

ANNUAL REPORT ON STATUS DETERMINATION PROCEDURE IN BULGARIA 2022

**Bulgarian
Helsinki
Committee**

**Refugees and Migrants
Legal Protection Programme**

31 January 2023



BULGARIAN
HELSINKI
COMMITTEE

☎ 02980 2049 / 02981 3318
Sofia, 1 Uzundzhovska Street

refunit@bghelsinki.org
www.bghelsinki.org

This report is funded by the
United Nations High Commissioner for Refugees (UNHCR)



TABLE OF CONTENTS:

METHODOLOGY	4
Introduction	4
Scope	4
Temporary protection of persons from Ukraine	5
I. PROCEDURE	6
1.1. ACCESS TO THE PROCEDURE AND REGISTRATION	6
1.2. VULNERABILITY IDENTIFICATION AND ASSESSMENT	8
1.3. UNACCOMPANIED CHILDREN	9
1.4. PROVISION OF INFORMATION ABOUT THE RIGHTS AND PROCEDURE	14
1.5. EVIDENCE	15
1.6. INTERVIEW	16
1.7. LEGAL AID IN ADMINISTRATIVE PROCEDURES	19
II. DECISIONS	20
2.1. TIMELY DELIVERY OF DECISIONS	20
2.2. COUNTRY OF ORIGIN INFORMATION	21
2.3. FACTUAL FINDINGS	21
2.4. LEGAL CONCLUSIONS	22
2.5. LEGAL ASSISTANCE IN CASES OF REFUSED PROTECTION	22
III. JUDICIAL REVIEW	24
3.1. FAIR HEARINGS	24
3.2. INTERPRETATION	24
3.3. INVOLVEMENT OF THE PROSECUTOR'S OFFICE	25
3.4. PROCEDURAL REPRESENTATION	25
IV. RECOMMENDATIONS	26

METHODOLOGY

Introduction

This report is based on RSD monitoring conducted by BHC with a focus on the institutional framework and the effective interaction among the various state authorities, as well as on the legal and practical standards for conducting the procedures for granting asylum, international protection in the form of refugee or humanitarian status, as they are regulated in the Law on Asylum and Refugees, and the compliance thereof with the principles of international protection and the general legal standards in the asylum acquis of the European Union (acquis communautaire).

Scope

Pursuant to the Law on Asylum and Refugees (LAR)¹, the State Agency for Refugees with the Council of Ministers (SAR) is the competent national authority which carries out the registration, examination of individual applications for international protection lodged in the Republic of Bulgaria, and the takes decisions on these applications.

The Bulgarian Helsinki Committee (BHC) monitors the procedures conducted by SAR at all its centres in Sofia, Harmanli, Banya, and Pastrogor. The monitoring encompasses all the phases of the administrative procedure at SAR. It is carried out on a weekly ad hoc basis, and consists of gathering data about the ways, means and practices of conducting the RSD, which is entered in standard forms for interview evaluation, decision evaluation, and the monitoring of court proceedings.

In order to ensure statistical comparability, and as agreed with the SAR in 2021, the monitored procedures encompassed 100 registrations, 250 interviews within the status determination procedure, 100 decisions issued by SAR, and 50 court hearings related to cases against decisions refusing international protection or a total of 500 procedural actions. The selection of the cases is random with an effort to reflect as diverse cases as possible and represent all specific groups, based on age, gender, vulnerabilities, etc. The COVID-19 pandemic in 2020 prevented the precise delivery of the quantitative indicators set in advance, as a result of which the actions monitored were, as follows: 149% (149 out of 100) registrations, 90% (226 out of 250) interviews, 68% (68 out of 100) evaluations of SAR decisions, and 34% (17 out of 50) court proceedings.

¹ Art. 2(3) of the Law on Asylum and Refugees (LAR).

The monitoring conducted in 2021 and 2022 delivered the precise number of the quantitative indicators set in advance, which allows full comparability of the monitoring results for the previous year and the current one.

In 2022 the monitoring covered 335 men, 82 women, 14 accompanied children (8 boys and 6 girls), and 69 unaccompanied children (68 boys and 1 girl) from the persons seeking international protection in Bulgaria.

Temporary protection of persons from Ukraine

Pursuant to the national legislation, temporary protection shall be granted by means of a general administrative act – a government (COM) decision – after this protection has been triggered by the Council of the European Union in conformity with Directive 2001/55/EC. On 10 March 2022 the Bulgarian government adopted Decision No 144 on granting temporary protection to displaced persons from Ukraine, which became effective upon its promulgation on 14 March 2022. Hence, all refugees from Ukraine who have entered the country and have declared their wish to seek international protection before the authorities receive, without delay and any additional procedures, a document certifying their legal status as foreigners under temporary protection in Bulgaria. As a result of this, 149,268 displaced persons from Ukraine had received temporary protection by 31 December 2022. As this type of protection is granted without delay and without conducting an individual administrative procedure for each person, this report does not take into consideration the issues related to the access to temporary protection, the granting thereof or its scope.

I. PROCEDURE

1.1. ACCESS TO THE PROCEDURE AND REGISTRATION

1.1.1. Time limit for registration

By way of rule, any individual lodging an application for international protection before an official of the State Agency for Refugees shall be registered as an asylum seeker within 3 working days² from the date of lodging the claim. Recording, processing and filing of information by SAR is still done manually by the SAR staff. When the application has been lodged before another state authority³ - in most cases, the bodies of the Ministry of Interior, General Directorate Border Police (GDBP) or Migration Directorate (MD) - the registration shall be carried out by SAR within 6 working days from the lodging of the application.

2022 is yet another consecutive year which marks improvement in terms of SAR observing the time limit for the personal registration of asylum seekers who have been detained for illegal entry or stay at the immigration detention centers (the so called Special Centres for Temporary Accommodation of Foreigners (SCTAFs) of MD-MOI and who have lodged their application for international protection via the immigration police authorities. The average detention duration has decreased from 7 calendar days in 2021 to 6 calendar days in 2022, which implies an **average duration of 4 working days for detention and registration**, with no delay. Therefore, out of all the foreigners lodging an application for international protection at a police detention centre, 87%⁴ were released 2 working days on average before the expiry of the legal time limit, while 0% were unlawfully detained for more than 6 months. This is improvement by 1% in terms of observing the registration time limit compared to the previous year 2021.

