



## 2010 Bulgaria

# Annual Border Monitoring Report

## ACCESS TO TERRITORY AND ASYLUM PROCEDURE

### I. INTRODUCTION

#### Chapter I. - Border Monitoring Framework

##### 1.1. Overview

Bulgaria was situated on the Balkan peninsula at one of the most busiest routes of human migration in geographic, historic and political blueprinting. Bulgarian boundaries stretched over 2245 kms, bordering with Black Sea coast on the East, Turkey and Greece on the South, Macedonia and Serbia on the West and Romania across the Danube river on the North. As the national government institution responsible to implement border control was assigned the Chief Directorate Border Police within the Ministry of Interior. It was divided into 7 regional offices - one aimed at air border control (Airports) in the capital Sofia and the rest for land border control in Burgas, Elhovo, Smolyan, Kyustendil, Dragoman and Ruse. Their jurisdiction was specified vis-a-vis the supervised border, respectively - airports, Black Sea, Turkey, Greece, Macedonia, Serbia and Romania.



Bulgaria was one of the first countries in Central Europe to reach in 2004 an official agreement between the Border police and the asylum non-governmental sector formalising their practical cooperation and the existing monitoring methods and arrangements. In April 2010 this agreement was expanded to a tripartite Memorandum of Understanding, signed among all national stakeholders in the area of asylum involved with the issues of access to territory and international protection, namely - the UN High Commissioner for Refugees, the General Directorate of the Border Police with the Ministry of Interior and the non-governmental legal partner, the Bulgarian Helsinki Committee. The memorandum has set new focuses and challenges as well as new mechanisms for coordination and cooperation to implement border monitoring aimed primarily to safeguard the non-refoulement principle. To these days the cooperation proved to be the most valuable national achievement regarding the individuals in need of international protection vis-à-vis the establishment of those core legal and practical arrangements to guarantee their access to the territory and the asylum procedure.

## 1.2. Legal Framework

In 1999 the first Law on Refugees was adopted (St.G. 53/1999) replacing the existing secondary legislation that since 1994 had provided for the asylum rules and procedure. Pursuant Article 44 in conjunction with Article 49 of the old law the Border police had the obligation to register all asylum applications that had been submitted before its officers or in its territorial units at the national borders, to provide interpretation (art.44, paragraph 7 of the old law), to decide on admissibility and manifestly unfounded grounds and, if established that the claim fell under the scope of the refugee legislation - to refer the asylum application to the Agency for Refugees for further examination in a general determination procedure.

In 2002 a new law was adopted to replace the old act, the Law on Asylum and Refugees, hereinafter referred to as "the asylum law" (St.G. 54/2002) which irrevocably stripped the Border police from the responsibility to assess the asylum claims lodged at the national borders (art.58, paragraph 4 of the law). These functions were shifted to the State Agency for Refugees (hereinafter referred to as "the asylum administration") which became the only administration determining on the need of international protection. Therefore, the border officers were obligated to send to the asylum administration for further proceeding and determination any asylum application made before them. They should also do that in a very strict time-frame. According to the national law on the Ministry of Interior, the Border police as a part of the interior administration could not keep in detention any individual for any period longer than 24 hours (art.64 in conjunction with art.63, paragraph 1, item 5 of the police law) and either should release the individual irrevocably, or should transfer him/her to another institution or administration, competent to deal with the case and to extend for this reason the detention. Thus, if the alien has not claimed asylum, s/he would be considered as an irregular migrant and should either be released, or, transferred to a detention center under the jurisdiction of the Migration Directorate with the Ministry of Interior, authorised by the police law to implement deportation procedures. But in case where an asylum application was submitted, the Border police was obligated under the asylum law (art. 58, paragraph 4) to refer the application to the asylum administration, the State Agency for Refugees.

However, the asylum law was also changed in a way that allowed the asylum administration to withhold the start of the determination procedures to the moment when the asylum seeker was actually transferred *in personae* to their reception facilities (art.58, paragraph 3 of the asylum law). Therefore, the asylum administration was not automatically opening a status determination procedure when it has been referred to by the Border police with an asylum application. As a result, the asylum administration has been delaying discretionary the access to the procedure of the asylum seekers who applied at the national borders. It was justified with the argument that determination

