



European
Network on
Statelessness

PROTECTING STATELESS PERSONS FROM ARBITRARY DETENTION



IN BULGARIA



Фондация за
достъп до права
Foundation for
Access to Rights

“ I have lived here for 24 years. These are not 24 hours or 24 months, but years. (...) Immigration detention has been the most humiliating punishment in my life.

CHRISTOFF, A STATELESS DETAINEE IN BULGARIA, ORIGINALLY FROM THE FORMER YUGOSLAVIA

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LIST OF ABBREVIATIONS

1954 Convention	1954 Convention relating to the Status of Stateless Persons
1961 Convention	1961 Convention on the Reduction of Statelessness
CJEU	Court of Justice of the European Union
CPD	Bulgarian Commission for Protection against Discrimination
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ECHR	European Convention on Human Rights
ECN	European Convention on Nationality
ECtHR	European Court of Human Rights
ENS	European Network on Statelessness
EU	European Union
FAR	Foundation for Access to Rights
ICCPR	International Covenant on Civil and Political Rights
LFRB	Law on Foreign Nationals in the Republic of Bulgaria
NCTHB	National Commission on Combatting Trafficking in Human Beings
OP-CAT	Optional Protocol to the Convention Against Torture, Cruel, Inhuman or Degrading Treatment or Punishment
SAC	Supreme Administrative Court
SANS	State Agency National Security
SAR	State Agency for Refugees
SCAC	Sofia City Administrative Court
SCTAF	Special Centre for Temporary Accommodation of Foreigners
the Institute	Institute on Statelessness and Inclusion
UNHCR	United Nations High Commissioner for Refugees

INTRODUCING THE INTERVIEWEES

Mr. A. is a stateless person from the former Soviet Union who was held in immigration detention in Bulgaria from 2005 to 2012. During the years of his immigration detention, he was told he would be deported, but was never provided with details about the actions taken towards his deportation. Mr. A remained in detention throughout this period because the only alternative to detention envisaged in Bulgarian law, daily reporting at the police station, could not be imposed on him as he had never had a registered address or acquaintances in Bulgaria. After almost seven years in detention and following the intervention of the Committee for the Prevention of Torture (CPT) of the Council of Europe, Mr. A was released at the end of 2012. He now lives in Bulgaria as an undocumented migrant. “Why did they hold me for seven years and gave me nothing?” – Mr. A. asked during his interview.

Mr. H. has lived in Bulgaria for the past 24 years. He was born in Banja Luka, Yugoslavia (present day Bosnia and Herzegovina). He has never had an identity document: “I have had only a birth certificate. I have never had any other paper in my life”, he recalls. Mr. H. entered Bulgaria in 1992 after his wife and two young children were killed in the Bosnian war. He found work and friends in a small Bulgarian village. Upon his encounters with Bulgarian authorities, Mr. H. was subjected to multiple detentions of several days, but was always subsequently released. In 2015 a removal order was issued against him and he spent four months at the Bousmantsi immigration detention centre. Mr. H. refers to the four months of his immigration detention as “the most humiliating punishment” that he has suffered in his life.

Mr V., aged nineteen, was one-year old when he entered Bulgaria with his parents and has lived in the country ever since. He graduated from secondary school in Bulgaria, but could not obtain a diploma for his school education, because he does not have any identity documents. “I have a problem with the citizenship. Over the last ten years it is as though I live illegally”, he shared. Mr. V. was born in Armenia. He has a certificate from the Armenian embassy in Bulgaria certifying that he has not been issued an Armenian passport and that he does not have a registered address in Armenia. He asks: “Why - although I have studied for twelve years in a Bulgarian school and have lived in Bulgaria for eighteen years - can't I obtain Bulgarian citizenship?”

In similar situation we find **Mr. D.**, who is 21 years old. He was a six-month old baby when he entered Bulgaria with his parents and has lived in the country ever since. He has graduated from secondary school in Bulgaria and currently studies law at a private university. He managed to receive a secondary education diploma thanks to the temporary registration card that he had as an asylum seeker (after that his asylum claim was rejected). He has no access to basic human rights and finds it a constant struggle to live a normal life.

Mr T. was tortured in his country of origin and was deprived of his Afghan nationality. He was granted refugee status in Bulgaria and has lived in the country over the last 16 years. Mr. T. has a stable 13-year family relationship with a Bulgarian citizen. In May 2015 he was issued an order for expulsion from Bulgaria on national security grounds, because of his alleged involvement in human smuggling. Since then he has been detained. Mr. T. suffers from chronic bronchial asthma and uses an inhalator twice a day. He also suffers from high blood pressure, heart problems and sleep epilepsy. A medical expert report appointed by the Court concluded that “the sanitary conditions in which the person is currently accommodated are incompatible with his health – there is a real risk of worsening of his diseases, and in the near future this might lead to respiratory and cardiac failure”.¹ Nevertheless, Mr. T. continues to be in detention, and has been for about sixteen months as of September 2016.

Mr S. is a rejected asylum seeker in Bulgaria. His parents were Iraqi nationals. He was born in an Iraqi prison, because his father was “against the regime of Saddam Hussain”. Therefore, the whole family - his father, his pregnant mother and his sister - were imprisoned for eight months. His father was separated from the rest of the family and they never saw him again. Mr. S. was born in the sixth month of his mother’s imprisonment. “They did not release us from prison, but expelled us to Iran”. Mr. S. was forty days old when his family was expelled to Iran in 1982. According to Iranian legislation, his mother could not pass her citizenship to him; only his father could do that. “We do not have proof that your father was Iranian, therefore we cannot grant you any documents”, the Iranian authorities told him when he grew up. His sister subsequently married an Iranian man and obtained Iranian citizenship through marriage. However, Mr. S. remained stateless and did not even have the right to marry the woman whom he loved in Iran. Mr. S. arrived in Bulgaria in 2011, where he approached the Iraqi embassy and was issued an official document stating that he is not a citizen of Iraq. Currently Mr. S. is employed illegally in Bulgaria. “My biggest fear is to be arrested and sent to prison, because I do not have documents”, he told us.

We also studied in detail the legal files of two former stateless detainees, whose cases reached the European courts in Luxembourg and Strasbourg. These are the cases of Mr. Kadzoev and Mr. Auad:

Mr. Kadzoev entered Bulgaria irregularly in order to seek asylum in October 2006. In Russia he had been detained and tortured by the authorities (the United Nations High Commissioner for Refugees (UNHCR) and Amnesty International issued statements validating the credibility of Mr. Kadzoev's testimony of torture and inhuman treatment in Russia). Although he sought asylum, a removal order and a detention order were imposed on Mr. Kadzoev. His asylum application was registered only after seven months, when Mr. Kadzoev attempted to commit suicide, and it was rejected as 'manifestly unfounded'. In the course of administrative proceedings to identify Mr. Kadzoev's nationality, two different documents were found: a birth certificate that determined that Mr. Kadzoev was born in Moscow of a Chechen father and a Georgian mother, and a temporary identity card of the Chechen Republic, which stated that Mr. Kadzoev's place of birth was Grozny. Contrary to the view of the Bulgarian authorities, the Russian authorities declared that the temporary identity card was issued by an agent unknown to the Russian Federation, consequently it could not be regarded as evidence of Mr. Kadzoev's citizenship. Mr. Kadzoev spent over three years in immigration detention in Bulgaria (from 21 October 2006 to 3 December 2009), after which he was released as an undocumented migrant. The Court of Justice of the European Union (CJEU) determined that, according to European Union (EU) law, the Bulgarian authorities could not continue holding Mr. Kadzoev in detention over the maximum time limit of eighteen months permissible under the European Returns Directive.²

Mr. Auad was born in a Palestinian refugee camp in Lebanon in 1989. As a Palestinian refugee, he is not a citizen of Lebanon or any other country. In October 2009 Mr. Auad was granted subsidiary international protection ('Humanitarian status') by Bulgaria. One month later, the State Agency for National Security (SANS) issued two orders for the detention and expulsion of Mr. Auad on national security grounds. He was held in immigration detention for eighteen months from November 2009 to May 2011 and then he was released without any identity documents and means of support. In October 2011 the European Court of Human rights (ECtHR) ruled that Mr. Auad's detention pending deportation and the lack of access to effective remedies was in violation of Article 5, paragraph 1 (right to liberty and security) and Article 13 (right to an effective remedy) of the European Convention on Human Rights (ECHR).³ Furthermore, it stated that if Mr. Auad's expulsion was to be carried out, it would violate Article 3 of the Convention (prohibition of torture) and the *non-refoulement* principle. The Court found that the Bulgarian authorities had failed to carry out the return proceedings with due diligence: the only action proven to be taken was writing three times to the Lebanese embassy. Furthermore, since it is not required by the national law, the expulsion order did not specify the country of destination. The Court saw this as problematic with regard to the requirement of legal certainty inherent in all Convention provisions.⁴

1. INTRODUCTION



1.1 STATELESSNESS AND DETENTION

The increasing use of immigration detention, including for punitive purposes, and the criminalisation of irregular migration by a growing number of states, is a concerning global and European trend. This results in increasing numbers of persons being detained for longer than they should, or for reasons that are unlawful. While arbitrary detention is a significant area of concern in general, the unique characteristics associated with stateless persons and those at risk of statelessness make them more likely to be detained arbitrarily, for unduly lengthy periods of time. As the ECtHR held in *Kim v Russia*, a stateless person is highly vulnerable to be “left to languish for months and years...without any authority taking an active interest in his fate and well-being”.⁵ This is mainly because

immigration systems and detention regimes do not have appropriate procedures in place to identify statelessness and protect stateless persons.

All stateless persons should enjoy the rights accorded to them by international and regional human rights law. Their rights should be respected, protected and fulfilled at all times, including in the exercise of immigration control. The circumstances facing persons with no established nationality – including their vulnerability as a result of their statelessness and the inherent difficulty of removing them – are significant factors to be taken into account in determining the lawfulness of immigration detention. The process of resolving the identity of stateless persons and a stateless person’s immigration status is often complex and burdensome. Lawful removal

of such persons is generally subject to extensive delays and is often impossible. In many European countries, stateless persons detained for removal purposes are therefore vulnerable to prolonged and repeat detention. These factors in turn make stateless persons especially vulnerable to the negative impact of detention. The emotional and psychological stress of lengthy—even indefinite—periods of detention without hope of release or removal is particularly likely to affect stateless persons throughout Europe.

It is evident that the failure of immigration regimes to comprehend and accommodate the phenomenon of statelessness, identify stateless persons and ensure that they do not directly or indirectly discriminate against them often results in stateless persons being punished for their statelessness. Thus, the European Network on Statelessness (ENS) has embarked on a two-year project aimed at better understanding the extent and consequences of the detention of stateless persons in Europe, and advocating for protecting stateless persons from arbitrary detention through the application of regional and international standards. Among the outputs of this project are:

- A Regional Toolkit for Practitioners, on protecting stateless persons from arbitrary detention – which sets out regional and international standards which states are required to comply with and practitioners can draw on in their work;⁶ and
- A series of country reports investigating the law, policy and practice related to the detention of stateless persons in selected European countries and its impact on stateless persons and those at risk of statelessness. These reports are meant as information resources but also as awareness raising and advocacy resources that we hope will contribute to strengthening protection frameworks in this regard. In year one of the project (2015), three such country reports have been published on Malta, the Netherlands and Poland.⁷ In year two, this report on Bulgaria and two others on the UK and Ukraine were published.