Registration <6 working days:

87%

Average duration of detention:
4 working days

² Art. 61 (2) LAR in conjunction with Art. 6 (1) of Directive 2013/32/EU (Asylum Procedure Directive).

³ Art. 58 (4) LAR.

⁴ 13,192 persons out of a total of 15,130 asylum seekers lodging an application in detention at SHTAF-Busmantsi and SHTAF-Lyubimets of MD-MOI (2021: 86% or 7,382 persons out of a total of 8,528 asylum seekers / 2020: 55% or 1,533 out of a total of 2,781 asylum seekers).

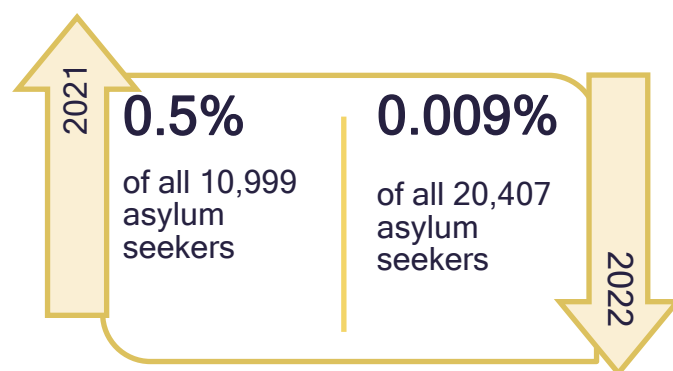
1.1.2. Procedure at the police detention centres

The law allows the State Agency for Refugees to detain asylum seekers during the status determination procedure for the sole purpose of their identification or in the event of evidence of a risk to the national security or public order, only for the shortest possible period of time and only in closed asylum reception centres or premises.

SAR, however, shall not conduct the procedure at the immigration detention centres (SCTAF), notwithstanding that the applications for international protection was lodged by detainees. The law obliges SAR to ensure that the asylum seekers are released from SCTAF, registered within 6 working days, and accommodated at one of its Registration-and-Reception Centres (RRC) where the procedure is conducted and a decision is made.

In 2015, SAR introduced an unlawful practice whereby it not only registered asylum seekers in the police detention centres of MOI's Migration Directorate (SCTAF-Busmantsi / SCTAF-Lyubimets) in order to observe the time limit for registration, but also conducted the whole procedure and served decisions in these detention facilities in breach of all of the above legal provisions - grounds, time limit and place of detention in the course of the procedure. The national courts persisted in regarding this practice as a minor violation of procedural rules, and refused to sanction it.

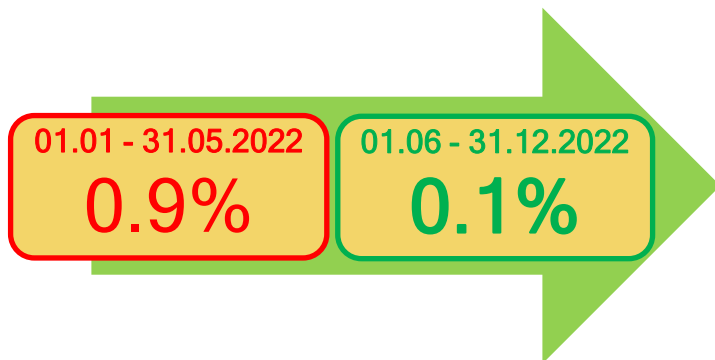
The 2022 monitoring has found that SAR has almost entirely discontinued this unlawful practice. In the course of the whole year, SAR carried out 1 registration in the immigration detention centre at SHTAF-Busmantsi, and 1 procedure for serving the decision also on the premises of SCTAF-Busmantsi.



1.1.3. Refusal of registration at SAR's territorial units

In 2016, in breach of the law, SAR started refusing the registration of asylum seekers in cases where the latter turned up on their own at one of its territorial units and declared their wish to seek protection (the so-called "self-reported persons"). Instead, SAR's staff alerted the local police department, as a result of which the asylum seekers were detained and taken to a police detention centre (SCTAF).

SAR continued this practice in early 2022, which affected a total of 72 asylum seekers during the period 1 January - 31 May 2022 or 0.9% of all 7,924 persons who had lodged an application for international protection by that time. During the period 1 June - 31 December 2022, however, the number of registration refusals by SAR drastically dropped, and thus a total of 22 persons were affected or 0.1% of all 12, 483 persons lodging an application for international protection during that period.



1.2. VULNERABILITY IDENTIFICATION AND ASSESSMENT

SAR's regulations require that the registration shall be attended by a social experts who establishes if the asylum seeker belongs to a vulnerable group and if he/she has special needs. According to the definition set out in the law, "persons belonging to a vulnerable group" are children, in particular unaccompanied children, persons with disabilities, elderly people, pregnant women, single parents with underage children, victims of trafficking, persons with serious health problems, mental disorders, and victims of torture, rape or other serious forms of mental, physical or sexual violence.

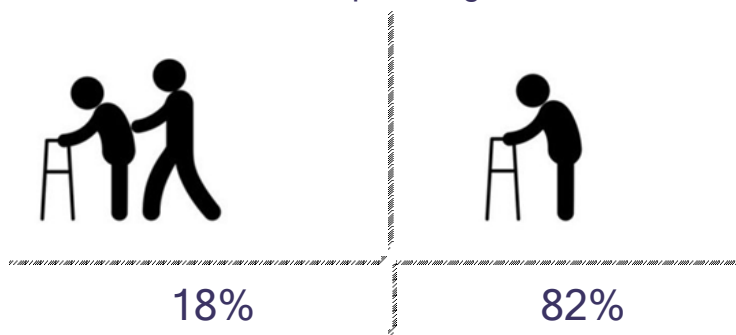
The monitoring has found that in 2022 SAR's social experts attended 67% (67 out of 100 cases) of the registrations of asylum seekers. Out of these, 28% (19 out of 100) of the cases concerned were unaccompanied children.

