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**Report of the fact-finding mission by Ambassador Tomáš Boček,  
Special Representative of the Secretary General on migration and refugees,  
to Bulgaria, 13-17 November 2017**

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## EXECUTIVE SUMMARY

The arrival of a high number of migrants and refugees in Bulgaria, notably in 2015 and at the beginning of 2016, put immense pressure on its asylum, reception and integration system. During this period of time, Bulgaria made significant efforts to cope with challenges of scale in setting up functioning reception facilities, strengthening its capacities to process asylum applications and providing education to refugee children. As the migratory pressures declined in 2016 and throughout 2017, Bulgaria progressively strengthened the control of its borders and took legislative steps to manage the presence of migrants and refugees on its territory as well as their eventual return to their countries of origin. However, should there be a higher migratory pressure in the future, Bulgaria would need to take further measures to develop a sustainable system to grant international protection to those in need of it and to ensure their integration in the Bulgarian society in full compliance with the European Convention on Human Rights (ECHR) and other Council of Europe standards.

Like all Council of Europe member states, Bulgaria has the sovereign right to control and manage its borders. However, interceptions of foreigners along the highly securitised fence at the Bulgarian-Turkish border, which effectively contribute to preventing them from reaching the Bulgarian territory, as well as pushbacks raise questions about the very essence of the right to seek asylum and the respect for the principle of *non-refoulement* in Bulgaria. Other issues regarding access to international protection relate to the lack of information available to asylum-seekers on their rights in a language that they can understand, the lack of interpretation during the status determination procedures, the lack of legal aid and the quality of the asylum procedure. These issues, on their own or taken together, raise concerns under Articles 2 and 3 of the ECHR.

Some of the amendments to the legal framework on detention of asylum-seekers and foreigners, which were enacted as the migration crisis was unfolding, raise questions about their arbitrary detention under Article 5 of the ECHR. The legal provisions on detention of children do not contain an exhaustive set of the necessary legal safeguards, which in the past led to situations of systematic detention of both accompanied and unaccompanied children. Although currently there is a relatively small number of migrants and refugees in detention, in comparison to the peak of the migration crisis in previous years, the conditions of detention remain concerning in view of Article 3 of the ECHR.

Faced with the arrival of a high number of unaccompanied minors, Bulgaria experienced difficulties in putting in place a functioning system of age-assessment and guardianship. It should be noted, however, that the Bulgarian Government's efforts to enrol refugee children in education have been successful and an enabling factor for their inclusion in local communities.

While the decentralisation of responsibilities on integration of refugees to municipalities appears to be a sensible step forward, the fact that the discharge of such responsibilities is not mandatory but left to the discretion of municipalities has resulted

in a complete lack of action by municipalities. Moreover, the public attitude towards migrants and refugees is generally negative while the use of anti-migrants rhetoric in the political discourse is stronger especially around election times.

## **1. THE CONTEXT OF THE MISSION**

Bulgaria was primarily a transit country for migrants and refugees who arrived in high numbers in the last three years, in particular across the Bulgarian-Turkish and Bulgarian-Greek borders. Most of them continued their journeys to other European countries passing primarily through Serbia. During this period of time Bulgaria faced an unprecedented situation in terms of reception and processing of asylum claims of migrants and refugees. The number of asylum applications rose sharply in 2015 and 2016, with 20,391 and 19,418 registered respectively. Following the closure of the Western Balkans migration route after the EU-Turkey Statement of March 2016 the number of arrivals of migrants and refugees and asylum applications dropped significantly. This trend continued in 2017 during which 3,391 asylum applications were registered in Bulgaria. At the time of my visit there were 1,080 asylum-seekers, refugees and foreigners in reception centres, mostly from Afghanistan, Syria, Iraq, Iran and Pakistan.

In the course of my fact-finding mission to Serbia (12 -17 June 2017), I met with several migrants and refugees who alleged that they had been ill-treated or lived in poor conditions during their stay in Bulgaria. Taking this into account, as well as the fact that Bulgaria is one of the transit countries on the Western Balkans migration route, I carried out this fact-finding mission. The purpose of my mission was to identify how the Council of Europe can offer assistance to Bulgaria in meeting the challenges posed by the arrival of a high number of refugees and migrants, while ensuring full respect for all international obligations related to their membership of the Council of Europe. This mission helped complete the picture of the situation of migrants and refugees travelling along the Western Balkans migration route.<sup>1</sup>

I conducted this mission together with my Political Adviser, Mr Edo Korljan, and my Legal Adviser, Ms Elvana Thaçi.

I would like to thank the Bulgarian authorities for their co-operation during our mission.

## **2. MEETINGS AND VISITS**

During our mission we met with the Deputy Minister of Interior, the Director General of the Border Police, the Director of the Migration Directorate, the Ombudsman, representatives of the Ministry of Labour and Social Policy, the Employment Agency, the Social Assistance Agency, the General Prosecutor's Office, with the leadership of the National Bureau for Legal Aid, the Commission for Protection against

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<sup>1</sup> See the reports of the Special Representative of the Secretary General on migration and refugees of his fact-finding missions to Greece and "the former Yugoslav Republic of Macedonia" (7-11 March 2016), Turkey (30 May – 4 June 2016), and Serbia and two transit zones in Hungary (12-16 June 2017).

Discrimination, the State Agency for Child Protection, the State Agency for Refugees (SAR) as well as with the Mayor of Harmanli and the members of the Municipal Council of Harmanli.

We exchanged views with representatives of the UNHCR, the IOM and UNICEF in Bulgaria. We also met with a number of NGOs and lawyers active in providing assistance and advice to refugees and migrants.<sup>2</sup> I would like to thank the IOM in Bulgaria for its valuable assistance in providing interpretation in Arabic, Kurdish and Farsi.

We visited Registration and Reception Centres (RCCs) managed by the SAR in Voenna Rampa, Ovcha Kupel, Vrazhdebna and Harmanli and the Special Home for the Accommodation of Foreigners in Lyubimets.

The programme of the fact-finding mission appears in the Appendix.

### **3. ACCESS TO INTERNATIONAL PROTECTION**

#### *3.1. Border controls*

Despite the fact that the migratory pressure dropped progressively during 2016 and in particular in 2017, the Bulgarian authorities continue to apply strict border control measures, which might prevent access into the Bulgarian territory of persons in need of international protection.<sup>3</sup> The construction of a 242km-long and three-metre-high fence along the entire Bulgarian-Turkish border, which started in 2014, is now completed. The fence has an integrated surveillance system, which includes thermic and vision detection devices intercepting movements of people towards the fence. The Bulgarian authorities notify the Turkish authorities about the intercepted movements, which in turn apprehend people before they cross the border into the Bulgarian territory. This surveillance system does not entirely prevent access into Bulgarian territory as migrants and refugees still manage to cross the border in clandestine ways, as acknowledged by the Bulgarian authorities themselves.