procedures ought to commence with the registration of the applicant, not the application. In continuation of this malpractice, in 2007 a piece of secondary legislation<sup>1</sup> was adopted that explicitly prohibited the Border police to transfer the asylum seekers who applied at the border to the asylum reception facilities. Instead, all of them, excluding separated children, pregnant women and disabled persons (art.16, paragraph 3 of the ordinance), should have been transferred to the detention centers for irregular migrants designed for implementation of deportation procedures. This provision was considered to be adopted in flagrant violation of the generally recognised rules and criteria for fair and efficient status determination and in violation of Article 29(2) in conjunction with Article 20 of the national law as well as Article 18(1) of 2005/85/EC Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, which explicitly prohibited detention of asylum seekers for the sole reason that s/he is an applicant for asylum. The access to status determination for border applicants was additionally complicated and postponed as far as their release from the immigration detention center depended entirely on the discretion of the asylum administration when, and, if to allow it. Only after such kind of release authorisation has been issued and sent to the detention administration, the asylum seekers could be transferred from the detention facilities to asylum reception centers where their proper identification, registration, documentation, accommodation and determination could finally begin.

### 1.3. Methodology

In the situation as described above, the Bulgarian Helsinki Committee as UNHCR's implementing partner exercised in 2010 regular monitoring of all national borders with priority given to the main main land (Svilengrad, Bulgarian-Turkish-Greek border) and air (Sofia Airport) entry borders which were monitored on a weekly basis as minimum.

The Border police was obligated to provide the BHC with access to every police border facility where the individuals in need of international protection might be apprehended (art.15 of the tri-partite MoU). Nothing in the agreement provided for limitation of this access except the general admittance and safety requirements, therefore it has been made available without any authorisation or pre-conditions in terms of time, frequency, duration or circumstances related to the individuals who were detained. Monitoring could be exercised daily, if such necessity has occurred. Any national border and/or 24 hours border detention facility could be approached and monitored.

In return, the BHC monitors were obligated to inform the monitored individuals about their identity and mandate, the purpose of the monitoring, the voluntary nature of conducted interviews including - the right of the person to refuse to be interviewed (art.16 of the MoU). The BHC had also an obligation to provide legal assistance to any other persons falling outside of the UNHCR concern, if such assistance was requested by the Border police in written or by phone, fax, email or other means of communication (art.20 of the MoU). The asylum application's original copy was sent immediately by a letter from the Border police to the State agency for refugees. In 2010 the BHC provided assistance and interpretation to 36 illegal immigrants arrested on their way out of the country's territory and cooperated the Border police in investigation of the related facts and circumstances. Finally, the BHC ought to monitor the accessibility and use of the information materials, elaborated and produced by all relevant GO/NGO border agencies, institutions and organisations (art.18 of the MoU) as well as to develop a monthly written report on its monitoring visits (art.19 of the MoU).

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<sup>1</sup> Ordinance №332/28.12.2007, enforced on 14.01.2008 on coordination and responsibilities sharing among State agency for refugees, Migration Directorate and Border Police in cases of asylum applications lodged at the national borders (St.G.3/2008)

#### 1.4. Protecting refugees within broader migration movements

In 2010 Bulgaria alongside Greece remained the most critical external border of the European union in South-East Europe which reflected in joined community efforts and investment to prevent illegal migration and unauthorised entry of third country nationals into the community's territory. These measures, however, needed to strike balance with the right of asylum seekers to be allowed to enter and remain on one's national territory in order to exercise the right to seek and enjoy asylum and international protection despite the lack of valid documents, visas, residence permit or the illegality of the entry. This balance was a core criterion to judge on whether Bulgaria respected its international obligations undertaken with the ratification of 1951 Geneva Convention Related to the Status of Refugees and, most importantly the observation of the *non-refoulement principle* and the explicit prohibition in the law (art. 33, paragraph 1 of the convention and art. 4, paragraph 3 of the asylum law) to expell, deport or return in any manner whatsoever (art.67, paragraph 1 of the asylum law) a refugee to the frontiers of territories where his life or freedom might be at risk or threatened on account of race, religion, nationality, membership of a particular social group or political opinion. As far as most asylum seekers travelled and entered the country as a part of mixed migration flows their early identification was of vital significance in order to enable them to exercise their right to access to the territory and determination procedure and, thus, to international protection and safe haven.

#### 1.5. Entry of aliens to the territory

The Law on Aliens (St.G.153/1998) arranged the general entry regime of the third country nationals and the Law on Entry, Residence and Exit of the Republic of Bulgaria of EU citizens and Members of Their Family (St.G.80/2006) regulated the entry into the country's territory of community nationals and the members of their family who were third country nationals. The general entry regime towards third country nationals required regular national travel document or another substitute document as well as an entry visa for those third country nationals to whom the visa immigration regime<sup>1</sup> was mandatorily applied (art.8, paragraph 1 of the EU nationals' entry law). Visa types were determined by the purpose for which the visa was issued (art.9a of the alien's law), namely: air transit visa (type "A"), land transit visa (type "B"), short-term residence visa (type "C") and long-term residence visa (type "D"). According to the second paragraph of the said legal provision (art.8, paragraph 2 of the EU nationals' entry law) visas shall not be required from the third country nationals as listed in 2001/539/EC Regulation, or, if the third country national had been issued long-term or permanent residence permit from another EU member state. They can enter and reside in Bulgaria without visas for period of 90 days at maximum within a duration of 6 months period of time.