In the remaining 33% of the cases, however, the registration was carried out in the absence of a social expert and without ensuring early identification of potential vulnerability.



The 2020 amendment of LAR lays down a rule requiring that in the event of identified vulnerability or special needs, SAR must carry out a needs assessment for the asylum seeker concerned, and, if necessary, draw up an individual support plan. Both the assessment and the plan must be attached to the personal file of the vulnerable individual in order for them to be taken into consideration by SAR in its decision on international protection.

The 2022 monitoring has found that only 18% (5 of all 27 cases) of the files of vulnerable asylum seekers contain documents with vulnerability identification and needs assessment, and only 7% (2 cases) of them contain also a support plan. However even in these cases the vulnerability of the applicants was not taken into account in the decision. The monitoring based on this indicator was conducted at the stage when the decision on the application for international protection had been issued, hence the personal file was expected to contain all forms, evidence and opinions gathered in relation to the specific case.



1.3. UNACCOMPANIED CHILDREN

1.3.1. Representation of unaccompanied children

Since October 2020 the representation of unaccompanied children in the course of the procedure has been ensured by the National Legal Aid Bureau (NLAB). As SAR regulates this representation in article 25, the lawyers providing legal aid for unaccompanied children are known as “Article 25 lawyer”.

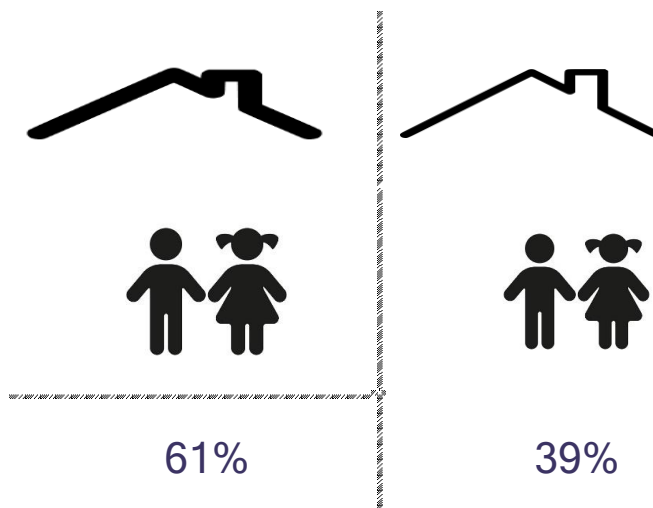
In 2022, NLAB appointed a legal aid representative for all 3,348 unaccompanied children who lodged an application for international protection (100%) in that year, and for 34 unaccompanied children who had lodged an application at the end of 2021. As in 2022 the representation for 3,103 of these children was discontinued early due to the children absconding, the number of unaccompanied asylum-seeking children who received representation in practice by legal aid lawyers in that year stands at 245.

1.3.2. Special conditions for unaccompanied children

The law requires⁵ that SAR's territorial units shall ensure the necessary conditions for asylum-seeking children.

The first so-called safe zone in SAR's Voenna Rampa hostel in Sofia, with accommodation capacity for 150 children, was opened in 2019. The safe zone provides 24-hour care, accommodation and specialized services for unaccompanied children. As Voenna Rampa is designated for asylum seekers from Afghanistan, Pakistan and Iran, it is only children from these countries of origin that are accommodated there, mostly from Afghanistan. Unaccompanied children of Arab or other origin are accommodated in the safe zone of Ovcha Kupel hostel in Sofia which was opened in January 2020 and has accommodation capacity for 138 children. The safe zones on the premises of these two territorial units of SAR in Sofia are financed from the EU Asylum, Migration and Integration Fund (AMIF), and are managed by the International Organization for Migration (IOM). For now, the two zones have funding ensured till 31 December 2023.

As 2022 was yet another year with a considerable number of unaccompanied children registered as asylum seekers in Bulgaria - 3, 348 children, these two safe zones at SAR's territorial units in Sofia proved insufficient to accommodate all of them. Hence, in 2022 unaccompanied children continued to be accommodated outside the safe zones, in zones with mixed inmates in SAR's Vrazhdebna hostel in Sofia and the RRC in Harmanli. As of 31 December 2022, 39% of the unaccompanied children were accommodated in territorial units outside the safe zones.



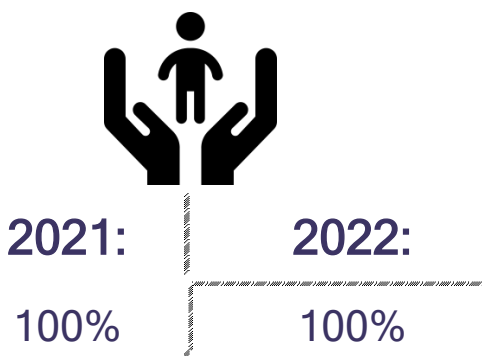
At the end of 2022, SAR announced an agreement with UNICEF for financing a safe zone for unaccompanied children in RRC-Harmanli.

⁵ Art.25a of LAR.

1.3.3. Legal aid for unaccompanied children

The representatives appointed in the procedure with unaccompanied children are lawyers registered with the National Bureau for Legal Aid (NLAB); therefore, by virtue of their profession, they have the right to provide legal aid to the children they represent, which includes the obligation to ensure clarifications about the procedure and the children's rights, counselling and representation before SAR, the other government authorities and the courts.

The monitoring has found that in 2022, as well, 100% or all the monitored interviews with unaccompanied children were attended by a representative, Article 25 lawyer, who provided children with support and legal assistance.

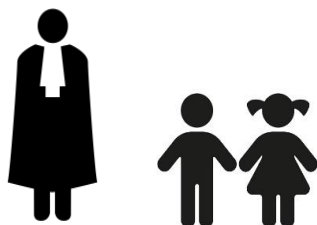


Under the law, ex-officio lawyers who represent unaccompanied children are required to have special qualifications, which is a safeguard for their capacity to defend the best interest of the child. In June 2021, NLAB, together with IOM, UNHCR, UNICEF and BHC organized 2 specialized trainings for the lawyers representing unaccompanied children in the procedures at SAR's territorial units in Sofia and Harmanli.