Over the last couple of years Bulgaria has deployed an increasing number of police officers to patrol and protect its borders.<sup>4</sup> In 2015 and 2016 there had been several cases of groups of Bulgarian citizens, often referred to in the media as “vigilantes”, who, although not bearing any direct relationship with the Bulgarian authorities, patrolled the Bulgarian-Turkish border and unlawfully detained or abused migrants and refugees.

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<sup>2</sup> The Association on Refugees and Migrants; Caritas Bulgaria; the Council of Refugee Women; the Bulgarian Council on Refugees and Migrants; the Bulgarian Helsinki Committee; the A25 Cultural Foundation; Bilitis Resource Centre; the Open Society Institute; the Centre for Educational Integration of Children and Young People from Minorities; the Centre for European Refugees, Migration and Ethnic Studies; the Bulgarian Red Cross; LUMOS Bulgaria; Animus Association Foundation; the Foundation for Access to Rights; the Centre for Legal Aid – Voice Bulgaria; the Bulgarian Gender Research and the LGBT organisation Deystvie.

<sup>3</sup> The authorities’ reports on registered attempts of foreign nationals to cross the Bulgarian border (95 641 attempts in 2015 and 42 466 attempts in 2016) underscore the preventive approach to entry into the Bulgarian territory. [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/03a\\_bulgaria\\_apr\\_part2\\_final\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/03a_bulgaria_apr_part2_final_en.pdf).

<sup>4</sup> Reportedly the Minister of Defense made reference in August 2017 to the possibility of deploying the army in order to reinforce border controls.

Despite the arrest of some of the perpetrators, criminal prosecutions in some cases and statements of the Ministry of Interior asking the Bulgarian citizens to refrain from apprehending refugees and migrants, in March 2017 UNHCR continued to receive accounts on groups of Bulgarian citizens, who at times patrolled parts of the Bulgarian-Turkish border. When raising this question in our discussions at the Ministry of Interior, we were informed that the relevant authorities had properly dealt with these cases, which were now considered as belonging to the past and that they had not involved organised criminal groups.

Asylum-seekers and refugees risk being detained in Bulgaria under criminal legislation on irregular border-crossing.<sup>5</sup> Despite calls and recommendations by the Council of Europe's Commissioner for Human Rights<sup>6</sup> and the Committee on the Elimination of Racial Discrimination<sup>7</sup> to decriminalise irregular border-crossing, given its punitive approach vis-à-vis persons who seek safety in Europe, the Bulgarian authorities reported to us that they do not plan to do so. It should be also noted that, the lack of interpretation in languages spoken by foreigners in police stations where foreigners are detained for illegal border-crossing, a challenge acknowledged by the Bulgarian authorities themselves, prevents or delays the identification of persons in need of international protection, and in turn leads to delayed access to asylum procedures and their placement in administrative detention.

### *3.2. Pushbacks*

During our mission we received reports by NGOs about pushbacks of migrants and refugees from Bulgaria to Turkey happening on a weekly basis. We also heard some testimonies from migrants and refugees alleging that they had been pushed back at the Bulgarian-Turkish border. They had managed to enter into Bulgarian territory after several attempts during which they had faced violence by the Bulgarian border police. The UNHCR<sup>8</sup> and other international bodies<sup>9</sup> have reported about alleged incidents, although on a smaller scale than in previous years, of ill-treatment and physical abuse of asylum-seekers and refugees by the Border Police. When raising these issues with the Ministry of Interior we were informed that both the Ministry of Interior and the Prosecutor's Office had opened relevant investigations into cases of alleged violence by the Border Police, but no violations of law by police forces had been found.

We also raised with the competent authorities the issue of deaths of migrants and refugees near Bulgarian border crossing points during the last three years, which had been reported by relevant international organisations.<sup>10</sup> We were informed by the

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<sup>5</sup> 18 844 foreigners were detained in 2016 and 31 281 in 2015 for unlawful crossing of the state border and illegal stay in the territory of the country [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/03a\\_bulgaria\\_apr\\_part2\\_final\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/03a_bulgaria_apr_part2_final_en.pdf).

<sup>6</sup> Report by the Commissioner for Human Rights following his visit to Bulgaria from 9 to 11 February 2015, CommDH(2015)12.

<sup>7</sup> UN CERD, Concluding observations on the combined twentieth to twenty-second periodic reports of Bulgaria, 31 May 2017; UN Doc. CERD/C/BGR/CO/20-22.

<sup>8</sup> UNHCR, Desperate Journeys (January-April 2017), <https://data2.unhcr.org/ar/documents/download/57696>.

<sup>9</sup> UN CERD, Concluding observations on the combined twentieth to twenty-second periodic reports of Bulgaria, 31 May 2017; UN Doc. CERD/C/BGR/CO/20-22.

<sup>10</sup> FRA monthly data collection on the migration situation in the EU, January 2017; see also <http://fra.europa.eu/en/theme/asylum-migration-borders/overviews/january-2017>; see also IOM's Missing Migrants Project <http://missingmigrants.iom.int/>.

Prosecutor's Office about the case of an Afghani man who after crossing the Bulgarian-Turkish border in October 2015 was shot dead by a warning shot of the Bulgarian police. The investigations into that particular case had concluded that there had been no criminal responsibility. As to other alleged deaths of migrants and refugees on Bulgarian territory, I trust that the Prosecutor's Office will take the necessary steps to conduct the necessary investigations.

In light of all the above-mentioned issues, Bulgaria's border control policies are characterised by a preventive approach to the admission of migrants and refugees in the country, in particular at the Bulgarian-Turkish border. The highly securitised fence along this border is a physical barrier to the entry of persons who might need international protection. Interceptions of migrants and refugees who are outside of Bulgaria's territory, which effectively contribute to preventing them from reaching the Bulgarian borders, raise questions about the very essence of the right to seek asylum and the respect for the principle of *non-refoulement* in Bulgaria. In this regard, pushbacks of foreigners by the Bulgarian police authorities notably to Turkey also raise concerns. As a result of the principle of *non-refoulement* states should screen foreigners arriving at their borders with a view to identifying persons in need of international protection and providing access to an asylum procedure in full compliance with their obligations under Articles 2 and 3 of the ECHR. This procedure should involve an individual assessment of the risk to the life or the risk of ill-treatment in case of expulsion of the person concerned to the country of origin or a third country. Also, the Bulgarian authorities should investigate effectively all recent allegations of excessive use of force by police in the context of migration as well as re-emerging allegations about citizen groups which patrol the Bulgarian-Turkish border and unlawful use of violence against migrants.

#### **4. ASYLUM PROCEDURES**

##### *4.1. Registration of asylum-seekers*

According to Bulgarian legislation when foreigners claim asylum before the Border Police, the Migration Directorate or other law enforcement authorities (e.g. in police stations) they should be transferred within six days to RCCs, which are open facilities for the accommodation of asylum-seekers managed by the SAR. The registration of asylum claims is done in RCCs by the SAR, also within six days.<sup>11</sup> Sometimes asylum-seekers are not able to have their asylum claims registered within this deadline due to lack of interpretation. This had been the case especially in 2015 and 2016 when there was a high flow of asylum-seekers, which resulted in asylum-seekers spending longer periods of time, up to three months, in custodial settings or detention premises. In several cases, when the relevant authorities determine that the person should stay in a detention centre, the SAR arranges for the asylum interview to take place in these centres. In the Special Home for the Accommodation of Foreigners in Lyubimets, a closed-type facility, we were informed that interviews with asylum-seekers were held occasionally in this centre. During the massive flow of migrants and refugees in the past

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<sup>11</sup> Article 58(4) of the Law on Asylum.

the National Security Agency had had its staff participating regularly in status determination interviews in this facility.