1.2 RESEARCH OBJECTIVES, METHODOLOGY AND LIMITATIONS

The goals of this study are two-fold: i) filling an information gap on statelessness and detention in Bulgaria; and ii) to serve as an advocacy tool to promote greater protection for stateless persons and those at risk of statelessness from arbitrary detention, including through improved identification and determination of statelessness. To this end, the present first chapter provides an overview of the research objectives and introduces the reader to the Bulgarian context. The second chapter is concerned with law and policy, existing research and (statistical) data on statelessness and detention. Then, in chapter three, key issues of concern

are identified. The report concludes with a summary of findings and recommendations for improvement.

This study employs a varied methodology: it draws on extensive desk research and analysis, inter alia, on Bulgaria's accession to the two UN Statelessness Conventions and the number of reservations made by the state; the study of the case law in which stateless applicants invoked the 1954 Convention relating to the Status of Stateless Persons (1954 Convention) in the absence of national implementing provisions; as well as a comparison with the 'Hungarian practice', which the Bulgarian draft law in the field declares to follow. The desk research takes into consideration a recently growing body of research in the field of immigration detention.

The report is informed by the knowledge and experience of its author, an academic in the field of undocumented migrants and their access to fundamental human rights with a particular focus on detention, and a legal practitioner in Bulgaria with first hand insight on administrative practices and access to justice in Bulgaria, being the legal representative of stateless detainees in landmark cases cited in the report. The findings in this report are up-to-date as of September 2016.

An important limitation in the desk research has been the lack of credible statistical data with regard to stateless persons (and persons at risk of statelessness) in detention. Upon detention in Bulgaria stateless persons are usually assigned to a country of origin that they are deemed to have come from or to have some cultural or historical link with. In the removal and detention orders stateless persons are routinely identified as citizens of those countries. Therefore, in the official statistics, there are very few persons who have been recorded as stateless or whose nationality is recorded to be 'unknown'. Additional freedom of information requests to the Ministry of the Interior, the State Agency for Refugees (SAR), the Ministry of Foreign Affairs and the Ministry of Justice have been made, using suitable proxies that might be indicative of the issues studied.

This report also draws on field research. Interviews were conducted with key stakeholders in Bulgaria as well as stateless persons and persons at risk of statelessness who either have been detained or are currently in detention. We also got access to and studied in detail the case files of (former) stateless detainees. Two of the case studies, of Mr. Auad and of Mr. Kadzoev, are based solely on the study of the former detainees' files. The remaining cases are based both on interviews with the persons and study of their legal files. For some cases, we relied solely on the information provided through the interviews, which was not verifiable through documentary sources.

A challenge and an obstacle has been the lack of recognition of the study topic as one of interest or

importance by the Migration Directorate at the Ministry of the Interior, which is the main decision-making authority in the field of removal and detention, and the Consular Directorate at the Ministry of Foreign Affairs, which assists the process of obtaining travel documents for the removal of immigration detainees. Both institutions declined invitations for interviews, but sent written replies, which are analysed in the report. Furthermore, the Directorate on Bulgarian Citizenship at the Ministry of Justice and the Commission at the Administration of the President of the Republic have sent information in writing instead of agreeing to give an interview.

We are most grateful to the stateless persons who have agreed to take part in the research and have enhanced our understanding of the issue through sharing their personal experiences with us.

1.3 STATELESSNESS AND DETENTION IN BULGARIA

Bulgaria does not yet have a statelessness determination procedure in its national legislation, but a new draft law has been adopted by the Parliament on 15 June 2016. Bulgaria acceded to the 1954 Convention and the 1961 Convention on the Reduction of Statelessness (1961 Convention) in February 2012. While the transposition of the 1954 Convention in concrete national law provisions is an act that is welcome, especially after four years of hesitance in this regard, the definition of a stateless person in the current draft law is inconsistent with the international law definition. We will look at this more closely later in section 3.1. of the report.

The Republic of Bulgaria is a member state of the Council of Europe. The ECHR was ratified by Bulgaria and entered into force on 7 September 1992. Bulgaria is also a member state of the EU since 1 January 2007. It is bound by the human rights standards in the European Charter of Fundamental Rights, and by EU legislation in the migration and asylum field, in particular, the EU Return Directive⁸ and the EU recast Reception Conditions Directive.⁹ The adoption of the EU Return Directive brought substantial improvement to the protection of immigration detainees in Bulgaria. Before the transposition of the EU Return Directive in Bulgaria in 2009, there was no time limit to immigration detention in the country and the Supreme Administrative Court (SAC) considered judicial review of detention orders to be inadmissible. Currently the awareness and knowledge of the public and the authorities with regard to immigration detention is much higher, but this report also reveals many areas in which progress has still to be made.

In Bulgaria detention of stateless and unreturnable persons takes place within the general immigration detention regime. There is no specific legal regulation

that provides for specific guarantees for the protection of stateless persons. Stateless persons in Bulgaria have been placed in immigration detention both when they have entered the country irregularly, prior to being given access to the asylum procedure, and upon their detection on the territory of Bulgaria as illegally staying persons. As a matter of long-standing practice, removal orders are usually accompanied by detention orders, without an examination of less coercive measures. With the substantial increase of asylum seekers in Bulgaria since 2013, detention has been seen by the Bulgarian authorities as a tool for migration management. At the time of drafting this report, in September 2016, Bulgaria is in the process of formally introducing an additional type of immigration detention lasting up to thirty days, the purpose of which is “to conduct the initial identification and establishment of identity and to assess the subsequent administrative measures that should be imposed or taken”¹⁰ with regard to migrants who have entered the country irregularly. The maximum time limit of ‘regular’ immigration detention in Bulgaria is eighteen months, broken down into six month blocks.

2. LAW AND POLICY CONTEXT



2.1 INTERNATIONAL AND REGIONAL OBLIGATIONS PERTAINING TO STATELESSNESS AND DETENTION

Having a nationality is an inalienable right enshrined in Article 15 of the Universal Declaration of Human Rights.¹¹ Similarly, the right of liberty and security of the person, and to be protected from arbitrary detention and cruel, inhuman or degrading treatment are widely recognised principles of international law. These rights are reinforced by several human rights treaties, to which Bulgaria is a state party, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights¹², the First Optional Protocol to the ICCPR which gives the Human Rights Committee competence to consider individual communications alleging violations of the rights set forth in the ICCPR,¹³ the Convention Against Torture, Cruel, Inhuman or Degrading Treatment or Punishment¹⁴ and its Optional Protocol (OP-CAT),¹⁵ the Convention on the Elimination of All Forms of Racial Discrimination,¹⁶ and the Convention on the Rights of the Child.¹⁷ Bulgaria has not yet signed the Convention on the Rights of Migrant Workers and Their Families.

Bulgaria is also party to the European Convention for the Protection of Human Rights and Fundamental Freedoms¹⁸ and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.¹⁹ The CPT has carried out ten visits to Bulgaria since 1995. In its Public Statement

Concerning Bulgaria, published on 26 March 2015, the CPT noted that “[i]n the course of the Committee’s visits to Bulgaria in 2010, 2012, 2014, and 2015, the CPT’s delegations witnessed a lack of decisive action by the authorities leading to a steady deterioration in the situation of persons deprived of their liberty.”²⁰

It is noteworthy that according to the Constitution of the Republic of Bulgaria international treaties that it is party to have primacy over national law provisions that contradict them. Article 5, paragraph 4 of the Constitution stipulates:

“ International treaties that have been ratified according to the constitutionally established procedure, that are promulgated and that have entered into force for the Republic of Bulgaria are part of the domestic law of the country. They take precedence over domestic legislation that contradicts them.”²¹

The Republic of Bulgaria ratified the Statelessness Conventions of 1954 and 1961 by law promulgated in the State Gazette No.11 of 7 February 2012. The 1954 Convention provides the international definition of a ‘stateless person’, and a set of rights for recognised stateless individuals and obligations for their protection. The latter treaty includes provisions on the prevention and reduction of statelessness. It should also be noted, however, that the ratification was done by Bulgaria with a wide range of reservations that are likely to undermine

the very purpose of the 1954 Convention. The reservations were to:

- Article 7, paragraph 2 (exemption from reciprocity),
- Article 21 (housing),
- Article 23 (public relief),
- Article 24, paragraph 1 (b) (social security),
- Article 24, paragraph 2 (right to compensation for the death of a stateless person resulting from employment injury or from occupational disease),
- Article 24, Paragraph 3 (extension to stateless persons of the benefits of agreements concluded between the contracting states),
- Article 27 (identity papers),
- Article 28 (travel documents), and
- Article 31 (Expulsion).²²

Although Bulgaria formally acceded to the 1954 Convention in 2012, it has not yet adopted implementing national legislation that would make the application of the Convention operational. In the next section (Section 2.2.), dedicated on national laws and jurisprudence, we will look at the national case law in this relation and the draft transposition law that is currently pending before the Bulgarian parliament.

The Republic of Bulgaria is a member state of the EU and as such is bound by the European Charter of Fundamental Rights. Furthermore, the EU Return Directive – Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in member states for returning illegally staying third-country nationals - is fully applicable in Bulgaria. Its transposition in national law will be examined in Section 2.2.1. below.

It is noteworthy that Bulgaria signed the 1997 European Convention on Nationality (ECN) as early as on 15 January 1998.²³ The ECN is designed to make acquisition of a new nationality and recovery of a former one easier, to ensure that nationality is lost only for good reason and cannot be arbitrarily withdrawn, to guarantee that the procedures governing applications for nationality are just, fair and open to appeal, and to protect persons from statelessness.

2.2 NATIONAL LAWS, POLICIES AND JURISPRUDENCE PERTAINING TO STATELESSNESS AND DETENTION

This section will provide information on Bulgarian laws, policies and jurisprudence with regard to the following three main issues:

1. Transposition and implementation of the 1954 Statelessness Convention;
2. Return and removal of illegally residing migrants including the issue of the destination country; and

3. Immigration detention

2.2.1. Transposition and implementation of the 1954 Statelessness Convention

As noted above, although Bulgaria formally acceded to the 1954 Convention in 2012, it has not yet adopted implementing national legislation that would make the application of the Convention operational. In its national law **there is no definition of a 'stateless person'**. However, the 1954 Convention definition of a 'stateless person' is part of customary international law²⁴ and UNHCR²⁵ has authoritatively interpreted it as requiring a careful analysis of "fact and law", as opposed to a purely formalistic approach.