The 2022 monitoring has found **substantial improvement in terms of one of the main issues** with the representation of unaccompanied children from previous years. In 2019-2021, SAR sent the request for ex-officio lawyers to be appointed by NLAB with a delay by over 2 months after the registration of an unaccompanied child. The timely appointment of a representative ensures qualified legal assistance and defence for unaccompanied children, and their access to rights, including medical assistance, if necessary.

In 2022, in 100% of the monitored cases with unaccompanied children the request for the appointment of a representative was sent by SAR to NLAB within 2 weeks from the child's registration.

After receiving the request for appointing a representative for an unaccompanied child from SAR, NLAB is obliged to designate a representative and notify thereof the territorial unit where the child is accommodated within 7 calendar days. It was only in one case in 2022 when the representative was appointed within 2 weeks.



2021:
60 days

2022:
14 days

The monitoring has also found substantial improvement in terms of SAR observing its obligation to inform, without delay, the unaccompanied child about the lawyer appointed as his/her representative by giving the child a copy of the decision on that appointment. The decision provides the child with information about the name of the lawyer in charge of his/her case, as well as contact data in case the child wishes to get in touch with the lawyer, if the need be. In 2022, only in 4% (1 out of 23) of the monitored cases this obligation was not fulfilled. By way of comparison, in 2021, 100% of the cases failed to meet this obligation.

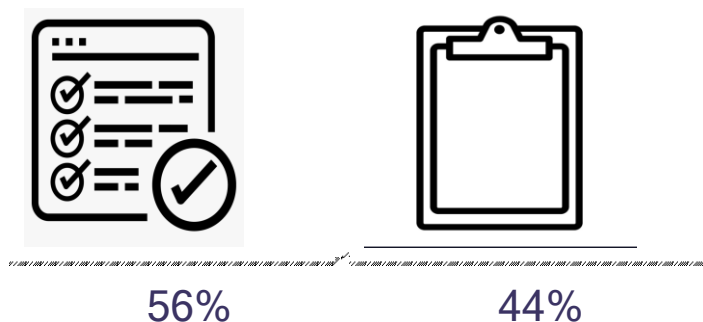


2021:
0%

2022:
96%

1.3.4. Best interest determination

SAR has two types of forms approved for best interest determination (BID). An initial BID is carried out by SAR social experts within 3 days from registration with respect to all children - accompanied and unaccompanied. A full BID is carried out within 10 days from registration in the event of a high or medium risk identified in respect of the child. The 2022 monitoring has established the existence of such an initial BID form contained in the file in 56% (14 out of 25 cases of children, of which 22 unaccompanied and 3 accompanied children) of the cases, and in 16% (4 cases) a subsequent full BID.



The main issue, however, which persists in the procedures with all asylum-seeking children is **the absence of any interest and commitment of the statutory child protection workers from the Child Protection Departments (CPD) with the Social Assistance Directorates of the Agency for Social Assistance.** The law obliges them to participate in all administrative procedures involving children and to ensure respect for their best interest. This obligation is fulfilled either by means of an oral opinion and recommendations to the official conducting the procedure with the child or by means of a written social report attached to the personal file.

The statutory child protection workers from CDP have been involved in asylum procedures by attending the interviews conducted with unaccompanied children since 1996. However, their participation has been just a formal one, without any actions being taken to support the child or facilitate the decision taken by SAR on the respective case. The monitoring carried out during all previous years has not established any concern or intervention by these child protection workers even in cases of obvious needs such as clothes and shoes or medical assistance and treatment.

The 2022 monitoring has also identified the absence of any improvement whatsoever in this respect. Moreover, the monitoring has established that while CDP child protection workers attended all the interviews with accompanied and unaccompanied children, they submitted a social report only in 24% of the monitored procedures (6 out of 25 cases), and only 1 of these reports contained a risk assessment for the child concerned, while the other 5 reports were entirely formulaic.

1.3.4. Age assessment examinations

In 2022, SAR ordered 33 age assessment examinations for unaccompanied children due to doubts in terms of the minority or majority age claimed by them. As a result of the examinations, 5 asylum seekers were determined as being adults, which amounts to 15% of all the age assessment examinations carried out. By way of comparison to the previous year, 80% of the cases were assessed as being adults (37 out of 46 examinations). The method applied in 100% of the age assessment examinations is invasive X-ray of the wrist of the right hand. In 2019, an inter-agency working group involving NGO experts developed a methodology for complex age determination and rules therefor. However, they have not yet been considered or adopted.

1.4. PROVISION OF INFORMATION ABOUT THE RIGHTS AND PROCEDURE

1.4.1. Introductory information

In 2022, SAR staff provided asylum seekers with introductory information in the respective language in relation to their procedures, and their rights and obligations in 94% (330 out of 350 case) of the monitored procedures. In 90% (315 out of 350 cases) of the monitored procedures the asylum seeker was duly notified that the information gathered in the course of the registration and the interviews was confidential and would be used only for the purpose of the procedure.