Notwithstanding, if recognised refugees or stateless persons travel by virtue of a regular document, they could be required an entry visa, if their residence permit or status were granted by a third country as listed in Annex I of 2001/539/EC Regulation (see, Annex B. at the end of the report). Thus, the determining factor would be the country of recognition and/or residence, rather than the country of origin or habitual residence in case of stateless travellers.

If the alien travelled without any of the required documents and/or visas as described above, s/he could be considered as an illegal migrant. In this case, border officials were obligated under the law to enact a deportation order (art.41 in conjunction with art.44 of

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<sup>1</sup> Pursuant Article 4, Paragraph 1 of the Ordinance for Visa Rules and Procedures (St.G. 44/2008) the country, whose nationals can transit Bulgaria on the basis of tranzitvisa are: Angola, Afghanistan, Bangladesh, Ghana, Ethiopia, Erithrea, Iraq, Iran, Democratic Republic of Congo (Zaire), Liberia, Nigeria, Pakistan, Somalia, Sudan and Sri Lanka. Pursuant Article 4, paragraph 2 of the Ordinance, the countries whose nationals need visa to enter or reside in Bulgaria are - see, Annex B). at the end of this report.

the aliens' law). The deportation should be mandatorily secured either with obligatory daily subscription before the police, or, with compulsory administrative detention (art.44, paragraph 5 and 6 of the aliens' law). If the illegal migrant has applied for asylum the deportation should be withheld automatically (art.67, paragraph 1 of the asylum law), however, the law omitted to prescribe the same effect in relation to the detention.

#### 1.6. Mechanisms for identification/profiling and referral

The Schenghen information systems I and II (SIS-I and SIS-II) should have by design collected fingerprints and scanned photographs of all travellers entering the Schenghen area in order to prevent illegal immigration as well as international crime and terrorism. Although Bulgaria was not yet a member of the Schenghen area, as an EU member state it rapidly started to equip and train border units and personnel to access the levels of admissibility in the existing systems for information exchange such as EURODAC, SIS, SIRENE and FADO. Mandatory and formally accessible, the EURODAC system was the tool used, if an asylum seeker was apprehended for being undocumented or for his/her illegal entry. Fingerprinting ought to take place for the purposes of implementation of the 2003/343/EC Regulation (so called, Dublin regulation) in order to establish the member state responsible to implement the status determination procedure of the asylum seeker in concern.

However, in view of lacking operational territorial units of the asylum administration in border areas and delayed start of the determination procedures in Bulgaria (see, above 1.2.) none of the asylum seekers who applied at the national border was fingerprinted for the purposes of EURODAC and Dublin procedure. Asylum applications were registered by the territorial units of the Border police, filed with an entry number and date and then faxed, or, scanned and emailed to one of the two asylum administration's reception centers in Sofia or Banya. Copy of the asylum application with registration date and number was usually served to the asylum seeker to be handed over either to the asylum administration staff, if the person was directed to a reception center - in the minority of the cases (113 border applicants), or, to the detention center staff, if the person was directed to a detention center - in the majority of the cases (183 border applicants). In this regard, in 2010 the most serious protection concern was the lack of interpretation services provided by the Border police. Without interpreters or budget for interpretation and/or translation services, the Border police could not provide the registration of the asylum applications which the Border police ought to provide mandatory under the law (art.58, paragraph 4 of the asylum law). Border officials before whom the asylum application were submitted could not communicate with the asylum seekers. In 2010 quite many pathological situations were monitored where the Border police together with the criminal investigation services required the asylum seekers and immigrants to cover the interpretation fees themselves, sometimes even for the purposes of criminal proceedings under Article 279 of the Criminal Code against their illegal entry. Therefore, in 2010 asylum seekers could exercise their right to seek and apply for asylum only, if assisted by BHC lawyers and interpreters. In 2010 Bulgaria registered 1008 asylum applicants in total. 296 of them, applied for asylum at the border. Thus, 29% of the registered asylum seekers were protected from refoulement, registered and granted access to territory and procedure on account of monitoring, assistance and representation provided within the established under the tri-partite mechanism border monitoring framework, communication and cooperation.