#### 4.2. Information

Authorities provide information to asylum-seekers about their rights and the asylum procedures in the form of brochures and posters, which are available in Bulgarian, English and Arabic. These arrangements are not adequate due to the fact that some asylum-seekers are illiterate or they do not speak the languages in which the information is available. The lack of interpretation in the languages frequently spoken by asylum-seekers, in particular in Farsi and Pashtoo, is a recurring issue in all phases of the status determination procedure, including registration and interviews with asylum-seekers, as well as in court proceedings when asylum-seekers appeal rejection decisions and return procedures. We received reports that in certain cases asylum-seekers had signed documents regarding their voluntary return believing that those were medical documents. In other cases court hearings had been adjourned for lack of interpreters. Some asylum-seekers complained that court hearings had been conducted without any interpretation at all. Non-state actors, notably the UNHCR, the Bulgarian Helsinki Committee and other NGOs provide information and advice to asylum-seekers and facilitate interpretation in the languages spoken by them. The challenge that the Bulgarian authorities face in ensuring interpretation and providing information to asylum-seekers on their rights is significant. However, it should be underlined that it is primarily the role of the state to secure interpretation as part of its duty to ensure fair and effective asylum procedures<sup>12</sup> and not rely excessively on the assistance of NGOs.

#### 4.3. Legal aid

According to Bulgarian legislation, asylum-seekers are eligible to request legal aid from the National Legal Aid Bureau during their status determination procedures (administrative proceedings) as well as at the stage of court appeals. However, the information on the availability of the state-funded legal aid services is not provided directly to asylum-seekers and foreigners in RCCs or closed centres.<sup>13</sup> We also understood from our discussions with relevant authorities that the budget available is rather limited and that there is generally speaking a lack of expertise in refugee law and international human rights standards among Bulgarian lawyers. In order to cope with these challenges, the National Legal Aid Bureau co-operates with UNHCR to train local lawyers in refugee law and the Bulgarian Helsinki Committee to ensure *pro bono* legal advice to asylum-seekers and foreigners. The latter NGO had recently established a hotline to receive complaints and requests by asylum-seekers and foreigners. Our delegation was encouraged, however, by the projects of the National Legal Aid Bureau to deploy in 2018 a new assistance mechanism targeting vulnerable groups, which would ensure the presence of a lawyer during interviews and other procedures carried out by the SAR and at the stage of court appeals.

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<sup>12</sup> M.S.S. v Belgium and Greece, no. 30696/09, 21 January 2011, paragraphs 286, 287, 301.

<sup>13</sup> The National Legal Aid Bureau has informed the regional bar associations about the services it can provide and since 2016 regional consultation centres of the Bureau have been established in Haskovo and Harmanli where the largest number of migrants and refugees lives.

#### 4.4. Status determination

At the time of our visit the number of asylum applications for 2017 was 3,391, which is significantly lower compared to numbers of applications in 2016 and 2015. During 2017 the SAR granted refugee status to 771 asylum-seekers and subsidiary protection to 869 persons; there were 2,929 rejection decisions and the asylum procedures were terminated in 9,490 cases. The SAR explained to us that Syrian nationals are in all cases granted protection in Bulgaria although there is no formalised position on this. Applications from other nationalities such as Iraqi and Afghan are assessed individually on the basis of the information provided by the applicant as well as general country-specific information provided by the UNHCR or other organisations.

Local NGOs expressed concerns about the quality of the status determination procedure, in particular the analysis of the grounds for granting international protection, authorities' overreliance on general information regarding the countries of origin of applicants without taking into consideration the individual circumstances of each applicant and a potential discriminatory treatment of Afghani nationals, for whom the recognition rate stood at less than 1%. Some of the asylum-seekers from Iraq and Afghanistan to whom we spoke alleged that their explanations about the risks to their lives, which they would face upon return to their countries of origin, had not been recorded during their interviews and had not been taken into account in the assessment of their applications. It should be noted that in recent years the European Court of Human Rights has indicated general measures to be taken by Bulgaria regarding the execution of its judgment concerning the expulsion of foreigners based on national security grounds, which should include changes in legislation as well as in administrative and judicial practices.<sup>14</sup> These changes should ensure, *inter alia*, that competent authorities consider rigorously the risks of death or ill-treatment likely to be faced by a foreigner as a result of his/her expulsion, by reason of the general situation in the destination country and his/her particular circumstances, including risks resulting in situations of transfer of the person concerned from third countries to his/her country of origin.

#### 4.5. Vulnerable persons

Although the Bulgarian legislation provides for an assessment of asylum applicants' vulnerabilities during their initial medical examination, there is no mechanism or protocol at the stage of status determination procedures to identify asylum-seekers with specific needs related to their age,<sup>15</sup> gender, consequences of torture, gender-based violence or other forms of psychological, physical or sexual violence. The SAR informed us that psychological assistance is made available in all RRCs with the help of NGOs, which is yet another illustration of the general approach to rely extensively on the assistance of NGOs. Nonetheless, the SAR's plans to ensure the daily 24-hour-presence of a social worker in all RCCs should be welcomed.

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<sup>14</sup> Auad v. Bulgaria, no. 46390/10, 11 October 2011, paragraph 139.

<sup>15</sup> See section 7 of this report on questions relating to unaccompanied children.

All the issues addressed above on asylum procedures, notably those regarding the lack of information available to asylum-seekers on their rights in a language that they can understand, the lack of interpretation during the status determination procedures, the lack of legal aid and the absence of an appropriate mechanism to identify persons in vulnerable situations and to refer them to the appropriate services, raise concerns about the absence of adequate safeguards to protect asylum-seekers against *refoulement* to countries where they run the risk of being subjected to treatment contrary to Articles 2 and 3 of the ECHR. The Council of Europe can support the Bulgarian authorities through training case-workers on international human rights law in order to make sure that there are individualised, fair and effective assessments of all claims for international protection, which duly take into consideration the ability of vulnerable applicants to present their cases (for example through the HELP Programme).

## 5. DETENTION

### 5.1. *The legal framework*

Foreigners can be detained following their unlawful entry or stay in Bulgaria for up to 30 calendar days for the purpose of conducting an initial identification and assessing subsequent administrative measures which are to be imposed.<sup>16</sup> It should be noted that these detention grounds beg the question as to whether they serve a legitimate purpose under Article 5 § 1 (f) of the ECHR. People in need of international protection may be automatically and systematically detained following their illegal entry or stay in Bulgaria simply because of not having any identification documents. While, in principle, it would be possible for them to be transferred from a detention facility to a reception facility after having applied for asylum, in practice, the lack of information on asylum and on their rights in an accessible form and language, randomly leads to delays in their access to the asylum procedure and extended periods of time in detention.