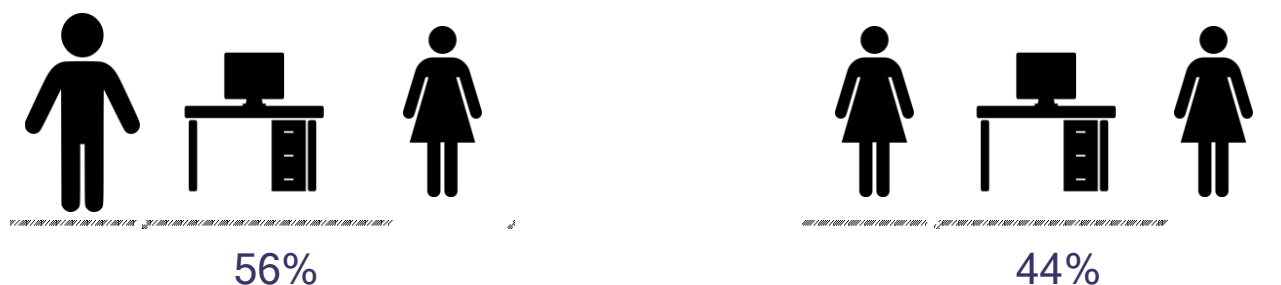
94%



16%

1.4.2. Special gender-related information

The monitoring has established that only in 13% (47 out of 270 cases) of the monitored procedures in which the interviewer and the asylum seeker were not of the same gender the asylum seeker was informed about the possibility to request that the interview be conducted by an **interviewer of the same gender**. In 82% (223 out of 270) of the cases this obligation was not met. This is a step backwards compared to 2021 when this requirement was met in 30% of the cases. Out of the asylum seekers who were not informed about this right, 78% (37 out of 47 cases) were women, and the interviews of 56% of them (21 out of 37 cases) were conducted by a male interviewer.



In 12% (44 out of 223 cases) of the monitored procedures in which SAR’s interpreter and the asylum seeker were not of the same gender, the asylum seeker was informed about the possibility to request that the interview be conducted with the assistance of an **interpreter of the same gender**. In 80% (179 out of 223 cases) this obligation was not met. Out of the asylum seekers who were not informed about this right, 77% (34 out of 44 cases) were women, and the interviews of 91% (31 out of 34 cases) were conducted with the assistance of a male interpreter. This is deterioration compared to 2021 when 60% of the women were not informed.

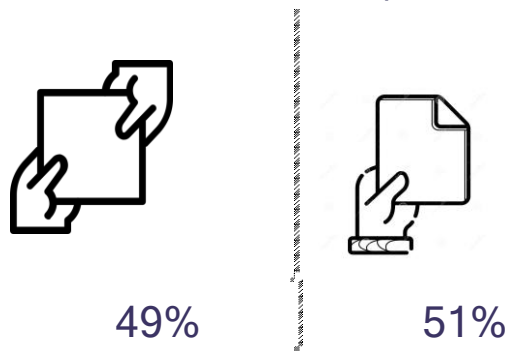
1.6.4. Written information

The monitoring has found that the obligation to serve asylum seekers with written instructions about their rights and obligations in the respective language upon registration was fulfilled in 77% (77 out of 100 cases) of the procedural actions monitored. In the remaining 25% (23 out of 100 cases) written information about the rights and obligations was not served on the asylum seekers.

1.5. EVIDENCE

1.5.1. Evidence gathering

In 2022, in 67% (67 out of 100 cases) of the monitored decisions on applications for international protection the asylum seekers submitted documents in support of their refugee story. In 49% of these (33 out of 67 cases) a take-over certificate was drawn up by SAR’s interviewer, which served as a safeguard that the relevant documents would be taken in consideration in the decision on the application for international protection. Such a take-over certificate was not drawn up in the remaining 50% (34 out of 67 cases).



1.5.2. Instructions in the event of lack of evidence

In 56% (56 out of 100 cases) of the monitored registrations, the asylum seekers were informed about the need to submit all the evidence available in support of the statements made by them, while in the remaining 44% (46 out of 100 cases) this was not done. In 100% of the cases when evidence was submitted by the asylum seekers, translation of the evidence in Bulgarian was ensured by SAR in order for the decision-making authority to consider this evidence in examining the application for international protection.

1.5.3. Provision of evidence gathered by other authorities

In all the monitored cases when an application for international protection was lodged before another authority - Border Police or Migration Directorate - the documents taken from the asylum seeker were sent in due time to SAR so that the latter could use them in the procedure. This constitutes improvement compared to the year 2021 when this obligation was not met in 5% (5 out of 100) of the monitored cases, and the asylum seekers were prevented from proving their refugee story, as the documents they had carried with them had not reached SAR.

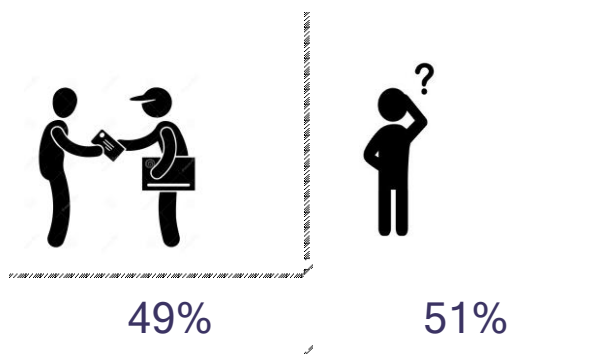
1.6. INTERVIEW

1.6.1. Arrangements and notification

The law stipulates⁶ that a date for the interview shall be fixed right after registration, and the asylum seeker shall be notified thereof in a timely manner. Delayed serving of **an invitation for the interview** or serving it during the interview constitutes a breach of the asylum seeker's right to prepare for the interview and to engage a lawyer or legal aid, if he/she wishes so. If the asylum seeker has not been informed about the date and time of the interview, he/she will in no way know when to appear for his/her hearing. The failure to appear at the interview, however, is interpreted by SAR as withdrawal from the procedure, and hence as grounds for terminating it.

The monitoring has found that in 2022 an invitation for the interview was served in 24% (24 out of 100 cases) of the monitored procedures. In another 27% (27 out of 100 cases) the asylum seekers signed the invitation for the interview without being given a copy thereof; instead, the signed invitation was attached to their personal file. 8 of these cases concern unaccompanied children. Thus, in 2022 the asylum seekers were not notified in a timely manner or were not at all notified of the date and time of the hearing on their application for international protection. This violation is very serious at SAR's RRC in Banya where the invitations for the interview are served at the beginning of the said interview, which makes the invitation pointless.

⁶ Art. 63a (1) et al. LAR.



1.6.2. Interpretation

The interview shall be conducted⁷ in the language declared by the asylum seeker, and when this is not possible, in another language that he/she understands.