In the absence of transposition of the 1954 Convention, however, there is still **national case law** that refers directly to the Convention. In Judgment No.53 of 21 April 2015 relating to case No. 101/2015, the Administrative Court of Dobrich allowed an appeal against a refusal to recognise the status of a stateless person. The refusal was issued on the ground that no decision-making body had been set in national law to decide on such applications, as well as no procedure for determining statelessness had been elaborated in national legislation. The Court noted that the lack of national provisions transposing the 1954 Convention was "not a ground to deprive stateless persons of their rights". The Court invoked Article 25 ('Administrative Assistance') of the 1954 Convention and ruled that the state shall assist the stateless person and shall not create obstacles for or discriminate against them. The Court found that it is the Director of the Migration Directorate that normally decides on applications for residence permits by immigrants in Bulgaria. Therefore, it was the competent body relevant to the case. The Court further concluded that the refusal contradicted the purpose of the 1954 Convention, namely, to guarantee the fundamental human rights of stateless persons.²⁶

In similar cases national courts²⁷ have further invoked Article 46, paragraph 2 of the Law on Normative Acts, which stipulates:

“ When a normative act is incomplete, the cases that are not regulated by it are regulated by the norms that apply to similar cases, if that meets the purpose of the act. If such norms are missing, the matters are regulated according to the fundamental principles of the law of the Republic of Bulgaria.”²⁸

In its judgment of 18 March 2014 relating to case No.327/2014, the SCAC stated that **the fundamental principles of the law of the Republic of Bulgaria** are found in the Constitution of the Republic and in the international treaties to which Bulgaria is a party. The court recalled that according to Article 5(4) of the Bulgarian Constitution, international treaties that have

been ratified according to the constitutionally established procedure, that are promulgated and that have entered into force for the Republic of Bulgaria are part of the domestic law of the country and take precedence over domestic legislation that contradicts them.

Article 5(4) of the Bulgarian Constitution was invoked by the SCAC also in Judgment of 21 December 2013 in case No.6735/2013 in relation to the direct application of Article 25, paragraph 1 of the 1954 Statelessness Convention.²⁹ The Court found that the requirement of Article 27(2) of the Law on Foreign Nationals in the Republic of Bulgaria (LFRB) that **the applicant for a residence permit shall present a valid travel document contradicted Article 25, paragraph 1 of the 1954 Convention**, which requires state authorities to assist the applicant when the exercise of a right by a stateless person would normally require the assistance of authorities of a foreign country to whom he cannot have recourse. Article 27(2) LFRB provides that the term of the residence permit can be prolonged for up to six months before the validity of the national travel document of the applicant expires.

The requirement under Article 27(2) LFRB is a common obstacle to grant or prolong the residence permit of migrants who do not have a national passport (travel document) or are unable to prolong its validity. Thus, during an interview with experts from the Bulgarian Commission for Protection against Discrimination (CPD),³⁰ they told the story of a stateless person of Palestinian origin, Mr. Karsholi, who had fallen into a vicious cycle of impossibility to renew his travel document by the Palestinian embassy in Sofia because of the requirement to do so in Palestine. At the same time, he did not have a travel document to leave Bulgaria lawfully. As a result, he had remained undocumented in Bulgaria. Mr. Karsholi had submitted an application to renew his Bulgarian permanent residence permit as he is the husband of a Bulgarian citizen and father of three children who are Bulgarian citizens. Mr. Karsholi's application for a valid identity card and a valid travel document was rejected by the Bulgarian Migration Directorate with the reasoning that "there is no possibility in the law to provide the requested service". Mr. Karsholi complained before the Bulgarian Commission for Protection against Discrimination claiming that he suffered discrimination on ground of his 'citizenship' and 'national origin'. By Decision No.190 of 1 September 2010 the CPD found that Mr. Karsholi had suffered such unequal treatment and discrimination. In accordance with its powers, the CPD made a proposal to the Ministry of the Interior to initiate a procedure for the accession of Bulgaria to the 1954 Statelessness Convention. The Migration Directorate appealed the CPD decision, but the latter was confirmed by the Judgment of 5 August 2011 of the SAC of the Republic of Bulgaria in case No.13338/2010.

Under Bulgarian national law, upon meeting certain specific conditions, it is possible for a narrow category of stateless persons to acquire a 'permanent' residence permit without having to provide a valid travel document.³¹ Although the resident permit is called 'permanent', it is valid for only one year and one has to re-apply for and renew it every year. However, even in those cases the person is not recognised as stateless, but it is assumed that the citizenship of the person is 'unknown'. The national provision in question is **Article 25, paragraph 1, point 12** of the LFRB.³² It sets the following cumulative conditions in order for one to qualify for this residence permit:

1. the foreigner should have been born in Bulgaria or entered the country prior to 27 December 1998;
2. he/she should have stayed in Bulgaria ever since then and should not have left the country;
3. the foreigner should be from a former Soviet republic, but should not have been recognised as a citizen by any of those republics.

Bulgarian case law concerning stateless persons deals mainly with the application of Article 25, paragraph 1, point 12 of LFRB. In the majority of these cases the appeal is submitted by persons of Armenian origin who have spent their lives in Bulgaria.³³ In all those cases,³⁴ upon official request by the Bulgarian Migration Directorate, the Consul of the Republic of Armenia in Bulgaria has replied that the person in question does not possess a national passport and a registered address in Armenia, but according to Article 10, paragraph 3 of the Law on the Citizenship of the Republic of Armenia the citizens of the former Soviet Union who live abroad, who are of Armenian origin and who have not received the citizenship of another state are considered to be Armenian citizens. Nevertheless, the SCAC has repealed these refusals to grant residence permits under Article 25, paragraph 1, point 12 of LFRB, stating that they were unlawful. The Court found a violation of the requirement of Article 35 of the Code on Administrative Procedure to establish all relevant facts in the case. Namely, according to the Court, the administrative authorities had not fully clarified whether the applicant fell within the scope of the cited provision of the Law on the Citizenship of the Republic of Armenia in view of the existence of additional conditions that the applicant might have to meet. The Court further found **a violation of the right to respect for private and family life under Article 8 of the ECHR** in view of the applicants' social integration in Bulgaria and the lack of social and family ties in Armenia.

The Law on Bulgarian Citizenship (Article 14) provides that stateless persons are entitled to submit an application for Bulgarian citizenship once they have completed three years as holders of a permanent residence permit. In view of the lack of a legal definition of

a stateless person, however, it is not clear what the conditions to consider a person as stateless are.

Interestingly, the Law on the Bulgarian Identity Documents,³⁵ in its Article 14, paragraph 1, point 8, provides that one of the identity documents issued by the Republic of Bulgaria to “foreigners residing in the country” is “a certificate for travel abroad to a stateless person”³⁶ which is issued by the Ministry of the Interior to “foreigners who have the status of a stateless person and a permanent residence permit on the territory of the Republic of Bulgaria”.³⁷ The question of determining the status of a stateless person remains.

The draft law introducing the status of a stateless person and a determination procedure

On 15 June 2016 the Bulgarian Parliament adopted at first reading a draft Law Amending and Supplementing the Law on Foreign Nationals in the Republic of Bulgaria,³⁸ which for the first time introduces a statelessness determination procedure. We will look into more detail at the provisions of the draft law in section 3.1. of this report.

2.2.2. Return and removal of illegally residing migrants: the issue of the destination country

Deportation and expulsion orders issued by Bulgaria do not state the destination country. There is no provision in Bulgarian national law that obliges the authorities to ascertain the destination country before issuing a removal decision and before detaining a person. The only possibility envisaged in Article 44a, paragraph 2 of the LFRB is for the authority that issued the *expulsion* order (on national security grounds) to issue a separate order stating to which country the migrant *should not* be removed. This new order is issued once there is a final judicial act, which establishes that, if the person is expelled to that country, their life and freedom would be threatened and they would be exposed to a risk of persecution, torture or inhuman or degrading treatment. The law explicitly states that this order **cannot be appealed**.

The above situation is exemplified in **the case of Mr. Auad**, who complained against violation of his human rights by Bulgaria before the ECtHR in Strasbourg.³⁹ Mr. Auad, a stateless Palestinian from Lebanon, had subsidiary protection status in Bulgaria. In November 2009 the chairman of the SANS issued two orders against Mr. Auad: one for his expulsion on national security grounds and a second one for his detention. Mr. Auad was detained for the purpose of removal for 18 months, the maximum period of detention allowed by the EU Return Directive 2008/115. After that he was released as an undocumented migrant. In its Judgment of 11 October 2011, the ECtHR found that Bulgaria had violated Articles 3, 5 and 13 of the ECHR.⁴⁰ The Court inter alia

noted that since it is not required by the national law, the expulsion order did not specify the country of destination. The Court saw this as problematic with regard to the requirement of legal certainty inherent in all Convention provisions:

“Where deprivation of liberty is concerned, legal certainty must be strictly complied with in respect of each and every element relevant to the justification of the detention under domestic and Convention law. In cases of aliens detained with a view to deportation, lack of clarity as to the destination country could hamper effective control of the authorities’ diligence in handling the deportation”.⁴¹

The Court also found that the general measures in execution of its judgment should include such amendments to LFRB or other Bulgarian legislation, and such change of administrative and judicial practice in Bulgaria so as to ensure that inter alia “the destination country should always be indicated in a legally binding act and a change of destination should be amenable to legal challenge”.⁴² This measure indicated by the Court has not been implemented by Bulgaria, which has continued to be found to have violated the Convention provisions in similar cases such as in the case of *Amie and Others v Bulgaria*.⁴³

In Bulgarian law there are no legal provisions which protect stateless persons from removal. The national law provision that stateless persons might invoke in their defence against removal is Article 44, paragraph 2 of the LFRB which states that:

“In imposing the compulsory administrative measures competent authorities shall take into account the duration of residence of the foreigner in the Republic of Bulgaria, the categories of vulnerable persons, the existence of proceedings under the Law on Asylum and Refugees or proceedings for renewal of the residence permit or other authorization offering a right of residence, his family situation, and the existence of family, cultural and social ties with the country of origin.”

2.2.3. Immigration detention

In Bulgaria detention of stateless and unreturnable persons takes place within the general immigration detention regime. There is no specific legal regulation that explicitly prohibits immigration detention of stateless persons. As a matter of long-standing practice, Bulgarian authorities use immigration detention as a measure of first resort with weak procedural guarantees to challenge its lawfulness and duration.⁴⁴ The adoption of the Return Directive 2008/115/EC has introduced judicial review and a time limit to immigration detention (eighteen months, split in six month blocks). However, implementation of detention has not been reduced as a result.⁴⁵ On the contrary, with the substantial increase of

asylum seekers in Bulgaria since 2013,⁴⁶ detention has been seen by the Bulgarian authorities as a tool for migration management. Furthermore, the transposition of the Recast Reception Conditions Directive has been seen as an opportunity to extend detention also to asylum seekers.⁴⁷ Stateless persons in Bulgaria have so far been placed in immigration detention both when they have entered the country to seek asylum, prior to being given access to the asylum procedure,⁴⁸ and upon their detection on the territory of Bulgaria as illegally staying persons.