Asylum applicants can be detained by an order of the SAR for purposes of establishing or verifying their identity or nationality, establishing the facts and circumstances on the basis of which the application for international protection is made, when there is a risk of the applicant absconding, when it is necessary for the protection of national security and in order to determine the EU member state responsible for examining an application for international protection when there is a risk that the foreigner can hide.<sup>17</sup> Asylum applicants should be placed in asylum detention for a period of time as short as possible.

Furthermore, a foreigner for whom an expulsion order has been issued or who must be returned to his/her country of origin can be detained to secure the enforcement of the expulsion order, when there is a risk of him/her absconding or when the foreigner does

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<sup>16</sup> Article 44(13) of the Law on Foreigners. This provision was amended in December 2017 after our fact-finding mission. According to the amended provision a foreigner whose identity is not yet established may be detained for up to 30 calendar days to conduct an initial identification and authentication and to assess subsequent administrative measures which must be taken. The amended provision will become effective on 6 June 2018.

<sup>17</sup> Article 45b of the Law on Asylum.

not comply with precautionary measures that might have been applied to him/her.<sup>18</sup> Detention with a view to removal can be ordered for a period of time up to six months<sup>19</sup> with the exception of families with children, which can be detained for up to three months.<sup>20</sup>

The Bulgarian legislation allows for the application of alternative measures to detention to foreigners before expulsion only when obstacles exist for a foreigner to leave the country and no actions are scheduled as to their forthcoming expulsion. The alternative measures include a weekly appearance before the territorial structure of the Ministry of Interior at the place of the foreigner's residence, the payment of a pecuniary guarantee and the submission of the passport or a travel document in a temporary pledge.<sup>21</sup> Also, alternative measures can, according to the law, be applied to asylum-seekers during the determination of their status (bi-weekly appearance before the SAR).<sup>22</sup> In practice these measures are very rarely applied both in respect of foreigner pending expulsion and asylum-seeker. During our visit we received several reports from NGOs that the applicability of alternatives to detention is generally speaking not examined before foreigners and asylum-seekers are placed in detention.

Bulgaria is in the process of reforming its legislation with a view to ensuring an effective judicial control of detention of foreigners pending removal.<sup>23</sup> The Committee of Ministers recently reiterated its call to the Bulgarian authorities to adopt without further delay the legislative reforms needed to confer automatic suspensive effect to the remedy applicable where an arguable claim about a substantial risk of death or ill treatment in the destination country is made, and to provide that the destination country is mentioned in a legally-binding act which is amenable to appeal.<sup>24</sup>

## 5.2. Duration

Foreigners and asylum-seekers are detained in one of the two closed centres in Bulgaria, Busmantsi and Lyubimets, for various periods of time. The Bulgarian

<sup>18</sup> Article 44(6) of the Law on Foreigners. Detention with a view to removal can be ordered by the Migration Directorate, the Border Police, the District Police and the Regional Police. Precautionary measures include a weekly appearance before the relevant structures of the Ministry of Interior at the place of his/her residence, the payment of a pecuniary guarantee and the submission of a passport or other travel document to the relevant authorities.

<sup>19</sup> Article 44(8) of the Law on Foreigners. Official inspections are conducted on a monthly basis by the relevant authorities in order to ascertain the existence of the ground for detention. Exceptionally, when the person refuses to co-operate with competent authorities and when detention may be extended for an additional period of 12 months.

<sup>20</sup> Article 44(9) of the Law on Foreigners.

<sup>21</sup> Article 44(5) of the Law on Foreigners.

<sup>22</sup> Article 45a of the Law on Asylum.

<sup>23</sup> The European Court of Human Rights has found Bulgaria in violation of its obligations in several cases regarding detention of foreigners for the purposes of deportation based on national security grounds, see C.G. and others, no. 1365/07, 24 April 2008; Raza, no. 31465/08, 11 February 2010; Kaushal and others, no. 1537/08, 2 September 2010; M and others, no. 41416/08, 26 July 2011; Auad, no. 46390/10, 11 October 2011; Madah and others, no.45237/08, 10 May 2012; Amie and others, no. 58149/08, 12 February 2013. See also the Action Plans submitted by Bulgaria on the implementation of the judgments of the European Court of Human Rights in the group of cases C.G and others (DH-DD(2017)1100), 28 September 2017 and DH-DD(2018)206-rev, 4 April 2018.

<sup>24</sup> Bulgaria was also invited to introduce measures to ensure that expulsion based on public order considerations is not implemented before the foreign national has been able to exercise his rights under Article 1 of Protocol No. 7 (procedural safeguards relating to expulsion of aliens); the contents of judgments concerning expulsion orders based on national security considerations should be public, as far as possible without prejudicing national security. Decision of Deputies 7 December 2017, CM/Notes/1302/H46-8 [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=090000168076d2ec](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168076d2ec).

authorities informed us that the maximum stay of foreigners in Lyubimets was three months. At the time of our visit in Lyubimets there were 171 persons primarily from Afghanistan, Iraq and Pakistan. Some of the persons we spoke to had been apprehended by the Bulgarian police for irregular crossing of the border, kept in police stations for periods of time ranging from one day to one month, and thereafter transferred to the Lyubimets centre. The practice of detaining foreigners in police stations for longer than 24 hours is clearly not in compliance with the Bulgarian legislation.

Some other foreigners who were in Lyubimets were waiting for the court rulings on their appeals when refugee status or protection was not granted to them by the SAR. We met asylum-seekers who claimed to have spent up to 10 months in detention, which is questionable under the rules on asylum-detention, given that they should be applied for the shortest time possible. Also, there were many cases reported to us by asylum-seekers who had lodged their asylum-applications while in detention and were not transferred from the closed centre to a RCC after the expiry of the six-day-limit as required by the law. Our understanding was that delays in transferring those who have claimed international protection was mainly due to the inability of authorities to communicate with foreigners because of lack of interpretation or the fact that the latter are not informed about their rights and consequently do not apply for asylum.<sup>25</sup>

### *5.3. Safeguards*

Most of the persons detained pending their expulsion to whom we spoke to in Lyubimets were not able to show us a detention order. Amendments to the Law on Foreigners, which were introduced in December 2017 after our mission, require that the order whereby a foreigner is placed in detention before removal shall state explicitly the necessity and the legal grounds for detention; a copy of the expulsion order should be attached to it.<sup>26</sup> This is a welcome step which hopefully will result in the necessary change of practice.

During our visit we received reports that the detention of asylum-seekers is often ordered on grounds not foreseen in law (see section 5.1. above) for example for breaches of internal rules in open reception centres, without a prior assessment of the reasonableness, necessity and proportionality of this measure, or for the entire duration of the status determination procedure rather than for the shortest time possible as required by the law. These issues raise concerns about the lawfulness of detention of asylum-seekers under Article 5 § 1 (f) of the ECHR.