#### 1.7. Access to asylum procedure from borders and right to appeal detention/deportation

All new arrivals at the borders were assisted by the BHC with legal advice and provided interpreters in order to enable their communication with the border guards as well as to support the submission and registration of asylum applications with the local Border police units. Once the asylum application was registered by the Border police the applicants together with the applications were sent to the national inland detention

center for illegal immigrants in Busmantsi village, near the capital Sofia. Altogether 580 asylum seekers were detained in 2010, 183 of whom, or 31%, were border applicants transferred to the detention center from the national borders. In order to ensure that none of the border applicants who was transferred there would be deported in violation of the non-refoulement principle, the BHC implemented further monitoring, counseling and assistance.

Under the national legislation all acts of the administration related to recognition or rejection of individual rights were made subject to a judicial control and revision (art.120, paragraph 2 of the national Constitution). Appeals against detention orders were submitted before the relevant courts in each individual case to assist the applicant's release from detention. As far as all deportation procedures vis-à-vis the asylum applicants were *ex lege* automatically suspended (art.67, paragraph 1 of the asylum law) there was no legal or practical need to submit appeals against the deportation orders.

After series of negotiations as well as interventions in group and individual cases made in order to pressure the asylum administration, the latter started to release asylum seekers, including the border applicants from detention in due time and following a strict sequence by the date of their arrival into the detention center. Non-disputed priority, however, was given in cases of families with little children and ill, or, injured individuals.

#### 1.8. Legal safeguards in the readmission agreements

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## II. SITUATION REPORT

### Chapter II. - Access to territory and asylum procedure

#### 2.1. Principle of non-refoulement under Article 33(1) of the 1951 Geneva Convention

The 1951 Convention relating to the Status of Refugees promulgated in its Article 33, paragraph 1 one of the cornerstones of the international protection - the prohibition of expulsion or return (refoulement), i.e. the non-refoulement principle. The law provided that no contracting state should have expelled or returned (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

Therefore, the most important common task and joint effort of cooperation among all parties of the agreement - the UNHCR, Border police and the BHC - was to safeguard the non-refoulement principle in a way that nobody who applied for asylum at the national borders was expelled, deported or returned before the asylum application was examined and decided on. In 2010 in Bulgaria were registered 0 cases of refoulement.

#### 2.2. Principle of non-punishment under Article 31(1) of the 1951 Geneva Convention

Article 31 of the 1951 Convention provided that the governments, which states were signatories to the convention should not impose penalties on account of illegal entry or presence on refugees who, coming directly from a territory where their life or freedom was threatened, entered or were present in their territory without authorization, provided they presented themselves without delay to the authorities and showed good cause for their illegal entry or presence.

Despite this provision, in 2010 the prosecutor's offices in the border region across Turkey and Greece initiated a campaign for criminal prosecution against asylum seekers who

crossed illegally the national border. As a result of this malpractice starting from June 2010 the local criminal courts sentenced on 6 months imprisonment on probation and fine in amount of 100,00 leva 74 border applicants or 25% out of all 296 asylum seekers who applied at the border. BHC intervened on the basis of Art.31 of the 1951 Convention and succeeded to stop this practice in June 2010, but only until October 2010 when this grave violation of the non-punishment principle continued, remaining one of the most serious protection concerns for the access to territory and procedure in Bulgaria.

This policy and practice of imposing penalties and criminal convictions without regard to the fact that the convicted aliens had submitted or were submitting an application for asylum clearly violated the obligation of the state to protect the human rights of everyone within its territory or subject to its jurisdiction. Such practice constituted a wasteful of judicial resources and was an example of twisted approach towards better conviction ratings of local prosecutor's offices. These conclusions have been based on the provision of Article 279, Paragraph 5 of the national Criminal Code, which explicitly decriminalised the illegal entry to those perpetrators who have entered the country's territory in order to apply for asylum. It not only flagrantly violated the international obligations of Bulgaria and its criminal legislation, but also imposed significant judicial costs and unlawful delays in refugee status determination and most regrettably, created a sense of resentment and secondary persecution and victimisation among asylum seekers who were confronted to deal with criminal charges and sentences instead of finding protection and safe haven.

### 2.3. Dublin Regulation

The Council Regulation (EC) No 343/2003 laid down the criteria and mechanisms for determining the member state responsible for examining an application for asylum lodged by a third-country national in one of the EU states. The aim of this legislative act was to adopt measures in accordance with the principle of subsidiarity set out in Article 5 of the EC Treaty. Thus, it was adopted that the relevant member states should examine the application of any third-country national who applied at the border, or, in their territory for asylum and that this application should be examined by a single member state, which should be the one which the criteria set out in the regulation indicated as responsible (art. 3, paragraph 1 of the regulation). For example, some criteria, among others, were the first place of arrival or application, family members in another member state, documentation or deportation implemented by another member state, etc.