The Bulgarian law provides for periodic review of the length of detention in accordance with Article 15, paragraphs 4, 5 and 6 of the EU Return Directive. In the first preliminary ruling request under the EU Return Directive made in relation to the prolonged detention of **Mr. Kadzoev**, a stateless person detained in Bulgaria, the CJEU stated that **a reasonable prospect of removal** “does not exist where it appears unlikely that the person concerned will be admitted to a third country”⁴⁹. “It must therefore be apparent, at the time of the national court’s review of the lawfulness of detention, that a real prospect exists that the removal can be carried out successfully, having regard to the periods laid down in Article 15(5) and (6) of Directive 2008/115, for it to be possible to consider that there is a ‘reasonable prospect of removal’ within the meaning of Article 15(4) of that directive.”⁵⁰ Mr. Kadzoev, a stateless person from Chechenia, spent over three years in immigration detention in Bulgaria (from 21 October 2006 until 3 December 2009), after which he was released back in Bulgaria as an undocumented migrant. The major change brought by the Kadzoev case⁵¹ has been that it subsequently led also to the amendment in the Law on Foreign Nationals in the Republic of Bulgaria in August 2013 (State Gazette No.70/2013) by which Article 44, paragraph 8 of the LFRB was changed to explicitly state that “[w]hen in the light of the particular circumstances of the case it is established that there is no reasonable possibility for legal or technical reasons for the forced removal of the foreigner, the person shall be released immediately”.

2.3 DATA ON STATELESSNESS AND DETENTION IN BULGARIA

The total number of immigration detainees in Bulgaria in 2012 was 2,477. In 2013 this rose to 7,463. While in 2014 it dropped to 4,810 it rose again in 2015 to 11,902.⁵² Furthermore, in 2015, there were 15,760 persons detained at the so-called ‘Redistribution Centre’ at Elhovo near the Bulgarian-Turkish border.⁵³

In the first five months of 2016, the total number of detainees at the three detention centres in Bulgaria has been as follows (see Table 1):

Table 1: Total (cumulative) number of detainees in Bulgaria in the period from January to May 2016

Detention Centre	Number of detainees
Bousmantsi (Sofia)	1,517
Lyubimets	1,610
Elhovo	4,363

On 31 May 2016 the Ministry of Interior reported that there were 585 detainees in Bulgaria, while the **detention capacity** in the country is 940 detainees.⁵⁴ Regarding detainees belonging to **vulnerable groups**, detailed information and official statistics are provided in Section 3.5 below.

As pointed out above, upon detention in Bulgaria stateless persons are usually assigned to a country of origin that they are deemed to have come from or have some cultural or historical link with. In the removal and detention orders stateless persons are identified as citizens of those countries.⁵⁵ Therefore the validity of official statistical data regarding stateless persons in detention should be addressed with caution. According to the Ministry of Interior statistics,⁵⁶ **the number of stateless persons in detention** varies from one person to 38 persons annually in the period from 2007 until 2016. The exact numbers are provided in Table 2 below.

Table 2: Number of stateless detainees in Bulgaria by detention centre

Year	Bousmantsi (Sofia)	Lyubimets	Elhovo
2007	1	-	-
2008	9	-	-
2009	6	-	-
2010	10	-	-
2011	4	1	-
2012	6	20	-
2013	16	22	-
2014	1	3	7
2015	13	9	9
1.01.-31.05.2016	2	0	0
As of 15 June 2016	3	0	3

According to the reply by the Ministry of the Interior,⁵⁷ the **average length of detention** of the stateless persons in the table above has been 118.5 days in the Bousmantsi (Sofia) detention centre, 28 days in the Lyubimets detention centre and seven days in the Elhovo detention centre. In comparison, the average length of detention for all detained migrants in the Bousmantsi (Sofia) detention

centre in the period from 2012 until April 2016 has been 40 days.⁵⁸

Regarding detention of persons of ‘**unknown citizenship**’, the official replies of the Ministry of the Interior are contradictory. In a freedom of information decision of 14 October 2015, the Ministry of the Interior replied that taking 9 October 2015 as a reference point, there were two persons of ‘unknown citizenship’ and one stateless person in detention.⁵⁹ However, in its freedom of information decision of 21 June 2016, the Ministry of Interior replied that for the period 2007 – 31 May 2016, no persons of ‘unknown citizenship’ were detained.

There is no other statistical data on the nationality of immigration detainees besides that collected by the Bulgarian government. Upon their monitoring visits to the Bulgarian detention centres, UNHCR representatives employ the data provided to them by the Bulgarian state authorities.⁶⁰

In 2015 there were **11,902** detained persons in the Bousmantsi and Lyubimets detention centres in Bulgaria, but only **755 of them were removed from Bulgarian territory**.⁶¹ In a freedom of information request under this study, we asked the Ministry of Interior the number of detainees who have been released following detention, because their removal order was not implemented due to the impossibility to obtain the necessary documentation from third countries. The Ministry of the Interior replied that “there are no statistics on release from detention on this criterion”. We asked the Ministry of Foreign Affairs of the Republic of Bulgaria what statistical data is collected regarding the documents provided by third countries for the return of their citizens. The Ministry of Foreign Affairs replied⁶² that it does not collect any statistics in this regard, although it plays a role in the communication with those countries. The Ministry of Foreign Affairs also stated that it does not have information on the number of positive and negative answers to the requests addressed to third countries to provide documents for the return of their citizens. For further information in this regard, the Ministry of Foreign Affairs forwarded the freedom of information request to the Ministry of Interior. In a follow-up reply to the forwarded questions, the Ministry of Interior stated⁶³ that the General Directorate ‘Border Police’ is the competent body within the Ministry of Interior structure to implement the readmission agreements concluded by Bulgaria. Therefore, the answer to the posed questions was narrowed down to the implementation of readmission agreements. The Ministry of Interior replied that the refusals to readmit third country nationals upon requests made by Bulgaria have been based on two main grounds: either the persons cannot be identified as citizens of the requested country or there is not sufficient proof that the foreign nationals have resided on the territory of the requested country.

The number of negative responses in this regard is listed in Table 3 below.

Table 3: Number of negative answers to readmission requests made by Bulgaria by year

Year	Number of refusals to readmit
2014	17 (14 by Pakistan, 1 by Russia and 2 by Greece)
2015	16 (10 by Pakistan, 1 by Serbia and 5 by Greece)
2016 (up to 31 May)	18 (8 by Pakistan and 10 by Greece)

Going back to the statistics for the year 2015, the statistical data collected on efficiency of detention for the purpose of removal is as follows: 755 persons have been removed, for 16 persons there have been negative readmission answers, while 11,902 individuals have been in the regular detention centres of Bousmantsi and Lyubimets. It therefore remains unknown what has happened with the outstanding 11,131 persons.

According to the SAR, in 2015 there were 125 **stateless persons** who **sought asylum** in Bulgaria. In 2015 the chairman of SAR issued 162 decisions on applications for asylum by stateless persons: in 68 of them SAR granted refugee status, in 26 of them SAR granted subsidiary international protection, in 15 of them SAR rejected the asylum application and in 53 of them SAR discontinued the asylum procedure.⁶⁴

Regarding the number of stateless residents in Bulgaria, the Ministry of Interior provided statistics of those who are lawfully residing (see Table 4 below).⁶⁵

Table 4: Number of residence permits issued to stateless persons in Bulgaria by year

Year	Continuous residence ⁶⁶	Permanent residence	Long-term residence
2007	49	14	-
2008	41	21	-
2009	33	8	-
2010	33	16	-
2011	23	16	-
2012	26	15	-
2013	40	20	-
2014	57	6	-
2015	67	14	-
01 January – 31 May 2016	23	2	-

In addition to the above numbers, the Ministry of Interior provided statistics with regard to foreigners of **'unknown citizenship' who reside lawfully in Bulgaria** (see Table 5).⁶⁷

Table 5: Number of residence permits issued to persons of 'unknown citizenship' in Bulgaria by year

Year	Continuous residence	Permanent residence	Long-term residence
2007	-	-	-
2008	4	1	-
2009	13	7	-
2010	6	15	-
2011	8	18	-
2012	11	13	-
2013	10	16	-
2014	5	19	-
2015	2	8	-
01 January – 31 May 2016	1	1	-

While it was requested, no statistical data was provided with regard to the number of stateless persons and persons of 'unknown citizenship' who have been issued return (removal) decisions and who reside in Bulgaria.

As noted above in the report, the Law on Bulgarian Citizenship (Article 14) provides that stateless persons are entitled to submit an application for Bulgarian citizenship once they have completed three years as holders of a permanent residence permit. In reply to a freedom of information request, the Ministry of Justice provided the number of stateless persons who have acquired Bulgarian citizenship by naturalisation (see Table 6 below).⁶⁸

Table 6: Number of stateless persons who have acquired Bulgarian citizenship by naturalisation on the ground of Article 14 of the Law on Bulgarian Citizenship by year

Year	Number of stateless persons who acquired Bulgarian citizenship
2007	8
2008	19
2009	30
2010	19
2011	24
2012	34
2013	12
2014	12
2015	17
01 January – 31 May 2016	5

The above data might be interpreted as meaning that once stateless persons are allowed to reside lawfully in Bulgaria, their integration - the utmost legal expression of which is the acquisition of the host country nationality - is quite successful. At the same time, there is no data with regard to the number of irregularly residing stateless persons in Bulgaria, who are particularly vulnerable to (arbitrary) detention.

3. KEY ISSUES OF CONCERN



This section sets out and analyses the situation in Bulgaria in relation to the key issues of concern regarding prevention of arbitrary detention of stateless persons.

3.1 IDENTIFICATION & DETERMINATION PROCEDURES

States have a human rights obligation to identify statelessness before subjecting people to immigration detention.⁶⁹ Bulgaria does not yet apply this obligation. As mentioned in Section 2.2. of the report, Bulgaria does not yet have a dedicated statelessness determination procedure, but there is a draft law adopted at first reading in Parliament on 15 June 2016 that introduces such a procedure. However, as drafted currently, the status of a stateless person would be accessible only to persons who were born in or entered legally into the territory of Bulgaria *and* who at the same time hold a permanent or long-term residence permit. As such, the scope of the draft law would exclude the vast majority of stateless persons in the country, and would be contrary to Bulgaria's obligations under the 1954 Statelessness Convention and under international human rights law. The draft, submitted before the Bulgarian Parliament on 28 April 2016 by the Bulgarian Government ('Council of Ministers') introduces in §22 a new Chapter Two "a", Articles 21b-21g, with the title: "*Granting the status of*

stateless person in Bulgaria under the Law on Ratification of the Convention on the Status of Stateless Persons, adopted by the United Nations Organization in New York on September 28, 1954".⁷⁰ Currently, as of September 2016, the draft law is pending adoption at a final second reading.⁷¹ According to the Bulgarian law-making procedure, between the first and the second readings it is possible to make amendments to the concrete provisions of the law.

In relation to **the definition of stateless person**, Article 21b(1) of the draft law provides:

“ The status of stateless persons may be granted to a foreigner who was born or has entered legally on the territory of Bulgaria, has been granted long-term or permanent residence and who is not a citizen of any country in accordance with its legislation.”