One of the major challenges that the Bulgarian authorities face is the shortage of interpreters in the languages frequently spoken by foreigners, notably in Farsi and Pashtoo. As a consequence, foreigners and asylum-seekers in detention are not always properly informed about their rights, their status and the possibility to apply for asylum,

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<sup>25</sup> In the last couple of years delays were also attributed to the lack of sufficient reception capacity in open centres after a large number of arrivals or lack of inter-institutional co-ordination.

<sup>27</sup> See Article 44 (10) of the Law on Foreigners.

which often leads to detention periods longer than those foreseen by law and delayed access to asylum procedures. The current interpretation arrangements made by NGOs and the INGOs do not provide a sustainable solution to this issue, which needs to be addressed in a more structural and formal manner.

State-sponsored legal aid is not available in or accessible from detention centres, which is primarily due to insufficient budgetary appropriations. In 2017, the National Legal Aid Bureau had assisted foreigners in few criminal proceedings for illegal border crossings. It is the NGOs such as the Bulgarian Helsinki Committee and the Centre for Legal Aid – Voice Bulgaria which provide legal aid to detained asylum-seekers and foreigners. The lack of legal aid, whether on its own or when combined with other factors such as the lack of information by foreigners and asylum-seekers on their rights or the lack of interpretation, may constitute obstacles to challenging the lawfulness of detention before courts, which potentially raise issues under Article 5 § 4 of the ECHR.

Issues relating to the treatment of foreigners and conditions of detention in Luybimets, as well as the practical operation of legal safeguards, will be covered in the report of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its periodic visit to Bulgaria from 25 September to 6 October 2017.

#### *5.4 Detention of children*

The relevant legal provisions of the Bulgarian legislation do not contain an exhaustive set of the necessary legal safeguards regarding detention of children in the context of asylum and migration.

As regards the detention of unaccompanied children following their illegal entry or stay in Bulgaria (see also section 5.1.above), the law does not contain a requirement regarding detention for the shortest time possible and in conditions appropriate to the needs, age and development of children.<sup>27</sup> The amendments introduced in December 2017, which will become effective on 6 June 2018, have, regrettably, weakened the standard of protection for unaccompanied children. The specific safeguards regarding detention of unaccompanied children only as a last resort and after consideration of the best interests of the child are no longer provided for in the law.<sup>28</sup> Accompanied foreign children can also be detained following their illegal entry or stay in Bulgaria for up to 30 days in special areas separate from adult foreigners, but the law does not require a best interests assessment and does not provide that this measure is applied only as a last resort measure.<sup>29</sup>

As regards asylum-detention of both accompanied and unaccompanied children, the law requires that detention is carried out only as a last-resort measure, for a period of time as short as possible and that efforts should be made to accommodate children in

<sup>27</sup> Article 44(13) of the Law on Foreigners.

<sup>28</sup> Article 44 (13) of the Law on Foreigners, as amended.

<sup>29</sup> Article 44(13) of the Law on Foreigners. The amendments of December 2017, which will become effective on 6 June 2018, require that accompanied foreigner children be accommodated together with their companions in special areas.

places suitable to them. However, the law lacks the necessary safeguards concerning an assessment of the child's best-interests before detention measures are applied.<sup>30</sup> As regards detention of children pending their removal, the Law on Foreigners prohibits the detention of unaccompanied children.<sup>31</sup> However, it does permit the detention of accompanied children for up to three months; in this case the law does not provide for a best-interests assessment and nor does it include a requirement to examine the availability of alternative measures.<sup>32</sup>

The detention of unaccompanied children has been a matter of serious concern over the last two years. The issue has been raised by the Bulgarian Ombudsman, INGO and NGOs.<sup>33</sup> One of the reasons which led to this situation in the past was the attachment of unaccompanied children to adults with whom the children did not have a verified kinship or with whom they would have simply travelled to Bulgaria. In certain cases, these children would be detained together with unrelated adults without even being served with a separate detention order. In the closed centre of Lyubimets, our delegation met with a few boys who claimed to be unaccompanied. It is necessary to ensure the accommodation of every unaccompanied child outside of closed centres, as required by the Bulgarian legislation. We were informed by the Bulgarian authorities about an ongoing co-operation project with UNICEF and the Bulgarian Red Cross to build a dedicated accommodation facility for unaccompanied children, which is expected to be completed in 2019. While this co-operation project is encouraging, the Bulgarian authorities should put in place interim measures regarding the proper accommodation of unaccompanied children until its completion.

The conditions of detention of children in Bulgaria have also raised serious concerns in the last years. The European Court of Human Rights has recently found a breach of Article 3 of the ECHR in the case of three minor foreigners who were kept in short-term holding facilities immediately after their interception and arrest; the Court did not consider that at the relevant time Bulgaria was facing an emergency of such proportions that it was practically impossible for its authorities to ensure minimally decent conditions in these facilities.<sup>34</sup>

## 6. RECEPTION CONDITIONS

At the time of our visit the number of asylum-seekers and refugees accommodated in RCCs was significantly lower compared to those in 2015 and 2016. This was due to

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<sup>30</sup> Article 45f of the Law on Asylum.

<sup>31</sup> In these cases unaccompanied children should be delivered to the competent Social Assistance Directorate under the Ministry of Labour and Social Policy, which will undertake protection measures pursuant to the Child Protection Act. See Article 44 (9) of the Law on Foreigners amended in December 2017 after our fact-finding mission. According to other amendments introduced also in December 2017, and which will become effective on 6 June 2018, unaccompanied children shall be represented by the Social Assistance Directorate of their place of residence; see Article 7.a of the Law on Foreigners.

<sup>32</sup> Article 44(9) of the Law on Foreigners.

<sup>33</sup> The Bulgarian Helsinki Committee identified 1,821 unaccompanied children detained in the national immigration detention centres in 2016, who had been released by the end of 2016. In the first quarter of 2017, 142 children were identified in detention following interception at border crossing points and within the territory of the country, of whom 32% were unaccompanied children.

<sup>34</sup> [S.F. and Others v. Bulgaria, application no. 8138/16, 7 December 2017](#). The Court found that the conditions of the cell in which the applicants were held, food and drinks deprivation for more than 24 hours, including food deprivation of a baby toddler for more than 19 hours, must have affected considerably the three applicants, both physically and psychologically, and must have had particularly nefarious effects on one of them in view of his very young age.

both a lower number of arrivals as well as continuous movement of migrants and refugees towards other European countries. We visited RCCs in Ovcha Kupel, Vrazhdebna, Voenna Rampa, Harmanli, which were all operating at around 20% of their occupancy capacities. The material conditions among these centres varied.