Mandatory and formally accessible, the EURODAC system was the tool used, if an asylum seeker was apprehended for being undocumented or for his/her illegal entry. Fingerprinting ought to take place in order to establish the member state responsible to implement the status determination procedure of the asylum seeker in concern. However, in view of a total absence of operational territorial units of the asylum administration in border areas and the delayed start of the determination procedures in Bulgaria (see, 1.2. above) none of the asylum seekers who applied at the national border was fingerprinted for the purposes of EURODAC and Dublin procedure. Asylum applications were registered by the territorial units of the Border police, filed with an entry number and date and then faxed, or, scanned and emailed to one of the two asylum administration's reception centers in Sofia or Banya. (see, 1.6. above)

In 2010 the most significant difficulty in implementation of the tripartite cooperation aim to secure the access to territory for asylum seekers, refugees and humanitarian status holders was the practice of the State agency for national security (SANS) to avoid communicating its expulsion and entry ban orders (Art.42 and 42g of the alien's law) to their addressees in violation of Art.61 of the Administrative Procedures Code. In the majority of the cases it was concerning individuals sent back to Bulgaria under the Dublin Regulation's taking back grounds and procedure. Relatively rare were the cases of individuals granted protection who have been travelling legally abroad and were

returning back to Bulgaria with valid documents. All cases monitored were in the Airport Sofia check point. The problem derived from the practice adopted by the Security agency to upload the information for the issued, but uncommunicated expulsion and entry ban order in the MOI information systems (under Art.31, Para 1 of the security agency's law), which has been creating obligation to all MOI directorates to stop the entry into the country's territory of the aliens who had been addressed with such orders, including asylum seekers, refugees and humanitarian status holders. In the same time, these individuals have never informed about or served with the said orders, hence they haven't appealed them. As a result of this malpractice in 2010 in the transit hall of Sofia Airport the border police have been detaining aliens with valid identity documents and in some cases - to whom the Asylum agency agreed to take them back (under Art.20, Para 1 of the Dublin Regulation) on account of uploaded in the MOI information systems entry ban. This practice was illegal as the issued, but uncommunicated administrative acts (orders) could not have a legal effect. The communication of issued administrative orders was an imperative rule without exclusion as far as it safeguarded the right of the addressee to legal defense against it, including - the right to appeal it before the court. The appeal deadline should start running from the moment of the order's communication to the addressee. This was also the moment from which the order could be legally implemented, but not before. In a situation of an order that hasn't been communicated to the addressee, the Border police was forced to implement administrative acts that has not yet come into effect, therefore could not be legally implemented or to serve these orders without the legal obligation to do that - argument as of Art.61, Para 2 and 3 Administrative Procedures Code. All these concerns were reflected most seriously in the IC of an alien with expired humanitarian protection who has been issued and expulsion order by the Security agency, but who could not be returned to his country of origin on account of Art.3 ECHR implications. The individual spent 14 days in Sofia airport transit hall until a compromise was reached among all agencies and institutions. Therefore, the described practice created preconditions to future stalemate legal situations where the collision between two contradictory administrative acts of the State Agency for refugees and State Agency for national security which could be solved only by the means of explicit arrangements in the law.

#### 2.4. Cross-border cooperation with neighboring countries

As the border area among Turkey, Greece and Bulgaria was the main route of entry for asylum seekers, Bulgaria took the initiative to explore the possibilities for establishment of tripartite cross-border cooperation of UNHCR, refugee assisting NGOs and border agencies in these three countries. Such cooperation would aim to facilitate the follow-up information gathering on individual cases, who suffered refoulement as well as to provide comprehensive overviews on each national asylum situation. In 2009 the BHC organised tri-partite meeting with the Turkish Helsinki Citizens' Assembly and Greek Group of Lawyers for the Rights of Refugees and Migrants which agreed on the need of further strengthening the cooperation and communication as a response to the specific protection problems in the region related to access of asylum seekers to territory and procedure. In 2010 delegations from all the three countries, including border police, UNHCR and non-governmental organisations met in Budapest within the Trans-Regional Conference on Border Management and Protection of Refugees, organised by the UNHCR Regional Representation for Central Europe in Hungary.

#### 2.5. Exchange of information within the cross border cooperation mechanisms

In 2010 there were no established cross border cooperation mechanisms or mechanism, thus no specific cross border information has been exchanged.