While in 2021 this rule was not violated, the 2022 monitoring has established 3 cases at SAR's RRC in Banya when the interview was conducted via an interpreter who did not speak the source language. The interviewer did not take actions to replace the interpreter, even though the asylum seekers were unable to understand the questions asked and to fully present the facts from their refugee story.

The control over interpreters was considerably strengthened in 2022, and only in 0.2% (1 out of 350 cases) of the interviews the interviewer failed to keep the interpreter's behaviour under control, and the arising arguments resulted in rescheduling the interview. In 2021 there were 11% (40 out of 350) such cases.

1.6.3. Interviewing children

Improvement has been established in terms of conducting interviews with unaccompanied children, as at the end of 2022 SAR introduced the use of a form which is adapted to take into account the children's age and development. The interviews with unaccompanied children monitored at the end of 2022 showed that the use of these adapted forms assisted children with understanding the questions and expressing themselves in a more complete and free manner.

1.6.4. Safeguards for a fair recording of statements

The law requires⁸ audio or audio-visual recording in the course of the interview, and a record from the interview based on that recording. The 2022 monitoring has found audio recording in 99% (248 out of 250) of the cases, which implies almost full compliance with the legal standard. One of the two cases without recording is an interview on an application for family

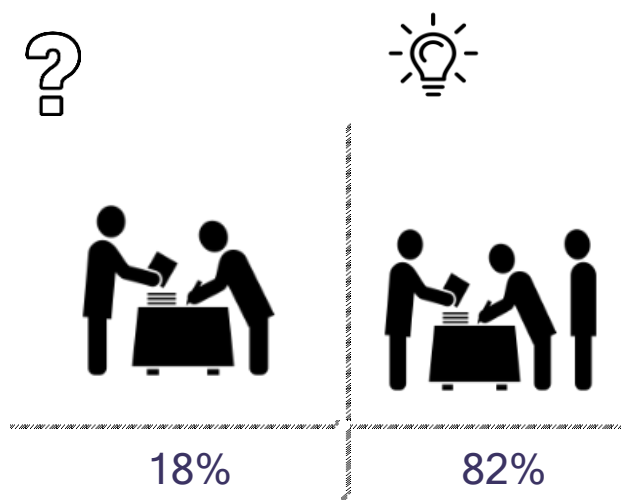
⁷ Art. 63a (8) LAR.

⁸ Art. 63a (3) LAR.

reunification, and the other one is about a request by the asylum seeker for termination of the procedure.

The registration form and the record from the interview shall be read back to the asylum seeker before being signed by him/her⁹.

In 2022, the registration forms or the records from the interviews were not read back to the asylum seeker in 18% (65 out of 350 cases) of the monitored actions, 18% (12 out of 65 cases) of which involved unaccompanied children. In 72% (47 out of 65 cases) of them the failure to ensure the read-back concerns the information entered in the registration form which contains initial data regarding the asylum seeker's identity and his/her story. The read-back before signing is a safeguard against mistakes and inaccuracies in drafting the registration forms or the interview records. The absence of mistakes and inaccuracies is essential in view of comparing the data, and detecting any potential contradictions that might undermine the statements made by the asylum seeker. Thus, contradictions in terms of the asylum seeker's statements at his/her registration or the previous interview have been detected in 15% (38 out of 250) cases, of which 13% (5 out of 38 cases) involved unaccompanied children. While the asylum seeker was given the possibility to clarify the contradictions, SAR's system allows corrections in the data that was initially entered only if an identity document is presented - a requirement that cannot always be met by asylum seekers.



1.6.4. Establishing the facts

The circumstances in the country of origin stated by the asylum seeker and his/her fears in terms of returning to the country of origin were considered in 84% (211 out of 250 cases) of the monitored interviews. The remaining 16% (39 out of 250 cases) of the monitored interviews are related to applications for family reunification by beneficiaries of international protection, where these circumstances are not considered. Therefore, SAR has examined

⁹ Art.63a (9) LAR.

the facts pertaining to the fears of persecution expressed by the asylum seeker in 100% (211 out of 211 relevant cases) of the cases.

All the cases (100%) have examined the grounds for granting refugee status, as well as subsidiary protection in the form of humanitarian status.

What continues to be unsatisfactory, however, is exploring internal flight alternatives. In 2022, 34% (27 out of 78 relevant cases) of the interviews conducted, where such an alternative was relevant, did not consider and clarify either the objective feasibility of such an alternative or the stability of the situation in the respective part of the country or the reasons why the asylum seeker had fled his/her country of origin, instead of choosing internal resettlement.

1.7. LEGAL AID IN ADMINISTRATIVE PROCEDURES

1.7.1. Access to legal aid

The state shall ensure conditions¹⁰ for asylum seekers in Bulgaria to receive legal aid. By way of principle, natural persons who cannot afford hiring a lawyer for the provision of legal defence and assistance are entitled to legal aid financed by the state. The state provides legal aid via the National Bureau for Legal Aid (NLAB). Since March 2013 asylum seekers have been entitled to explicit access¹¹ to legal aid financed by the state.

In 2022, legal aid at the administrative stage was provided to 245 unaccompanied children and 2 adults with special needs belonging to vulnerable groups.

1.7.2. Legal aid for vulnerable persons

In case a vulnerable asylum seeker has declared his/her wish to receive legal aid, the Director of the relevant SAR territorial unit or an employee empowered thereby, within 3 days from receiving the memorandum, shall send a notification letter to NLAB requesting the appointment of an ex-officio lawyer.

The monitoring of the interviews has found that in 2022 legal aid was not appointed by NLAB in any (0%) of the examined 8 cases of vulnerable adults. These cases involve women who are victims of violence or women who are single parents.

The monitoring of the decisions issued by SAR has identified 2 cases of vulnerable adults, of whom one (50%) received legal aid and had an ex-officio lawyer appointed.

On the issue of legal aid for unaccompanied children, see 1.3.3.

¹⁰ Art. 23 (2) LAR.

¹¹ Art. 22 (8) of the Legal Aid Act.