The Bulgarian authorities have made considerable efforts to adapt old schools or military buildings into facilities for the accommodation of asylum-seekers. While some of the facilities offered good living conditions such as those in Vrazhdebna, others have deficiencies in terms of hygiene, access to hot water and bedding materials. Following some instances of inter-ethnic violence among asylum-seekers, which took place in the past, the Bulgarian authorities have grouped asylum-seekers according to nationality. This was notable in Harmanli where all the asylum-seekers from Afghanistan were accommodated in a separate building; in Voenna Rampa where asylum-seekers from Afghanistan, Iran and Pakistan were accommodated separately from asylum-seekers of other nationalities.

According to the Bulgarian legislation asylum-seekers and refugees have access to health care in the same way as Bulgarian citizens. Also, their health insurance should be covered by the SAR. Some RCCs have a general practitioner present during standard working hours who provides basic medical assistance. We received several allegations by people in the RCCs that they did not have access to a general practitioner and could not consult specialists in the country due to lack of financial means. This situation was exacerbated by the suspension by the SAR in spring 2015 of the provision of the monthly social assistance of Bulgarian Lev 65 (€ 33), which asylum-seekers and refugees randomly used to buy medicine or other items for their personal needs. Persons with special medical needs should normally be identified and their needs should be assessed during the initial medical examination of asylum-seekers upon arrival to RCCs. Standard operating procedures to identify victims of trauma, trafficking in human beings or sexual or gender-based violence and to refer them to specialised assistance services remain largely underused.

Provision of education in RCCs is rather scarce. Bulgarian language courses are generally organised for children only by NGOs. In Harmanli, the asylum-seeking children from Afghanistan attend some basic learning courses, which are organised by the community itself with the support of the SAR. While this is a positive example of community engagement, it is not a sustainable solution to the issue of children's education. Adults do not have access to language learning, education or social activities in the RCCs.

We were informed by the Bulgarian authorities about their plans to increase capacities in most RCCs we visited. While this is a welcome step, especially in view of a possible large influx of migrants and refugees in the future, it is not sufficient. Measures to improve the material conditions in the RCCs should be taken immediately. Addressing

these issues is necessary to eliminate risks of inhuman and degrading treatment in compliance with Article 3 of the ECHR.<sup>35</sup>

## **7. UNACCOMPANIED CHILDREN**

### *7.1. Accommodation*

At the time of our visit there were 363 asylum-seeking and migrant children in Bulgaria, of whom 60 were unaccompanied.<sup>36</sup> According to Bulgarian legislation, unaccompanied children should be accommodated in specialised facilities. However, in practice they are randomly accommodated in RCCs, sometimes together with adults with whom they have no verified kinship. During our visits in the RCC in Voenna Rampa we were informed that around 20 unaccompanied children were accommodated there. In the RCC in Ovcha Kupel there was only one unaccompanied child present, while the administration had plans to build a separate section for unaccompanied children within the centre. During our visit in the closed centre in Luybimets we also met few children who, as mentioned above, claimed to be unaccompanied.

### *7.2. Age assessment*

The Bulgarian legal framework does not stipulate an age-assessment procedure when there is a doubt that a person is a child. In these cases an x-ray of the wrist is generally carried out. The relevant Bulgarian authorities recognised the need to introduce a multi-disciplinary assessment which takes into account both the physical and psychological maturity of children as well as their ethnic and cultural background. The Council of Europe can offer its expertise in introducing an age-assessment system which is multi-disciplinary and ensures that the best interests of the child are taken into account.

### *7.3. Guardianship*

In 2015 the provisions on guardianship of unaccompanied asylum-seeking children were removed from the Bulgarian Family Code while changes introduced in the Law on Asylum mandated mayors to appoint a person from the municipal administrations to act as representatives (“proxy”) of unaccompanied children. The representatives should safeguard the legal interest of the children during their status determination procedures and represent them before all administrative authorities, including social, health care, educational and other institutions with a view to protecting children’s best interests.<sup>37</sup> It was only at the end of 2016 that municipalities started to appoint one representative for the children accommodated in RCCs within their jurisdiction. Clearly, unaccompanied children were left without any guardian or legal representative for long periods of time.<sup>38</sup>

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<sup>35</sup> NGOs have reported on several cases throughout 2016 and in 2017 in which courts in some Council of Europe member states have suspended the transfer of asylum-seekers under the Dublin system in view of the poor conditions for the reception of asylum-seekers in Bulgaria which risk exposing them to inhuman and degrading treatment. ECRE – Aida country report on Bulgaria 2016, <http://www.asylumineurope.org/news/06-02-2017/aida-2016-update-bulgaria>.

<sup>36</sup> In 2016 there were 2772 unaccompanied children in Bulgaria.

<sup>37</sup> Article 25 of the Law on Asylum in the Republic of Bulgaria

<sup>38</sup> 2 772 unaccompanied children applied for asylum in Bulgaria in 2016, whereas 177 unaccompanied children submitted asylum applications in 2017.

The current arrangements of only one representative for several children are insufficient. The representatives are generally selected among the municipality staff, which is not trained and lacks knowledge or skills to deal with unaccompanied asylum-seeking children. The lack of qualified representatives has been criticised by INGOs and NGOs as well as the Bulgarian Ombudsman who have underlined that the situation in which unaccompanied children find themselves in Bulgaria accentuates safety risks, such as of being trafficked, subjected to sexual abuse and sexual exploitation, and contributes to the high absconding rate of unaccompanied children. The Council of Europe could support the Bulgarian authorities through its expertise to put in place an adequate system of guardianship for unaccompanied children, in particular through training programmes for representatives of children in order to enable them to define and defend the best interests of children.

## **8. INTEGRATION**

### *8.1. Integration strategies and policies*

According to the Law on Asylum, refugees and beneficiaries of subsidiary protection should have access to integration programmes on housing, employment and health care. In practice, however, the integration opportunities for refugees and beneficiaries of subsidiary protection in Bulgaria are rather scarce. This situation has been persisting in the last five years, with insufficient funding identified as one of its main root causes. No budgetary frameworks have been adopted to underpin the National Strategy on Migration, Asylum and Integration since its adoption in 2015. In spring 2017 a new Ordinance was adopted to regulate Integration Agreements between beneficiaries of international protection and municipalities<sup>39</sup>, which participate in such agreements on a voluntary basis. While the decentralisation of integration responsibilities from the government to municipalities would, in principle, be a sensible step forward, the fact that the discharge of such responsibilities is not mandatory but left to the discretion of municipalities raises questions about the effectiveness of integration measures in Bulgaria. This is illustrated by fact that no municipality has volunteered to conclude Integration Agreements, although funds would be allocated to them for every refugee participating in such agreements.

### *8.2. Housing*

A person who is granted refugee or subsidiary protection status should register within 14 days of his/her status determination decision with the municipality where he/she resides. In most of the cases, however, those granted international protection continue to live in RCCs because they cannot afford to rent apartments outside these centres and have limited access to social housing. They are allowed to live in RCCs for up to six months but are not entitled to receive food. While these arrangements ensure minimal support they do not adequately provide beneficiaries of international protection with

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<sup>39</sup> These agreements provide for arrangements to be made by municipalities for the integration of refugees and others granted international protection status, such as housing, kindergartens and schools for children, registration with general practitioners, registration at the National Employment Agency and the Agency for Social Assistance.

opportunities for self-reliance, which exacerbates the risk of homelessness and poverty. Therefore, arrangements should be made by the Bulgarian authorities to provide social assistance for at least six months after being granted refugee status, which seems to be essential to empower beneficiaries of international protection to access affordable housing and start building their lives in Bulgaria.