### Chapter III. - Description of monitored locations and facilities

#### 3.1. Places of monitoring

The scope of monitoring included regular visits on a weekly basis to the locations and facilities as listed below in Annex E). where the aim of the visits was to determine, if Bulgaria met its obligations under the international and national legal instruments to provide actual access to the territory and asylum procedure to migrants who were in need of protection. In 2010 BHC implemented 238 visits and most visited places were:

3.1.1. Kapitan Andreevo check point detention facilities which were located on the Bulgarian – Turkish border, near the town of Svilengrad, had always been the focus of the border monitoring activities. The facilities included 6 rooms furnished with 19 beds as follows: 1 room for mothers with children, 1 room for accommodation of unaccompanied minors, 1 room for asylum seekers, 2 rooms for irregular migrants and a bathroom. All rooms had access to daylight and 5 of them were airconditioned.

3.1.2. Novo selo check point detention facilities were located on the Bulgarian – Greek border, near the town of Svilengrad. The facilities included 2 rooms furnished with 4 beds and a bathroom. For the sake of accuracy it should be noted that usually apprehended migrants and/or asylum seekers were not detained in this facility, instead all of them were transferred to Kapitan Andreevo detention facilities.

#### 3.2. International Airport Sofia

The Sofia airport detention facilities had been subjected to monitoring since 1998, but the regular monitoring started in 2005. The BHC monitors had access to the premises of all airport terminals:

3.2.1. Terminal 1 where the detention facilities included 4 rooms furnished with 10 beds and a bathroom. Two of them had access to daylight, but without open air access.

3.2.2. Terminal 2 where the detention facilities were aimed to meet the need of short term detention of migrants who were not allowed to enter the country and deportation measures ought to be taken within 24 hours. Therefore, there were only 2 rooms with 4 beds, equipped for these purposes. None of them had access to daylight or open air.

The procedure of monitoring was conducted on a weekly basis and included interviewing of asylum seekers, assisting them in putting in written form their asylum application, if such was declared as well as registration of the applications with the border police administration. The interviews were always conducted with the assistance of an interpreter. In 2010 the numbers of asylum seekers who spoke Arabic language prevailed and due to that no obstacles in the communication process were detected. However, there were several cases where rare languages like Tamili or Malaysian were requested which need could not be met at the border. The lack of interpreters from rare languages in border areas remained a major problem. The detention facilities in Kapitan Andreevo, Svilengrad and Terminal 2 at the Sofia Airport were equipped with information dispensers, but information brochures and leaflet were not always available in.

### Chapter IV. - Findings of the monitoring to the respect of the rights guaranteed by law

#### 4.1. Exercising the right to asylum in practice

In 10 consecutive years the opening of Pastrogor border asylum center (border area across Turkey and Greece) has been postponed, same was done again in 2010 and for an indefinite period of time. Without interpreters or budget for interpretation services, the

Border police could not communicate with the individuals, therefore asylum seekers applied only, if assisted by BHC lawyers and interpreters. Nevertheless, even those of them, whose asylum applications were registered at the border continued to be sent to Busmantsi detention center for illegal immigrants instead to asylum reception centers. Using again the pretext of lacking reception capacity the asylum administration was not meeting the obligation to release immediately all asylum seekers from Busmantsi detention center, who stayed in custody between 2 to 5 weeks on average. Although the detention duration was drastically decreased in comparison with 2009 (3 weeks to 6 months) due to implemented regular detention monitoring, yet the automatic and direct access to RSD procedures was not fully safeguarded. In 2010 Bulgaria registered 1008 asylum applicants in total. 296 of them, or 29% applied for asylum at the border by submission of 225 applications, where the difference was explained by the possibility the spouses and parents with children to submit joint application; 183 border applicants, or 61% were sent to Busmantsi, 113 border applicants, or only 39% were admitted directly to asylum reception centers. Altogether 580 asylum seekers were detained in 2010, 380 or 65% were released in due time; 183 of all 580 or 31% were border applicants, another 397 individuals or 69% applied in Busmantsi. Thus, 693 asylum seekers, or 68% of all newly arrived asylum seekers in 2010 were protected from refoulement, registered and granted access to territory and procedure on account of monitoring, intervention and communication provided by all the parties of the tri-partite agreement for monitoring the access to territory and procedure.