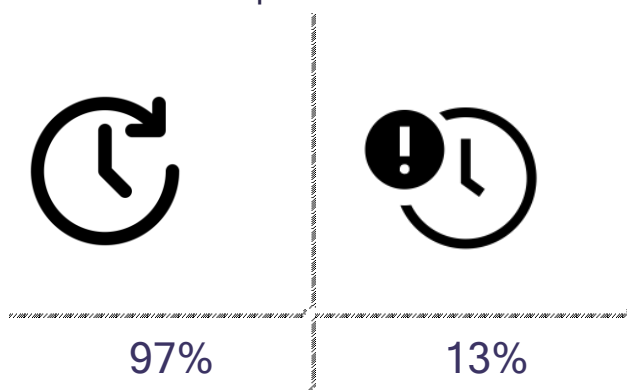
II. DECISIONS

The 2022 monitoring covered 100 decisions issued by SAR, of which: 69 granting humanitarian status, 3 granting refugee status, 14 terminations of the procedure, 1 refusal to grant international protection, 7 family reunification, 2 admissibility of the application for international protection, 1 Dublin procedure, and 3 detention in a SAR closed asylum reception centre.

2.1. TIMELY DELIVERY OF DECISIONS

The law stipulates¹² that, within 4 months from initiating a general procedure, the interviewing authority shall draft an opinion which, together with the personal file, shall be submitted to the Chairperson of the State Agency for Refugees with a view to a decision to be issued within another 2 months or **within a total of 6 months from the registration** of the asylum seeker. Making a decision on the application for international protection in a timely manner is a fundamental procedural safeguard for asylum seekers, as it precludes legal uncertainty in terms of their status and prospects, as well as conditions for irregularities and corruption in the course of the asylum procedure.

In 2022, this time limit was observed in 97% (97 out of 100 cases) of the monitored decisions. The time limit was not observed in 3 of them, which constitutes minimum deterioration compared to 2021 when the time limit was met in 100% of the cases.



¹² Art. 75 LAR (version prom. SG, issue 52/2007).

2.2. COUNTRY OF ORIGIN INFORMATION

In 2022, 30% (30 out of 100 cases) of the examined decisions on applications for international protection cited updated country of origin information and made correct referral to the sources therefor. 43% (43 out of 100 cases) of the decisions did not cite any country of origin information. 100% of these decisions, however, are positive decisions granting a status (40 refugee status and 3 humanitarian status). Nevertheless, including country of origin information in the reasons of the decision is essential for assessing the validity and lawfulness of the decision, especially of a decision granting humanitarian status, and refusing refugee status. In the remaining 27% (27 out of 100 cases) of the examined decisions which do not cite country of origin information, such information is not required by law (14 decisions on termination of the procedure, 7 on family reunification, 1 in a Dublin procedure, and 3 on detention in a SAR closed asylum reception centre).

In 29% (29 out of 30 cases) of the decisions citing country of origin information, the monitoring has found conformity between that information and the ruling of the decision. 1% (1 out of 30) of the cases lack such conformity.

2.3. FACTUAL FINDINGS

2.3.1. Establishing the facts

Overall improvement compared to the previous year 2021 has been observed in terms of clearly indicating which circumstances have been accepted as established. In 2022, this was done in 78% (78 out of 100) of the decisions, while in 2021 in 61% of the examined decisions. 59% (59 out of 100) of the decisions indicated which of the circumstances stated by the asylum seeker were not accepted as established and for what reason. 90% (20 out of 24 relevant cases) of SAR's decisions set out reasons why the asylum seeker's statements have not been accepted as credible, while the remaining 16% (4 out of 24 relevant cases) neither set out the reasons therefor nor specify which of the facts and circumstances stated by the asylum seekers are false or imprecise.

2.3.2. Causality

In 2022, the grounds for granting international protection were correctly identified in compliance with the legal definitions laid down in the law¹³ in 81% (81 out of 100) of the decisions. The monitoring has also found that 97% (97 out of 100) of the decisions were in line with the facts and circumstances presented therein, while in 74% (74 out of 100) of the decisions all the relevant substantive legal issues had been considered. In 4% (4 out of 100) of the decisions the ruling used repetitive standard paragraphs for refusing international protection, without any conformity whatsoever to the individual story, the facts and circumstances gathered in the personal file or other data relevant to the asylum seeker's personality or fears. The remaining 22% (22 out of 100) of the decisions are related to rulings which fail to explore the situation in the country of origin.

2.3.3. *In dubio pro fugitivo* principle

The 2022 monitoring has found improvement compared to previous years¹⁴ in terms of sharing the burden of proof in asylum procedures and applying the *in dubio pro fugitivo* principle. The burden of proof was properly determined, and shared and the *in dubio pro fugitivo* principle was applied in practice in 94% (94 out of 100) of the cases. By way of comparison, in 2021 the burden of proof was properly determined in 88% (88 out of 100) of the cases, which implies improvement under this indicator.

2.4. LEGAL CONCLUSIONS

The monitoring indicates improvement in terms of the legal classification of protection grounds in 2022. 95% (70 out of 73 applicable decisions) of the decisions were based on correct identification and classification of the legal grounds for granting refugee or humanitarian status. Such classification is not required in the remaining 27 examined decisions (family reunification, termination, etc.). By way of comparison, this requirement was met in 73% of the decisions examined in 2021, which amounts to improvement by 22% under this indicator.

The exclusion clause was applied in 1% (1 out of 100) of the decisions, and this has been assessed as correct and in conformity with the Convention and LAR.

2.5. LEGAL ASSISTANCE IN CASES OF REFUSED PROTECTION

The cases monitored in 2022 do not include any cases of negative decisions served on an individual belonging to a vulnerable group. In 5 monitored cases when positive decisions were served on vulnerable adults, one of these had an ex-officio lawyer appointed by NLAB,

¹³ Articles 8 and 9 LAR.

¹⁴ 88% in 2021, 69% in 2020, 75% in 2019.

and another one used the services of a private lawyer; however, in neither case did the lawyers attend the serving of the decision. Only 2 of the vulnerable adults receiving positive decisions had been assessed for vulnerability or special needs.