The proposed provision only includes foreigners who cumulatively meet the three conditions stated therein, excluding foreigners who did not enter Bulgaria legally and those lawfully residing foreigners who do not hold permanent or long-term residence permit. In comparison, the UNHCR Handbook and the UNHCR Guidelines on Statelessness NO.2 (HCR/GS/12/02), paragraph 17, state that “everyone in a State's territory must have access to statelessness determination procedures” and

raise concern about the requirement that applicants for statelessness determination be lawfully within a state. This is because many of the rights in the 1954 Convention are for stateless persons not lawfully in the state. Furthermore, the human rights to non-discrimination and equality are not conditional upon lawful presence and often can only be met if statelessness is identified. According to UNHCR, it must be taken into account that in many occasions stateless persons' lack of access to "the very documentation that is necessary to enter or reside in any State lawfully".

Furthermore, Article 1 of the 1954 Convention defines a 'stateless person' as a person who is not considered as a national by any State "*under the operation of its law*". As the UNHCR Handbook⁷² sets out, this means both what the law says and how it is implemented, whereas the Bulgarian definition ("in accordance with its legislation") only includes what the law says.

Article 21d(1.1) of the draft law states that applications for statelessness status are refused if the applicant "does not meet the conditions of Art. 21 b." Thus, the exclusion of individuals who have not entered the country legally and/or who do not have a permanent/long-term residence permit, or whose right to a nationality may be evident under national 'legislation' but who may not enjoy this right in practice due to the discriminatory implementation of the law, goes against the main principle behind the 1954 Convention of protecting the stateless.

In the reasoning behind the draft law, it is stated that – following an analysis of European good practices – the working group on the draft law "has found it appropriate to adopt **the Hungarian practice**". Therefore, it is noteworthy that on 23 February 2015 the Hungarian Constitutional Court declared "that lawful stay requirement in statelessness determination breaches international law" and quashed the lawful stay requirement as of 30 September 2015.⁷³ After the Hungarian Constitutional Court judgment, persons that did not enter Hungary legally or that are residing in the country unlawfully have access to the process of the determination of statelessness. Furthermore, the definition of statelessness used under Section 2(b) of the Hungarian Aliens Act of "a person who is not considered as a national by any state under the operation of its law" is fully compatible with the 1954 Convention definition.

Article 21c(1) of the draft law provides that **the competent entity** to issue the decision granting or refusing the status of a stateless person is **the Director of the Migration Directorate** at the Ministry of the Interior. This is also the competent body to issue 'coercive administrative measures' against migrants such as removal and detention orders.

Article 21d(1.2) of the draft law provides that the application will be terminated when "the applicant does not submit within the time limit required additional data or documents necessary for the procedure for granting the status of stateless person". Here it is important to mention that the UNHCR Handbook, paragraph 91, alerts that "requiring a high standard of proof of statelessness would undermine the object and purpose of the 1954 Convention". UNHCR advises states to adopt a similar standard of proof to the one required for refugee status determination. In addition, paragraph 89 of the UNHCR Handbook explains that the burden of proof in statelessness determination is a shared one by both the applicant and the determination authority. The Bulgarian draft law stipulates that the procedure for establishing the relevant circumstances for recognising the status of a stateless persons will be determined by the implementing regulation of the law.⁷⁴

In practice the identification of statelessness should be necessary when determining the destination country to which an illegally staying person is to be removed. As pointed out in Section 2.2.2. of this report, in the case of Mr. Auad the ECtHR stated that "the destination country should always be indicated in a legally binding act and a change of destination should be amenable to legal challenge".⁷⁵ Furthermore, in the case of *Amie and Others v Bulgaria* the ECtHR noted that "the enforcement of expulsion measures against refugees – the Court would add, especially ones who are stateless – may involve considerable difficulty and even prove impossible because there is no readily available country to which they may be removed. However, if the authorities are – as they surely must have been in the present case – aware of those difficulties, they should consider whether removal is a realistic prospect, and accordingly whether detention with a view to removal is from the outset, or continues to be, justified".⁷⁶ To-date, this measure has not been implemented by Bulgaria and the destination country of removal is determined in the process of enforcing the removal order, after detaining the person.

The Director of the Migration Directorate at the Bulgarian Ministry of the Interior indicated in writing that the identification procedure "is one and the same for all illegally residing foreigners and is no different for persons who have declared that they are stateless. At the moment of detention all illegally residing persons are unidentified and their identity is subject to subsequent verification." He further explained that the identification procedure upon detention includes "the filling out of an identification form approved by FRONTEX,⁷⁷ allowing the person to present documents that are available or sent by his relatives, as well as to present information to be verified by the competent administrative authorities through official channels". The fact that no specific procedure is applied to stateless persons was also confirmed to us by a lawyer from the non-governmental sector.⁷⁸

In fact, **the need to establish one's identity is a formal ground for detention under Bulgarian national law.**

According to Article 44, paragraph 6 of the LFRB, detention is imposed when the foreigner "is unidentified, hampers enforcement of the order or there is a risk of absconding". According to a recent analysis of 55 rulings of the SCAC related to the detention of migrants, "(t)he most common legal reason for issuing a detention order, according to the reviewed court decisions, was that the identity of the foreigner was not established".⁷⁹ At the same time, it is noteworthy that the detention ground under Article 44, paragraph 6 of the LFRB that the foreigner is not identified, **is not a detention ground under Article 15, paragraph 1 of the EU Return Directive and thus contradicts the EU Directive.**

Another issue of concern in Bulgaria is that, upon issuance of removal and detention orders, **stateless immigration detainees are usually 'assigned' to a country of origin from which they have come to Bulgaria.**⁸⁰ In other words, in their detention and removal orders they are not identified as stateless. This is the case both with persons who have recently entered Bulgaria, as well as with persons who have spent decades in Bulgaria. The practice of 'attaching' stateless persons to some country can be inferred also from the statistics provided in Section 2.4. above.

Thus, for example, in the case of Mr. A., who was detained in Bulgaria from 2005 until 2012, the authorities continued to refer to him as a citizen of Russia, regardless of the fact that in a Ruling of June 2009 the Court had noted that at an unspecified date the Migration Directorate had received answers by the Ukrainian and the Russian embassies in Bulgaria stating that Mr. A. was not a citizen of either of the two countries.

In the case of Mr. H., who has lived in Bulgaria for the last 24 years, the Bulgarian authorities refer to him as a citizen of Bosnia and Herzegovina, although he left his country of origin during the Bosnian war and had never had an identity document. "I have had only a birth certificate. I have never had any other paper in my life", he recalls. Mr. H.'s mother, who died when he was four years old, was of Bulgarian origin. That is why he chose to come to Bulgaria. Mr. H. speaks fluent Bulgarian and considers himself a Bulgarian: "I seek a way to stay a Bulgarian citizen. I have lived here for 24 years. These are not 24 hours or 24 months, but years". Reminded of his removal order issued in December 2015, he states: "I am already old and cannot start my life anew". His biggest fear is to be expelled from Bulgaria. Mr. H. had previously been subjected to multiple detentions of several days, but then released. In 2015 a removal order was issued against him and he spent four months at the Bousmantsi immigration detention centre until he was released. Mr. H. refers to the four months of his immigration detention as "the most humiliating punishment" that he has suffered in his life.

It should be noted that unless detention serves a lawful purpose, it is arbitrary.⁸¹ According to Article 5, paragraph 1, "f" of the ECHR, immigration detention should solely be for the administrative purposes of preventing unlawful entry or to enforce removal. The imposition of detention solely for the purpose of administrative convenience is not lawful under international law. In both cases of Mr. A. and Mr. H. detention did not serve the purpose for which it was imposed as no removal was possible. If the authorities had provided space for the stateless persons to be heard before detaining them, they should not have detained them in the first place.

Mr. H. shares that he felt like a criminal during his detention: he was fingerprinted and questioned as though he had done something wrong. In detention he often had high blood pressure and started to take medicine to address heart problems. Mr. H. counted every day that he spent detention. In his words, "to live in this place means that you have died and when you come out of here, it is as though you are born again".

3.2 DECISION TO DETAIN AND PROCEDURAL GUARANTEES

With regard to grounds for detention, the LFRB transposes Article 15 of the EU Return Directive 2008/115/EC.⁸² According to Article 44, paragraph 6 of the LFRB, detention is imposed when the foreigner "is unidentified, hampers enforcement of the order or there is a risk of absconding". Furthermore, the Draft Law Amending and Supplementing the Law on Foreign Nationals in the Republic of Bulgaria introduces an additional new type of 'short-term' immigration detention lasting for up to thirty days. It is imposed on persons who have entered Bulgaria irregularly and its purpose is "to conduct the initial identification and establishment of identity and to assess the subsequent administrative measures that should be imposed or taken".⁸³ In practice this type of detention is currently taking place at the so-called 'Redistribution Centre' at Elhovo near the Bulgarian-Turkish border: for example, in 2015 the number of detained persons there was 15,760.⁸⁴

By law and in practice, in issuing a detention order the authorities do not consider the existence of reasonable prospects to implement the removal order. For example, in a Judgment of 02 September 2013 in case No.11595/2012, the SAC of the Republic of Bulgaria repealed as wrong the decision of the SCAC that had invoked the test of the reasonable prospect of removal when reviewing the initial detention order. The Supreme Court stated that the detention order should be confirmed as the migrant was undocumented and had entered the country illegally, which constituted a risk of absconding.

According to the CJEU,⁸⁵ observance of the rights of the defence is a fundamental principle of EU law, in which **the right to be heard** in all proceedings is inherent. The right to be heard “must apply in all proceedings which are liable to culminate in a measure adversely affecting a person”.⁸⁶ In order for a stateless person to be heard prior to imposing a detention order on him or her, there must be a space and means for that. Access to free interpretation services is important in cases of persons who do not speak the language of the authorities. More importantly, however, **the authorities should recognise the significance of taking the time and giving the space to hear the person.** Currently in Bulgaria removal and detention orders are issued simultaneously, even in cases of persons who have spent their lifetime in Bulgaria, simply because these persons were identified as residing irregularly in the country. Such was the case of Mr. H., who had lived in Bulgaria for 24 years when he was issued a removal order and detained. Although he spoke fluent Bulgarian, he was not ‘heard’ about the fact that he was stateless and there was no country to which he could be removed. It was only from behind the walls of the detention centre that Mr. H. managed to obtain a recommendation letter from the mayor of the village where he had lived, which gave assurance that there was no risk of his absconding as he was well known by everybody in the village and had fully integrated there. One of Mr. H.’s fellow villagers provided all the necessary documentation required by law in order to ‘guarantee’ him.⁸⁷ Only after Mr. H. spent four months in detention and was severely re-traumatised,⁸⁸ was a less coercive measure in the form of regular reporting imposed on him. **Although the law formally stipulates that detention is a measure of last resort that can be imposed only if less coercive measures could not be applied effectively, that provision remains only on paper, if the right to be heard is not respected in practice.** Mr. H.’s detention for four months was arbitrary also because his removal order did not state a destination country, but he was assigned to be a citizen of Bosnia and Herzegovina. However, later on the authorities realised that neither Bosnia and Herzegovina, nor Serbia recognise Mr. H. as a citizen. A Migration Directorate official told him that “[we] cannot find anything about you”. If the authorities had heard Mr. H. before imposing the removal order on him, they would have received the necessary information upon which to act differently and lawfully.