### *8.3. Access to the labour market*

According to the relevant legislation, beneficiaries of international protection should benefit, in the same way as Bulgarian citizens, from employment programmes upon their presentation and registration with the local employment offices. The latter should prepare individual employment plans taking into account the relevant qualifications of the beneficiaries of international protection. This approach is positive especially when taking into account the general situation in Bulgaria with regard to unemployment of the Bulgarian population and the regional imbalances in this regard. However, it should be noted that beneficiaries of international protection have fewer opportunities to benefit from general support programmes compared to Bulgarian citizens, because of lack of information about how to seek employment, lack of knowledge of Bulgarian language and lack of recognition of qualifications. In the absence of employment programmes providing targeted support to beneficiaries of international protection or special assistance to those with specific needs, refugees face a number of barriers in exercising their right to work. Some of the refugees we met in RCCs who had taken up jobs in Sofia or in Harmanli reported that these were temporary and did not provide them with sufficient means to live outside the RCCs.

### *8.4. Education*

Asylum-seeking and refugee parents have generally shown reluctance to send their children to schools in Bulgaria because they intend to travel elsewhere in Europe. The SAR has made significant efforts to convince parents about the benefits of educating their children in Bulgaria. Also, the SAR facilitates the enrolment of refugee and asylum-seeking children in local schools in particular by making arrangements for their transportation from the RCCs to schools. Consequently, there has been some progress in school enrolment of children in 2017; of the 363 children present in RCCs, 130 are currently enrolled in Bulgarian schools.<sup>40</sup> Concerns remain, however, regarding actual school attendance by children and their placement in appropriate programmes for their age and state of development. More concerning is the situation of unaccompanied children accommodated both in RCCs and closed centres who do not have any access to education. There is no provision of Bulgarian language training for adults in or outside of RCCs, which constitutes an obstacle to their integration in the Bulgarian society. The lack of funding, which is the main cause of this situation, should not prevent Bulgarian authorities from engaging in partnerships with local NGOs which can provide language courses, training and apprenticeships leading to skills acquisition for adult asylum-seekers and refugees.

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<sup>40</sup> In 2016 only 77 children out of total of 6,500 had attended school.

### 8.5. Public attitudes towards migrants and refugees

During our visit we received reports about the general public showing hostility towards asylum-seekers and refugees. In December 2016, when inter-ethnic violence broke out in the Harmanli RCC and quarantine measures were put in place to stop the spread of infectious diseases, the local population protested requesting the closure of this centre. During the same period of time people from the village of Lessovo protested against plans to build a reception centre for refugees near their village, citing worries that similar situations such as in Harmanli would be repeated. There were also reports about nationalists protesting in Sofia against migrants demanding government action against refugee criminality. They also demanded that refugee centres be closed, irregular migrants be transported to their home states and that police take more serious action in places where foreigners are present.<sup>41</sup>

In 2016, NGOs have reported about cases of Bulgarian citizens forming so-called “voluntary border patrol” groups, which held captive Iraqi and Afghan migrants who were crossing the border from Turkey before handing them over to the police (see section 3.1. above). It was only after formal complaints were made by the Bulgarian Helsinki Committee, that local police arrested some of the perpetrators and the Ministry of Interior issued statements asking citizens to refrain from apprehending refugees, asylum-seekers and migrants.<sup>42</sup>

Other concerns relate to increased incidents of hate speech and allegations of hate crime targeting refugees and migrants in Bulgaria. During our meetings with the Commission Against Discrimination and the General Prosecutor’s Office, we were not able to receive updated information on the number of reports on crimes of hate speech and racially motivated crimes, prosecutions, convictions and sentences imposed on perpetrators during the last years.<sup>43</sup> The Committee on the Elimination of Discrimination, implementing the International Convention on the Elimination of All Forms of Racial Discrimination, has recently called on Bulgaria to investigate incidents of racist hate speech and racially motivated violence, take appropriate measures against persons using hate speech and prosecute perpetrators of racially motivated crimes.<sup>44</sup>

Asylum-seekers, refugees and migrants are often portrayed in negative ways and as a threat to the safety of the country in Bulgarian media. ECRI has considered that the monitoring conducted by the Bulgarian Council on Electronic Media of the ways in which refugees and migrants are portrayed by the media has been passive and that the measures taken were not sufficient to act as deterrents against racially motivated hate

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<sup>41</sup> FRA monthly data collection on the migration situation in the EU, January 2017 [fra.europa.eu/sites/default/files/.../fra-january-2017-monthly-migration-report\\_en.pdf](http://fra.europa.eu/sites/default/files/.../fra-january-2017-monthly-migration-report_en.pdf).

<sup>42</sup> Amnesty International, Bulgaria 2016/2017 report, [www.gpo.gl/kr7JJ5](http://www.gpo.gl/kr7JJ5).

<sup>43</sup> The Commission Against Discrimination informed us about a decision it had taken in 2014 which had found that the statements of the mayor of a municipality and the chairman of the municipal council about two refugee children from Somalia and Afghanistan as well as their action preventing these children to attend local schools were in violation of the legal provisions on the prohibition of discrimination.

<sup>44</sup> UN CERD, Concluding observations on the combined twentieth to twenty-second periodic reports of Bulgaria, 31 May 2017; UN Doc. CERD/C/BGR/CO/20-22.

speech against migrants and refugees.<sup>45</sup> Recently, ECRI concluded that its Recommendation of 2014, according to which the authorities should urgently organise an awareness-raising campaign promoting a positive image of and tolerance for asylum-seekers and refugees and ensuring that the public understands the need for international protection, had not been implemented by the Bulgarian authorities.<sup>46</sup>

During our meetings with civil society, several NGOs raised concerns about a perceived process of normalisation of anti-migrant extremism in political discourse in Bulgaria, despite a relatively low number of refugees and migrants in the country. The racist discourse against migrants and refugees is stronger especially during election campaigns, with political parties and candidates frequently instigating hate and fear of migrants and refugees amongst the local population. Several of our interlocutors informed us about the repeal by the Bulgarian caretaker government in March 2017 of a Decree on arrangements to be made by municipalities regarding the integration of beneficiaries of international protection and the subsequent adoption of an Ordinance with an equivalent regulatory content<sup>47</sup> after the general elections. Our interlocutors maintained that this was a manifestation of how issues related to migrants and refugees were used for political opportunism in Bulgaria especially during pre-election periods. The extremely high politicisation of migration issues has had a negative influence on municipalities, as none of them has volunteered to enter into the Integration Agreements regulated by the above-mentioned Ordinance.