In 2022, in 100% of the monitored cases where decisions were served on unaccompanied children, these decisions were served in the presence of the ex-officio representatives appointed for them - Article 25 lawyers.

III. JUDICIAL REVIEW

The 2022 monitoring of judicial review related to appeals against negative decisions on applications for international protection issued by the State Agency for Refugees was conducted in 50 judicial proceedings, of which 43 involved men, 7 women, and 1 an unaccompanied boy.

3.1. FAIR HEARINGS

In none of the monitored 50 judicial proceedings has discriminatory or unequal treatment of asylum seekers by the court been observed.

3.2. INTERPRETATION

65% (32 out of 49 relevant cases) of the monitored court hearings were conducted with the participation and assistance of an interpreter from/into the language spoken by the asylum seeker based on whose appeal the relevant proceedings had been instituted. However, 34% (17 out of 49 relevant cases) of the court hearings were not attended by an interpreter. In the remaining 28% (14 out of 50 cases) an interpreter was not appointed due to the asylum seeker's failure to appear before the court. In all the cases involving an interpreter the translation was accurate, complete and prompt.

2022 was yet another year in which the monitoring of judicial proceedings at Administrative Court-Haskovo established the persisting unlawful practice of this court failing to summon an interpreter for the first court hearing scheduled in the relevant case. The interpreter was summoned by telephone when the claimant had already appeared in the court room for the first hearing. Under these circumstances, Administrative Court-Haskovo rescheduled the hearing for a later hour, which allowed summoning the interpreter by telephone and the latter appearing before the court. In such a situation, however, there is no adequate communication between the court and the asylum seeker who cannot understand what is going on in the court room and that the hearing has been rescheduled for a later hour. Still, this approach of the court is more adequate compared to its practice in 2021 when the hearing was rescheduled for another day. Nevertheless, even when the court hearing is rescheduled for a later time on the same day, the asylum seeker is unable to understand the situation due to the absence of an interpreter. In most cases the asylum seekers were able to understand that they had to wait till a later hour, and not leave the court, only due to the

intervention of the observer who put them through to an interpreter with the relevant language. This practice of the court constitutes a serious breach of procedural rules, which prevents asylum seekers from *habeas corpus* in the proceedings before the court hearing their appeals against the refusal to grant them international protection.

3.3. INVOLVEMENT OF THE PROSECUTOR'S OFFICE

The monitoring has established participation of the prosecutor's office in the court hearings related to refugee judicial proceedings in 90% (45 out of 50 court cases) of the procedures. It is only in 35% (16 out of 50) of the court cases, however, that the prosecutor's office submitted a reasoned, and not formulaic, opinion on the appeal lodged against SAR's refusal to grant international protection.

3.4. PROCEDURAL REPRESENTATION

In 84% (42 out of 50) of the cases, the asylum seekers participating in the monitored judicial proceedings were assisted by a procedural representative, a lawyer, and in 30% (13 out of 42) of the court cases the representative was an ex-officio lawyer appointed by the court at the asylum seeker's request. In 50% (21 out of 42) of the court cases, excluding those with unaccompanied children, the asylum seekers were represented in the proceedings by a lawyer from a non-governmental organization. In 20% (8 out of 43) of the court cases the asylum seekers were represented by a lawyer empowered by themselves. In 25% (2 out of 8) of the court cases, however, the empowered lawyer did not appear at the court hearing.

In 7% (3 out of 13) of the court cases the ex-officio lawyers from NLAB showed a formalistic attitude, and were not prepared to defend the claimant. By way of comparison, in 2021 only one ex-officio lawyer from NLAB did not show a professional attitude and responsibility with respect to the defence of the asylum seeker.

IV. RECOMMENDATIONS

- Ensure 24-hour arrangements for the registration of applications for international protection and the accommodation of asylum seekers in all of SAR's territorial units, including at weekends and bank holidays.
- Create a "safe zone" for accommodating unaccompanied children on the premises of SAR's largest territorial unit, RRC-Harmanli, in order to ensure 24-hour care for all children from this category and that no unaccompanied child is accommodated in any of SAR's territorial units outside the safe zones.
- Provide an interpreter for the preparatory meeting before the first interview is held between unaccompanied children and their Article 25 lawyers.
- Establish a feedback and complaints mechanism for asylum seeker against any misconduct by the SAR staff related to their or other personal cases.
- Take measures aimed at the observance of the rule according to which the asylum seeker has to be informed about their right to ask for an interviewer and an interpreter of the same gender.
- Ensure that in all the interviews held with accompanied and unaccompanied children the adapted form is used, which is adapted to take into account the children's age characteristics, their ability to perceive and convey information, their specific needs, and development.
- Designate appropriate spaces for interviews with asylum seeking children, whether they are accompanied or unaccompanied.
- Take the necessary actions to adopt a methodology for complex age assessment based on cognitive and socio-psychological markers and non-invasive medical examinations in compliance with all procedural standards and rules for carrying out such examinations.
- Take measures to ensure that vulnerabilities are identified at each registration of an asylum seeker, whether preliminary data indicating vulnerability or special needs is available, in order for asylum seekers belonging to a vulnerable group to receive due care.

- Introduce a requirement for SAR's social workers to carry out needs assessment and draw up an individual support plan in all cases when asylum seekers are identified as vulnerable or with special needs. These documents must be attached to the asylum seeker's personal file.
- Make arrangements with the aim to check and control whether the initial BID for the unaccompanied child due within 3 working days from registration and the full BID due within 20 working days are carried out in a timely manner by SAR's social worker, and whether these are attached to the child's file.
- Ensure that the forms of the initial BID and the full BID for the unaccompanied child that are attached to the personal file, and the individual support plan drawn up by SAR's social worker are discussed and taken into consideration in the reasons presented in the decision on the child's claim for international protection.
- Ensure that the country of origin information generated by the International Activities Directorate is made available via SAR's website to the other participants in the administrative procedure: Article 25 representatives, social workers, lawyers, and ex-officio lawyers, judges, and prosecutors.
- Ensure legal aid at the serving of negative decisions on all asylum seekers belonging to vulnerable groups.