Unfortunately, both administrative and judicial authorities in Bulgaria still believe that checks conducted using the information system of the Ministry of Interior, which reveal that the foreigner does not have a registered lawful entry in the country or no residence permit, are sufficient to issue removal and detention orders against them. So far the SAC of Bulgaria has not recognised that failure to hear the person upon issuing a detention order results in its unlawfulness. Thus, in the Judgment of 12 May 2016 relating to case No.1747/2016, the SAC

stated that only a *substantial* breach of the rules of the administrative procedure is a ground to repeal the administrative order as unlawful. According to the SAC, “in the case, not hearing the party in the administrative procedure prior to issuing the detention order is not a material breach of administrative procedural rules”. The case concerned detention of an asylum seeker who while detained managed to provide proof that he had been registered as an asylum seeker and, he met the legal conditions for the less coercive measure of regular reporting. After several months of detention, he was released in Bulgaria, but the court did not find his detention order to be unlawful.

Another issue of concern is hearing of detainees by a court in Bulgaria. In spite of the increasing recourse to immigration detention, the number of cases that reach the court for review of the lawfulness of detention orders remains insignificant. This is due to a number of factors: according to Bulgarian law, the term to appeal detention orders starts from the date of the factual detention of the person and not from the date of properly notifying (serving) the detention order. Migrants sign detention orders without knowing the reasons for being detained and the remedies against that. The detention orders are in the Bulgarian language and are rarely translated. Judicial control of detention orders is not automatic, but the detainee has to write (in Bulgarian) and submit an appeal to the court within fourteen days from the start of detention. Moreover, detainees have to find and engage a lawyer by themselves. Although in 2013 the Bulgarian Law on Legal Aid was amended to introduce a right to legal aid for immigration detainees, access to it has remained difficult and the new legal provisions have not been applied in practice. Even if an appeal against a detention order reaches the court, the Bulgarian law provides that participation of the detainee in the case “is not obligatory”.⁸⁹ With no legal obligation for the detention authority to escort the detainee to the court hearing, this often does not happen. Thus, in the case of the asylum seeker mentioned above in relation to the Judgment of SAC of 12 May 2016 on the right to be heard, the detainee was not brought by the Migration Directorate to the hearing in the court, but the court still required that the detainee pay the 30 BGN (approximately 15 Euro) fee for the interpreter to attend the hearing.⁹⁰

With regard to **review of the length of detention**, the Bulgarian law requires the director of the detention centre to inform the Court of the detainee’s case every six months. The Court then decides whether to prolong the detention with another six months, whether to release the detainee or impose an alternative to detention. The law provides that the decision of the court is taken in a closed ‘hearing’, that is, without participation of the detained person.⁹¹ This often means that the decision of the Court is taken solely on the basis of the

evidence and arguments submitted by the detaining authority, without hearing the detainee. In 2010 in a precedent-setting case on appeal against extension by six more months of the already year-long immigration detention of a person who had lived in Bulgaria for thirty years and was non-returnable, the SAC of Bulgaria stipulated that the national law providing for review of the length of detention in a closed ‘hearing’, contradicted the right to a fair trial under Article 47 of the Charter of Fundamental Rights of the European Union.⁹² As a result, many of the lower court judges started to hold open hearings, although the detainees are not always escorted to and present at the hearing in the court. Court practice however has remained inconsistent as many other judges continue to apply the national law strictly and decide cases in absentia.⁹³

3.3 THE RELATIONSHIP BETWEEN ACTIONS FOR REMOVAL AND THE LENGTH OF DETENTION

Removal⁹⁴ is one of the two legitimate objectives which can justify detention (the other one is preventing unlawful entry). Unless removal is carried out with due diligence, detention is unlawful. Article 15, paragraph 1 of the EU Return Directive requires that detention shall be “only maintained as long as removal arrangements are in progress and executed with due diligence”.

On the one hand, under Article 15, paragraph 6 of the Return Directive, member states are allowed to extend detention in cases where “regardless of all their reasonable efforts, the removal operation is likely to last longer owing to: (a) a lack of cooperation by the third-country national concerned, or (b) delays in obtaining the necessary documentation from third countries”.

On the other hand, Article 15, paragraph 4 of the Return Directive, holds that when it appears that a reasonable prospect of removal no longer exists for legal or other considerations or the conditions laid down in paragraph 1 no longer exist, detention ceases to be justified and the person concerned shall be released immediately.

In the case of Mr. Auad, cited above, the ECtHR concluded that the Bulgarian authorities could “hardly be regarded as having taken active and diligent steps” with a view to deporting the detainee.⁹⁵ The Court noted that the only steps taken by the authorities during the eighteen months of Mr. Auad’s detention were to write three times to the Lebanese embassy in Sofia with requests to issue a travel document for the applicant. “While the Bulgarian authorities could not compel the issuing of such a document, there is no indication that they pursued the matter vigorously or endeavoured entering into negotiations with the Lebanese authorities with a view to expediting its delivery.”⁹⁶

However, neither the national law, nor the case law has elaborated any time-frames within which a reasonable prospect of removal must exist (e.g., within which the embassy should reasonably provide an answer, etc.). Usually the courts follow the general time limits of detention itself (six + six + six months).

In Bulgaria the authorities frequently refer to **the refusal of the detainee to sign a declaration for voluntary return to the destination country** as an impediment to obtaining travel documents necessary for enforcement of the removal. This is often interpreted as lack of collaboration by the third country national and a delay in obtaining the necessary documentation by third countries, both grounds for extension of the period of detention under Article 15, paragraph 6 of the EU Return Directive.⁹⁷ Thus, in the case of Mr. T., in its Ruling of 25 April 2016 in case C-8/2016, the SCAC concluded that both grounds for extension of Mr. T.’s detention by six more months were present, because he had refused to attend a meeting with representatives of the Afghan consulate in Bulgaria. The Afghan embassy however does not issue travel documents to persons who refuse to return voluntarily. The court did not discuss at all whether the authorities had made reasonable efforts to carry out the removal operation during the period of detention of the person, which amounted to eleven months at the time of issuing the court ruling. The only actions for removal that the authorities had reported were 1) a note from a talk held with the detainee ten days after his detention and 2) the organisation of a meeting of the Afghan consul with detainees at the centre on 09 October 2015, which the detainee refused to attend. Despite this failure to establish due diligence, the judge allowed the extension of the period of detention of Mr. T.

In relation to the above, it is important to reflect on **the Mahdi case** before the SCAC,⁹⁸ and the CJEU.⁹⁹ The refusal of Mr. Mahdi to voluntarily return to his country of origin led to the refusal of the third country to issue him identity documents necessary for his return. In its judgment of 5 June 2014 the CJEU **firstly** reiterated that for it to be possible to consider that there is a **‘reasonable prospect of removal’** within the meaning of Article 15, paragraph 4 of the Return Directive, there must, at the time of the national court’s review of the lawfulness of detention, be a real prospect that the removal can be carried out successfully, having regard to the periods laid down in Article 15(5) and (6) of Directive 2008/115 (paragraph 60 of the judgment). **Secondly**, the CJEU noted that Article 15(6) of Directive 2008/115 requires that, before it considers whether the detainee has shown that he has failed to cooperate, the authority concerned should be able to demonstrate that the removal operation is lasting longer than anticipated, **despite all reasonable efforts of the removing authorities**: “that means that, in the case before the referring court, the Member State in question should have sought, and should still actively be

seeking, to secure the issue of identity documents for the third-country national” (paragraph 83 of the judgment).

Thirdly, the CJEU stated that “a third-country national who, in circumstances such as those in issue in the main proceedings, has not obtained an identity document which would have made it possible for him to be removed from the Member State concerned may be regarded as having demonstrated a ‘lack of cooperation’ within the meaning of that provision only if an examination of his conduct during the period of detention shows that he has not cooperated in the implementation of the removal operation and that it is likely that that operation lasts longer than anticipated because of that conduct”.¹⁰⁰

Following the judgment of the CJEU of 05 June 2014 in the Mahdi case C 146/14 PPU, by ruling of 06 June 2014 the SCAC replaced Mr. Mahdi’s detention with the less coercive measure of weekly reporting. The judge based her decision on the lack of a reasonable prospect of removal. Namely, in her decision the national judge said: “In view of the above data on the behaviour of Mr. Mahdi and considering possible actions for the enforcement of his return, it is concluded that there is not any reasonable need, based on the grounds provided by law, for the person to continue to be detained for the purpose of arranging his removal from the country, which is confined to the issue of an identity document from the Embassy of Sudan. Furthermore, the Directorate “Migration” has not listed specific actions that it intends to take and which require the presence of Mr. Mahdi.”

Along the same lines, in his Opinion in the Kadzoev case,¹⁰¹ presented on 10 November 2009, the Advocate General stated that “the detention of a third-country national who is staying illegally is justified only for the purpose of his removal and in connection with ongoing removal procedures being undertaken with due diligence, which implies that there is a possibility of removal. However, as is clear from the wording of Article 15(4) of the Return Directive, the existence of an abstract or theoretical possibility of removal, without any clear information on its timetabling or probability, cannot suffice in that regard. There must be a ‘reasonable’, in other words realistic, prospect of being able to carry out the removal of the person detained within a reasonable period.”¹⁰²

Unfortunately, the ruling of the national court in the case of Mahdi is the exception and not the rule in the Bulgarian case-law. **In the majority of cases the burden of proof has been shifted to the detainee to prove that there is no reasonable prospect of removal.** In its report analysing the Bulgarian case law in the field of immigration detention in the period from January 2013 till September 2015, the Bulgarian Lawyers for Human Rights Foundation concluded that “in most of the reviewed judicial acts, the court was satisfied that it formally found a theoretical, abstract possibility of

removal by noting that *no evidence has been provided that there is no reasonable prospect of removal for legal and other considerations*, instead of requiring from the authorities to specifically indicate data, from which it is clear that removal is realistic and will happen in the foreseeable future, as soon as possible”.¹⁰³

3.4 ALTERNATIVES TO DETENTION

As already stated in section 3.2. above, in spite of the declarations on paper that detention should be a measure of last, not first, resort, there is almost automatic imposition of both removal and detention orders upon identification of an irregularly present migrant in Bulgaria.¹⁰⁴

Article 44, paragraph 5 of the LFRB, envisages one alternative to detention, weekly regular reporting (until March 2013, it was a daily reporting requirement). In order for this to be imposed, there must be obstacles to enforcing the removal order and a ‘guarantor’ shall provide a declaration and respective evidence that they will provide for the subsistence and accommodation of the migrant. Thus, as explained above, Mr. H’s application for replacing his detention with regular reporting was supported by a recommendation letter by his village mayor and by a friend of his standing as his guarantor. One month after submitting the application for alternatives to detention, Mr. H. was released. The only paper given to him upon release was an order that obliged him to report weekly at the local police station.