In Harmanli we had a very open and frank discussion with the members of the Municipal Council and the Mayor. The Council members explained their concerns about the lack of information regarding the number of migrants and refugees in the city. The contacts between the local population in Harmanli and refugees in RCCs are limited to refugee children attending local schools and the normal exchanges in local shops. The Municipality Council raised concerns about a number of challenges regarding the integration of refugees in the local society, such as those relating to cultural differences, lack of work opportunities in the region and potential difficulties to integrate descendants of refugees in the longer term. However, we felt that there was a genuine good will to engage in dialogue to overcome these challenges. The Bulgarian Government and other relevant agencies should engage more in communication and dialogue with local government authorities not only to promote a positive image and tolerance for asylum-seekers and refugees but also to discuss and address concerns of local populations and authorities with regard to the integration of beneficiaries of international protection. Without such engagement the Integration Agreements mentioned above could remain a dead paper.

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<sup>45</sup> ECHRI Report on Bulgaria published on 16 September 2014, <https://www.coe.int/t/dghl/monitoring/ecri/country-by-country/bulgaria/BGR-CbC-V-2014-036-ENG.pdf>

<sup>46</sup> ECRI, Conclusions on the implementation of the recommendations in respect of Bulgaria subject to interim follow-up, published on 16 May 2017, <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Bulgaria/BGR-IFU-V-2017-022-ENG.pdf>.

<sup>47</sup> Ordinance on terms and conditions for conclusion, implementation and termination of the agreement for integration of foreigners granted asylum or international protection.

## 9. CONCLUSIONS AND RECOMMENDATIONS

Bulgaria has made steady and noteworthy efforts, with significant support from the EU, international organisations and several NGOs, to receive a high number of migrants and refugees who arrived in or transited through the country in the last couple of years. Over this period of time, Bulgaria has changed its legislation on asylum and foreigners several times and reinforced its border controls with a view to preventing the irregular entry of foreigners. The public attitude towards migrants and refugees is generally negative while the use of anti-migrants rhetoric in the political discourse is stronger around election times.

Currently there are few arrivals to Bulgaria and a relatively low number of refugees and asylum-seekers are present in the country. Under these circumstances the Bulgarian asylum system is not subjected to a stress-test. However, should there be a higher migratory pressure, Bulgaria would need to take further measures to develop a sustainable system to grant international protection to those in need of it and to ensure their integration in the Bulgarian society in full compliance with the ECHR and other Council of Europe standards. In order to meet these goals the Council of Europe can provide meaningful assistance to Bulgaria, upon its request, in the following areas:

- a. improving access to international protection through:
  - training the Border Police and the National Police on how to ensure full respect for the principle of non-*refoulement*, access to asylum procedures and identification of and assistance to asylum-seekers with specific needs or vulnerabilities;
  - providing expertise on how to build a sustainable system with qualified interpreters assisting border-crossing points and police stations;
  - providing expertise on preventing and combating ill-treatment of migrants and refugees by the police, effectively prosecuting such acts and punishing those responsible as well as on strengthening complaint mechanisms regarding violent acts;
  - supporting the SAR in making sustainable arrangements for the availability of interpretation during the status determination procedures and the accessibility of legal aid services;
  - supporting the SAR in strengthening its capacities, through human-rights training under the European Programme for Human Rights Education for Legal Professionals (HELP) in relation to the registration of asylum-seekers and the fair assessment of their claims for international protection, with a view to ensuring that all asylum and immigration decisions are made in full compliance with Articles 2, 3 and 13 of the ECHR and Article 1 of Protocol No.7;

- b. ensuring that the reception conditions for migrants and refugees guarantee an adequate standard of living taking into account the specific needs of migrants and refugees, in compliance with Article 3 of the ECHR, through providing expertise in establishing a mechanism for the identification and referral to appropriate assistance services of those who are vulnerable or have specific needs;
- c. ensuring that migrants and refugees are not subjected to arbitrary detention, through:
  - training the SAR and the Migration Directorate on the relevant jurisprudence of the European Court of Human Rights under Article 5 of the ECHR;
  - providing expertise on establishing a system for the provision of information to migrants and refugees in detention about their rights and the possibility to apply for asylum as well as on making the necessary arrangements for the provision of interpretation and legal aid services;
  - providing expertise on progressively eliminating detention of children through introducing the necessary changes in law and in practice, which ultimately ensure that detention is used only as a last resort, for the shortest time possible, after an assessment of the child's best interest and after a proper examination of alternatives to detention;
  - sharing of best practices on a wider and systematic use of alternatives to detention.
- d. strengthening the protection of unaccompanied children through providing expertise on age-assessment, guardianship, access to healthcare, education and other support services.
- e. ensuring the full and effective access of refugees and migrants who will remain in Bulgaria to their social and economic rights through the sharing of best practices in this regard with municipalities in order to facilitate awareness-raising on their responsibilities regarding beneficiaries of international protection.

## Appendix

### Programme

#### Monday, 13 November 2017

15:30-17:30 Meeting with NGOs

#### Tuesday, 14 November

09:15-10:45 Meeting with Mr Milko Berner, Deputy Minister of Interior, Mr Stoyan Ivanov, the Director General of the Border Police and Ms Mariyana Marinova, the Director of Migration Directorate

11:00-12:00 Meeting with Ms Elena Cherneva-Markova, President of the National Legal Aid Bureau and Ms Vilma Vasileva-Georgieva, Vice-President of the National Legal Aid Bureau

13:00-14:45 Visit of the Registration and Reception Centre Voenna Rampa

15:00-16:00 Meeting with Ms Liliana Stankova-Proytcheva, Chairperson of the State Agency for Refugees and Mr Daniel Indzhiev, Deputy Chairperson

16:30-18:00 Visit of the Registration and Reception Centre Vrazhdebna

#### Wednesday, 15 November

11:00-13:00 Visit of the Special Home for the Accommodation of Foreigners in Lyubimets

14:00-16:00 Visit of the Registration and Reception centre Harmanli

16:00-17:00 Meeting with the members of the Municipal Council of Harmanli

17:00-18:00 Meeting with the Mayor of Harmanli

#### Thursday, 16 November

8:30-10:00 Meeting with Mr Mathijs Le Rutte, UNHCR Representative in Bulgaria and Mr Radoslav Stamenkov, Head of Office, IOM Bulgaria

10:00-11:00 Meeting with Ms. Ana Dzhumalieva, the Chairperson of the Commission for Protection against Discrimination

11:30-13:00 Visit of the Registration and Reception centre Ovcha Kupel

14:00-15:00 Meeting with officials of the Ministry of Labour and Social Policy and representatives of the Employment Agency and the Social Assistance Agency

15:15-16:15 Meeting with Mr Valentin Dimitrov, Deputy Chair of the State Agency for Child Protection

16:30-17:30 Meeting with Mr Nikolay Georgiev, the General Prosecutor's Office

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**Friday, 17 November**

09:00- 10:30 Meeting with Ms Maya Manolova, Ombudsman of the Republic of Bulgaria

10:30-12:00 Meeting with Ms Maria Jesus Conde, UNICEF Representative in Bulgaria