#### 4.2. Right to information

The right to information was generally safeguarded in 2010, but it was entirely due to the services provided by the BHC under the UNHCR's mandate. Information dispensers with written materials were distributed to all border facilities. The materials were elaborated as a joint effort by the relevant institutions and organisations. They were produced in the languages spoken in the countries of origin of asylum seekers, refugees and migrants who traditionally have been entering Bulgaria, such as Arabic, Farsi, Dari, Pashtoo, Kurdish, English, French, etc. However, in many border checkpoints, including the busiest ones like Svilengrad and Sofia Airport the dispensers were put in inaccessible for asylum seekers places or spots. For example, in the transit hall of Sofia Airport the dispenser with information brochures on how and where to apply for asylum was placed behind the yellow line of the national territory and thus, completely out of reach for asylum seekers. Similar was the situation in Svilengrad, where the dispenser was placed next to the front door of the administrative building of Kapitan Andreevo Border Checkpoint, far away from the border detention facility where the individuals were placed and kept in.

#### 4.3. Right for interpretation

The right for interpretation was not safeguarded in 2010 for asylum seekers who applied at national borders. Border police did not provide any means of interpretation or translation in order to be able to communicate with the detainees and vice-versa, the detainees to be able to communicate back to them, express their need of international protection and to claim asylum. The lack of interpretation services was considered as the most serious omission in relation to the access to procedure and the application of the non-refoulement principle. (see, 1.6. and 4.1. above)

#### 4.4. Right to legal remedies

Legal aid in Bulgaria was provided in criminal proceedings only. In rest of the cases legal aid could be claimed only before the court. It was not provided during administrative procedure of any kind and neither when administrative detention was applied despite the seriousness of the limitation to the right of liberty of the person.

Therefore, asylum seekers could have access to the existing legal remedies only, if these were provided additionally to the general legal aid system. In 2010 the BHC under the UNHCR mandate was providing free of charge legal assistance for appeal and representation in cases where this type of legal aid was needed to safeguard the right and freedoms of the individuals in need of international protection.

#### 4.5. Right to medical treatment

Right after being apprehended all aliens were subjected to a medical exam, performed by the 2 general practitioners serving with the medical center at the Border Police Station in Svilengrad. If there was a need for further treatment the doctors were sending the sick persons to local hospital for diagnosis and treatment. Asylum seekers within border custody received medical care and treatment under the provisions of the Law on Health care, which obligated the state to provide urgent medical assistance in cases when there was a sudden deterioration in the health condition of the person that requires an immediate medical assistance (art.99, paragraph 2 of the health law). However, urgent medical cases or serious medical problems of the border detainees cannot be treated in detention and there were sent to external hospitals/clinics, which could condition grave health consequences due to the delay in time usually provoked in cases where there was a dispute about whether the medical condition was an urgent or a chronic one. In 2010 the hospitals in principle performed examination of the asylum seekers, however in general they were not admitted for treatment. In many cases, the help and assistance of the Bulgarian Red Cross was invoked to cover the cost of drugs and materials in more serious health conditions or situation that required higher than usual medical expenses. Thus, the law failed to recognize the needs for medical treatment of those detainees who suffer chronic diseases and who, by definition were deprived from access to general health and medication services. Similar situations as for the convicted criminals who serve prison sentences have been already solved in other laws by obligating the state to cover under the budget their health insurance costs (art.40, paragraph 3, item 6 of the health insurance law).

#### 4.6. Protection of vulnerable categories (unaccompanied minors, single women, etc.)

Under the generally recognised rules and criteria for international protection special attention and assistance should be provided to vulnerable categories such as separated children, single women, ill or disabled individuals. BHC monitored the detention conditions vis-à-vis the standards of treatment towards vulnerable individuals and, particularly, whether they had been kept in separate and specially equipped for their needs premises in order to safeguard their personal security. In cases of identified needs and following a request from the Border police food, clothing, sanitary and hygienic materials were provided with the assistance of the Bulgarian Red Cross. In 2010 at the national borders there were 48 single female applicants, 65 accompanied children and 18 separated children, seeking asylum. Altogether another 82 aliens were granted social assistance at the borders by the Red Cross, including 9 asylum seekers.