In the case of Mr. A., he was detained one day after his arrival to Bulgaria and he had no social connections in the country. Once the maximum time limit to Mr. A.’s detention passed, he continued to be kept in detention, because he could not provide an address at which he would live upon his release and thus the Migration Directorate found it impossible to apply the alternative of, then, daily reporting to him. On 22 March 2010 the Migration Directorate submitted a request to the SCAC “to give concrete instructions” on how to implement the Ruling of 29 December 2009 of the SCAC, which ordered Mr. A.’s immediate release. By Ruling of 8 April 2010 the Court found the request of the Migration Directorate inadmissible and discontinued the case, because the powers of the court concerned only the issue “whether to prolong, to discontinue or to substitute the detention”, while “the court does not have the powers to give instructions to the Migration Directorate on how to implement in practice the daily regular reporting of the foreigner when the latter refuses to collaborate”. “For the sake of completeness”, with regard to the objection of the Migration Directorate that Mr. A. did not collaborate in providing an address for residence, the court noted that the authorities could order for the regular reporting to take place in the current address of Mr. A. as the law did not require for it to happen at a police station.¹⁰⁵ Mr. A.

was released from detention as late as on 27 March 2012, after he had spent nearly seven years in immigration detention. He admits that his helpless experience in Bulgaria “makes [him] angry”.

Mr. A.’s case reveals that the one alternative to detention that currently exists in Bulgaria is not feasible in cases of persons who have entered the country shortly before their detention and have no social links in it. One solution could be the amendment of the conditions for allowing the alternative measure of weekly reporting. A preferred solution is the introduction of new alternatives to detention that are in line with respect for human rights.¹⁰⁶

As highlighted in the ENS *Regional Toolkit*¹⁰⁷, for detention to not be arbitrary, it must be *necessary* and it must be a *proportionate* means of achieving the legitimate objective. This proportionality obligation compels the state to always explore alternatives and to impose detention only as a measure of last resort. The practice in Bulgaria, however, reveals that alternatives are sought, only after removal has not been possible within a reasonable period of time and/or only upon a subsequent application by the person who has already been placed in detention.

3.5 VULNERABLE GROUPS

The Bulgarian national law has two legal definitions for vulnerable groups of foreigners. One of them is found in the asylum legislation, the Law on Asylum and Refugees, which refers to Article 21 of Directive 2013/33/EU.¹⁰⁸ According to this definition, vulnerable persons are *inter alia* “minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation”. The list is not an exhaustive enumeration. The law requires that the special reception needs of vulnerable asylum seekers are taken into account by the state.

The second legal definition that directly applies to immigration detainees is found in Paragraph 1.4.b of the Additional Provisions to the Law on Foreign Nationals in the Republic of Bulgaria. The provision reads that “[v]ulnerable persons are minors, unaccompanied minors, persons with disabilities, the elderly, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence”. Stateless persons are not considered to be a vulnerable group under Bulgarian law. At the same time, however, as confirmed by this study, stateless persons are vulnerable to prolonged and unnecessary detention.¹⁰⁹

Despite the recognition of different types of vulnerability under the law, in the official statistics of the Ministry of Interior, there are **only the following five categories of vulnerable groups of detainees**: minors under 14 years old, minors over 14 years old, elderly persons, ill persons and pregnant women. These are also the types of vulnerable groups of detainees with regard to whom the Ministry of Interior provided statistics in reply to our freedom of information request.¹¹⁰ The numbers of these detainees is provided in Table 7 below. A conclusion can be drawn that **no identification of the other types of vulnerability** is conducted upon or during detention.

Table 7: Types and numbers of vulnerable persons detained in Bulgaria by year

Year	Vulnerable group	Persons in the Bousmantsi (Sofia) centre	Persons in the Lybimets centre	Persons in the Elhovo centre
2013	Minors under 14 years old	170	307	788
	Minors over 14 years old	55	155	599
	Elderly persons	8	12	-
	Ill persons	-	20	-
	Pregnant women	-	5	-
2014	Minors under 14 years old	115	32	939
	Minors over 14 years old	106	57	857
	Elderly persons	2	1	-
	Ill persons	-	-	-
	Pregnant women	-	-	-
2015	Minors under 14 years old	321	511	1942
	Minors over 14 years old	650	940	2535
	Elderly persons	1	5	-
	Ill persons	1	-	-
	Pregnant women	-	-	-
01.01.2016-31.05.2016	Minors under 14 years old	188	272	500
	Minors over 14 years old	146	283	322
	Elderly persons	4	10	-
	Ill persons	2	-	-
	Pregnant women	3	5	-

The number of **detained children** is striking. The Law on Foreign Nationals in the Republic of Bulgaria prohibits the detention of unaccompanied children.¹¹¹ The law allows the detention of ‘accompanied’ children ‘by exception’ for a period of up to three months.¹¹² However, in practice, unaccompanied children are detained as ‘attached’ to a random, unrelated adult who was in the same group of irregular migrants. This unlawful practice has been documented over the years¹¹³ and has been flagged in the latest Report of the Ombudsman of the Republic of Bulgaria as a National Preventive Mechanism under the OP-CAT Convention.¹¹⁴ On her visits to the detention centres, the Ombudsman found:

“ [...] several cases of minors, listed in the [removal and detention] orders of adults, without the persons in question knowing each other and without any family connection whatsoever between them. In this manner, the children are formally listed as accompanied and the ban of the detention of unaccompanied minors is avoided. In reality, however, they are unaccompanied minors, who should have been identified as such and who must immediately receive help and support as members a particularly vulnerable group.”¹¹⁵

The Ombudsman also noted that she “cannot remain indifferent” to the detention of families with children. She reiterated that the detention centres are unsuitable for children as they lack the appropriate conditions and trained personnel.¹¹⁶

Detention of ill persons in Bulgaria also contradicts human rights standards.

“ I CAN'T BREATHE ”

This is what Mr. T., a torture survivor in his country of origin that deprived him of his citizenship, told the judge during his court hearing on 27 June 2016. The court case concerned the request by the detaining authority to prolong Mr. T.’s detention by six more months.¹¹⁷ Mr. T. has been in immigration detention since 27 May 2015, for almost sixteen months at the time of writing the report. He suffers inter alia from a chronic bronchial asthma, which has deteriorated significantly because of the detention conditions in which he finds himself. In the interview with Mr. T. on 20 April 2016, he complained of lack of a possibility to open the small window with bars in his room, which resulted in **no access to fresh air**. At the beginning of his detention he was placed in the medical unit of the detention centre, where he had access to an open window. However, later on he was in a separate building of the Bousmantsi detention facilities (called ‘block 3’), where persons who are regarded as a threat to national security are placed. Because of his chronic bronchial asthma, Mr. T. uses an inhalator twice a day. He also suffers from high blood pressure, heart problems and

sleep epilepsy. In October 2015 the psychiatrist at the hospital of the Ministry of the Interior diagnosed him with post-traumatic stress disorder and recommended his sedation for better sleep. “[In the detention centre] my health is in danger. ... Without a[n open] window one cannot breathe without medicine. There was an instruction by the previous court that I be moved to the medical unit. I have not been moved to the medical unit. They do not provide medicine for asthma. I cannot breathe”, Mr. T. told the judge on 27 June 2016. ‘The previous court’ that Mr. T. refers to decided on the prolongation of his detention by six more months from 27 November 2015 until 27 May 2016. In that case the SCAC noted that according to the medical expert report heard in the case, “the sanitary conditions in which currently the person is accommodated are incompatible with his health - there is a real risk of worsening of his diseases, and in the near future this might lead to respiratory and cardiac failure”. However, the judge pointed out that it is not the very detention that was “unfavourable” for the health of the detainee, but the conditions in the room where he was placed. Therefore, the judge allowed the extension of the period of detention of Mr. T. In spite of the observations in the reasoning of the ruling of the SCAC that Mr. T. would feel better in the medical unit of the detention centre, situated in another building of the facility, the judge did not expressly make any recommendation or instructions for Mr. T. to be transferred there. Therefore, Mr. T. continued to be detained in block 3. In the interview with him, he reiterated: “I am suffocating and I cannot open the window. They want to make me a terrorist. At least to know that I have done something and that is why I am punished.”

As seen in the official statistical records and in the case of Mr. T., there is no identification and specialised care for detainees who are **torture survivors**. These findings are confirmed by a recent report on detention of torture survivors in Bulgaria and Hungary, *From Torture to Detention*.¹¹⁸ The report concludes that “in the absence of regular, state-funded psychological counselling and regular mental healthcare, the tension deriving from the closed circumstances, lack of information and forced close contact of persons from different national, cultural and social backgrounds”, the psychological condition of detainees is deteriorating.

3.6 CONDITIONS OF DETENTION

Conditions of detention are common to stateless and non-stateless persons alike. However, as stateless persons are more likely to be detained for longer periods, they have to endure poor conditions of detention for longer as well. **No improvement in the conditions in Bulgarian immigration detention centres has been documented over the years.**¹¹⁹ For example, one of the persisting problems to date, which detainees find most

humiliating, is the unnecessary limitation of the internal freedom of movement in the detention facilities, including **access to sanitary premises**. In the interview with Mr. A., a stateless person who spent about seven years in immigration detention in Bulgaria, he complained that during his detention from 2005 to 2012 he had to urinate in a bottle, because he had no access to the toilet at night. The problem is also described in a report on monitoring visits to the detention centres in 2011:

“ The male detainees interviewed, however, raised a serious concern – **the access to the toilet during the night depended on the police officer on duty**. Some interviewees reported that they either had to use an empty bottle or endured without going to the toilet until the morning, as none of the staff on duty would respond to the bell or alarm button. Staff members commented that there was indeed a temporary problem with the bell, but a technician had been called and had fixed it. Custody visitors, however, continued to register complaints concerning this issue throughout the reporting period (up until June).

The problem at the Special Centre for Temporary Accommodation of Foreigners Lyubimets was identical, with the exception that it also concerned the women detained at the centre. Bedrooms were locked at night and if someone wanted to use the toilet, they had to ring a bell. An interviewee said that the whole facility was guarded and it made no sense for them to be locked in as this was not a prison but an accommodation centre.”¹²⁰

The same problem has been registered also in a 2016 report, according to which, detainees in Bulgaria complain that “[b]edrooms are locked at 10 PM and this creates difficulties when people want to use the bathroom facilities at night time. Some use bottles or the windows as toilets.”¹²¹

In her report for 2015, the Ombudsman observed “significant deterioration in material living conditions” in the immigration detention centres in Bulgaria.¹²² She observed that the centres were overcrowded, bedrooms and bathrooms were dirty, there was insufficient personal space, there was a lack of hot water and no sanitary products.

A significant problem related to detention conditions in Bulgaria over the years has been the arbitrary use of **solitary confinement** as a form of punishment.¹²³ For example, in the case of Mr. Kadzoev, the Bulgarian NGO ‘Assistance Centre for Torture Survivors’, issued a certificate which stated that Mr. Kadzoev’s detention and the degrading treatment that he suffered while detained in Bulgaria had led to his re-traumatisation. During his detention the authorities at the detention centre subjected him to disproportionate punishments and excessive use of force. He was forced to be in solitary

confinement several times, for a total of at least nine months. Some reasons for his punishment were as trivial as being in possession of a lighter. He was also placed in solitary confinement for inquiring about his asylum claim and prolonged detention, beaten by the authorities and handcuffed to the bed and the heating facilities. In none of these instances was a paper or document, which stated the punishment and the reasons for imposing it, served to him. No official charges were ever communicated to him. His mental and physical health severely deteriorated, however, he did not receive special medical treatment. In January 2008 he suffered from gallstones, a doctor from the emergency aid told him that he needed surgery, but this surgery never happened.