### III. SUMMARY

#### Chapter V. - Conclusions and recommendations

##### 5.1. General findings and observations

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##### 5.2. Conclusions

- Right to interpretation is not safeguarded. Stripped from obligation to assess asylum claims made in front of them, the Border police does not have staff or budget to provide interpretation from mother tongue or any other spoken language to asylum seekers in border areas.
- Legal aid is not provided neither to asylum seekers, who apply at the border, nor to any other of aliens detained in 24 hrs border custody on account of their illegal entry.
- The officials who are conducting criminal investigations on illegal entry are not examining or reflecting in the protocols the facts and circumstances related to the asylum application even when stated by the interviewed person, but focus only on the registration of those facts, which are related to the penal prosecution on account of Art.279 of the Criminal Code.
- Asylum seekers who entered in the country illegally are subjected to criminal prosecution and conviction in violation of Article 31, Para 1 of 1951 Geneva Convention and Section 279, Para 5 of the national Criminal Code.
- Asylum seekers within border custody could receive medical care only in urgent cases. Those who suffer chronic diseases were deprived from access to general health care and medication services by the definition of the law.
- Legal collision existed between those contradictory acts of the State agency for refugees for taking back certain individuals under Art.20 of 2003/343/EC Dublin Regulation and the acts for expulsion and entry ban for the same individuals issued by the State agency for national security.
- Additional monitoring capacity was determined vis-à-vis the forthcoming opening of Pastrogor Transit asylum center of the State agency for refugees as well as Liubimets detention center for illegal migrants of the Migration Directorate - MOI in the area of Svilengrad (Bulgarian border with Turkey and Greece).

### 5.3. Recommendations

- Chief Directorate Border Police should budget means and resources for interpretation/translation in border detention facilities as a minimum standard provided to detained aliens, and - in particular, to detained asylum seekers for communication and registration of their asylum claims.
- The Law on Legal Aid should be amended in order to provide state sponsored legal aid, assistance and representation to all detained individuals, including asylum seekers from the very moment of their detention and it should be arranged under the competence of the National Bureau on Legal Aid with the Ministry of Justice.
- Training on refugee law provided to the criminal investigators in order to sensitize them on the issues related to the need of international protection, if and when stated before them to ensure that they will be properly collected and registered.
- Medical treatment of chronic diseases must be arranged using the approach as to convicted criminals who serve prison sentences by obligating the state to cover under the budget of the Chief Directorate Border Police health insurance costs of the individuals detained in 24 hours border detention facilities.
- Article 31 of 1951 Geneva Convention read in conjunction with Art.279, Paragraph 5 of the national Criminal Code for non-punishment of asylum seekers who

entered the national territory illegally in order to claim international protection should be strictly respected.

- Legall arrangements should be adopted to solve the collision between the acts of the State agency for refugees for taking back certain individuls under Art.20 of 2003/343/EC Dublin Regulation and the acts for expulsion and entry ban into the national territory for the same individuals issued by the State agency for national security.
- Means should be planned to impement aditional monitoring of the national border vis-à-vis the forthcoming increase in the reception capacity when Pastrogor Tranzit asylum center of the State agency for refugees as well as Liubimets detention center for illegal migrants of the Migration Directorate - MOI in the area of Svilengrad (Bulgarian border with Turkey and Greece) will be opened.

#### IV. ANNEXES

##### ANNEX A).

Tri-partite Memorandum of Understanding

##### ANNEX B).

Commonlist referred to in Article 1(1) 2001/539/EC Regulation, Annex 1  
(Official Journal of the European Communities Nº L 81/21.03.2001)

#### 1. STATES

Afghanistan,Albania, Algeria, Angola, Antigua and Barbuda, Armenia, Azerbaijan, Bahamas, Bahrain,Bangladesh, Barbados, Belarus, Belize, Benin, Bhutan, Bosnia and Herzegovina, Botswana, Burkina Faso, Burma/Myanmar, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, China, Colombia, Congo, Cote d'Ivoire, Cuba, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Federal Republic of Yugoslavia (Serbia-Montenegro), Fiji, Former Yugoslav Republic of Macedonia, Gabon, Gambia, Georgia, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, India, Indonesia, Iran, Iraq, Jamaica, Jordan, Kazakhstan, Kenya, Kiribati, Kuwait, Kyrgyzstan, Laos, Lebanon, Lesotho, Liberia, Libya, Madagascar, Malawi, Maldives, Mali, Marshall Islands, Mauritania, Mauritius, Micronesia, Moldova, Mongolia, Morocco, Mozambique, Namibia, Nauru, Nepal, Niger, Nigeria, North Korea, Northern Marianas Islands, Oman, Pakistan, Palau, Papua New Guinea, Peru, Philippines, Qatar, Russia, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Solomon Islands, Somalia, South Africa, Sri Lanka, Sudan, Surinam, Swaziland, Syria, Tajikistan, Tanzania, Thailand, The Comoros Islands, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, Ukraine, United Arab Emirates, Uzbekistan, Vanuatu, Vietnam, Western Samoa, Yemen, Zambia and Zimbabwe.

#### 2. ENTITIES AND TERRITORIAL AUTHORITIES THAT ARE NOT RECOGNISED AS STATES BY AT LEAST ONE MEMBER STATE

East Timor, Palestinian Authority and Taiwan

ANNEX C).  
List of monitored places

ANNEX D).  
Map of border crossing checkpoints and Border Guard Facilities

ANNEX E).  
Monitoring Forms