In a landmark judgment¹²⁴ of 7 January 2016 the SAC repealed the regulation of solitary confinement in the Ordinance¹²⁵ adopted by the Minister of the Interior because it was unlawful. The SAC noted that the regulation of the issue for the first time in an Ordinance adopted by the Minister and not in a law adopted by the Parliament contradicted the provisions of the Constitution of the Republic of Bulgaria.

As highlighted in the ENS *Regional Toolkit*,¹²⁶ conditions of immigration detention must reflect its non-punitive nature. As stateless persons are likely to be detained for longer than most others, the poor environment in which they are compelled to live can have a massive impact on them and can amount to inhuman and degrading treatment. In view of the case studies presented in the report, Bulgaria should revise the conditions of immigration detention in order for them to comply with international standards.

3.7 CONDITIONS OF RELEASE AND RE-DETENTION

Immigration detainees always ask what the use or purpose of their time spent in detention is. If by law immigration detention is not a punishment, then what result does their detention produce in relation to their immigration status? They expect to finally receive a solution to their legal limbo situation. Unfortunately, their expectations are not met by Bulgarian law. When released back in Bulgaria, stateless persons, like undocumented migrants, receive no papers. This is seen in the cases of all former detainees studied in the report.

For example, **Mr. Auad** was released after the elapse of the ‘18 months’ time limit of detention; his residence status had been withdrawn and he was not given any surrogate legal status.

When **Mr. A.** was released, he did not receive any documentation and was in a legal limbo without access to welfare or decent legal employment. “Why did they hold me seven years and gave me nothing,” Mr. A. asked during

his interview. Mr. A. was homeless. He tried to approach the authorities for help, but had no success. He lived in the streets of Sofia until 2015, at which point he left Bulgaria irregularly to another EU member state where he is currently seeking asylum.

When he was released due to the judgment of the CJEU, **Mr. Kadzoev** was not granted any legal status. In fact, he was told that he could be detained again since he lacked identification documents. At the time of his release, he was only provided with a copy of the decision of the Court, his mobile telephone and one set of clothes. Since Mr. Kadzoev was not granted asylum, he could not access material assistance. For months he moved from one place to another, being hosted by friends in the cities of Sofia and Varna. Without access to the labour market, he could not find a job and, apart from having difficulties to find accommodation, he also had trouble finding enough food to survive. Mr. Kadzoev was violently attacked and seriously injured, but he could not access formal medical treatment. He survived, once again, relying on his friends. He never approached the authorities because he was afraid he would be detained again for lacking identification papers. This situation in which Mr. Kadzoev could not ensure his survival led him to suffer not only physically, but also psychologically.

The only paper given to **Mr. H.** upon his release from detention was an order that obliged him to report weekly at the local police station. Asked about his plans for the future, Mr. H. replies that he is going to search for a job. He admits that without identity documents he is being exploited: “If I had papers, I would not have worked for 5-10 *leva*,¹²⁷ but for normal payment. However, when you do not have documents, you are being used”. Mr. H. sees it as a vicious circle as he believes that if he had a good job and money, he would have been able to arrange his papers.

According to Recital 12 of the Preamble to the EU Return Directive:

“ The situation of third-country nationals who are staying illegally but who cannot yet be removed should be addressed. Their basic conditions of subsistence should be defined according to national legislation. In order to be able to demonstrate their specific situation in the event of administrative controls or checks, such persons should be provided with written confirmation of their situation. Member States should enjoy wide discretion concerning the form and format of the written confirmation and should also be able to include it in decisions related to return adopted under this Directive.”

In the Mahdi case C 146/14 PPU, the SCAC asked the CJEU whether:

“ in the event of the release of a third-country national on account of the absence of a reasonable prospect of implementation of a removal decision where that third-country national has no identity documents, has crossed the state border illegally and states that he does not wish to return to his country of origin, it is to be assumed that the Member State is under an obligation to issue a temporary document on the status of the person in question if the embassy of the country of origin does not in these circumstances issue the document required for the person in question to travel to his country of origin even though it has confirmed that person’s identity”.

Unfortunately, the CJEU replied that Directive 2008/115 must be interpreted as meaning that a member state cannot be obliged to issue an autonomous residence permit, or other authorisation conferring a right to stay in such cases. However, that member state **must provide the third-country national with written confirmation of his situation.**

When persons are released from detention without any identity documents, there is a high **risk of re-detention**. For example, during the interview at the National Commission on Combatting Trafficking in Human Beings (NCTHB) the expert recalled the case of a stateless lady who was repeatedly detained in the Bousmantsi detention centre.¹²⁸ She was a victim of trafficking and had suffered physical abuse. As a result, she suffered from dissociative psychosis. In September 2013 she was transferred from the Bousmantsi detention centre to a shelter of the NCTHB. In the meantime, the Migration Directorate continued to investigate her citizenship. She was not provided with identity documents. In 2014 the shelters of the NCTHB were temporarily closed and the stateless lady was again detained in the Bousmantsi detention centre.

For release from detention to be sustainable, it must come with a legal status and related rights. To this extent, identification of statelessness is also relevant at point of release.

4. CONCLUSION AND RECOMMENDATIONS



The issue of statelessness is gradually gaining momentum following Bulgaria's February 2012 accession to the 1954 Convention relating to the Status of Stateless Persons and 1961 Convention on the Reduction of Statelessness. Bulgaria does not yet have a statelessness determination procedure in its national legislation, but a draft law was tabled in Parliament in 2016. While these developments are welcome and should be encouraged, there are a range of issues that expose stateless persons to a high risk of arbitrary detention in Bulgaria. The Bulgarian authorities do not yet identify statelessness *before* subjecting persons to immigration detention. The destination country, to which an illegally staying person is to be removed, is determined in the process of enforcing the removal order, after detaining the person. On the other hand, upon detention stateless persons are often 'assigned' to a certain country of origin, from which they have come to Bulgaria. This practice not only makes it difficult to measure the exact number of stateless detainees in Bulgaria. It also contributes to the prolonged and unnecessary detention of stateless persons. By law and in practice, in issuing a detention order the authorities do not consider the existence of reasonable prospects to implement the removal order. As detention is usually imposed automatically along with the removal

order, the right to be heard as part of the rights of the defence of detainees is not respected. Although the law formally stipulates that detention is a measure of last resort and it can be imposed provided that less coercive measures could not be applied effectively, that provision remains only on paper. Detention is applied as a measure of first resort, while alternatives to detention are considered last. When extending the length of detention in six-month blocks (up to 18 months), Bulgarian courts do not exercise strict scrutiny as to whether the authorities have taken reasonable actions with due diligence in order to implement the removal order. In the majority of cases the burden of proof has been shifted to the detainee to prove that there is no reasonable prospect of removal. As stateless persons tend to be detained for longer periods, they have to endure poor conditions of detention for longer as well. No improvement in the conditions in Bulgarian immigration detention centres has been documented over the years. Some of the accounts amount to inhuman and degrading treatment. It is particularly worrisome that Bulgaria detains large numbers of unaccompanied and accompanied children, in spite of the legal ban on detention of unaccompanied children. Finally, even when released back in Bulgaria, stateless persons, like

undocumented migrants, receive no papers and remain in a legal limbo.

This report has revealed that prevention of arbitrary detention of stateless persons in Bulgaria requires a number of interrelated overhauls to the system and how it is implemented, regarding recognition of the status of a stateless person, issuance of return and removal decisions and imposition of immigration detention. Concrete recommendations for improvement are listed below:

1. The definition of a stateless person in the draft Law Amending and Supplementing the Law on Foreign Nationals in the Republic of Bulgaria should be revised in line with the 1954 Statelessness Convention, according to which, “a person who is not considered as a national by any State under the operation of its law” is stateless.
2. The provision in the draft Bulgarian law that the status of ‘stateless person’ should be accessible only to persons who were born in or entered legally onto the territory of Bulgaria *and* who hold a permanent or long-term residence permit, should be removed, as these criteria contradict Bulgaria’s international treaty obligations.
3. In removal proceedings, Bulgaria should determine the destination country before enforcing a removal order and detaining the individual. In this regard, it should implement the measure set out by the European Court of Human Rights in the *Auad* case that “the destination country should always be indicated in a legally binding act and a change of destination should be amenable to legal challenge”.
4. Identification of statelessness should take place before issuing a removal and detention order. Stateless persons should be identified as such and should not be arbitrarily ‘assigned’ a country of origin in their detention and removal orders.
5. The need to establish the identity of a person should not be a formal ground for detention. Article 44, paragraph 6 of the Law on Foreign Nationals in the Republic of Bulgaria, which provides that detention is imposed when the foreigner “is unidentified, hampers enforcement of the order or there is a risk of absconding” should be amended and brought in line with Article 15, paragraph 1 of the EU Return Directive and Article 5(1)(f) of the European Convention on Human Rights.
6. Both administrative and judicial authorities in Bulgaria should recognise every person’s right to be heard when they are subject to removal and detention. In order to guarantee access to justice, Bulgarian law should envisage automatic judicial review of removal and detention orders and court hearings with the appropriate participation of the addressee of the orders.
7. Unless removal efforts are carried out with due diligence, detention is unlawful. In reviewing the length of detention, the authorities should follow the burden of proof test, stipulated by the Court of Justice of the European Union in the *Mahdi* case. For it to be possible to consider that there is a ‘reasonable prospect of removal’ within the meaning of Article 15, paragraph 4 of the Return Directive, there must be a real prospect that the removal can be carried out successfully within the allowed time limit of detention.
8. Before authorities consider whether the detainee has shown that he has failed to cooperate, the authority concerned should be able to demonstrate that the removal operation is lasting longer than anticipated, despite *all reasonable efforts of the removing authorities*.
9. ‘Lack of cooperation’ by the detainee should not be inferred solely from their refusal to sign a declaration for voluntary return.
10. Bulgarian authorities should take into consideration the fact that the one alternative to detention that currently exists in Bulgaria, weekly regular reporting, is not feasible in cases of persons who have entered the country shortly before their detention and have no social links in Bulgaria. Furthermore, this one alternative, with onerous weekly reporting requirements is not fit for purpose to meet the varying needs of different vulnerable persons. Bulgaria should therefore introduce new alternatives to detention that are in line with respect for human rights, and which are considered and exhausted first, before, in exceptional cases, detention is resorted to.
11. Vulnerable persons should not be detained and alternatives to detention should be explored instead. To that end, identification of vulnerability is crucial. The number of detained unaccompanied children in Bulgaria despite the legal ban on their detention speaks of the pressing need to take concrete measures for initial screening and identification of unaccompanied minors and other vulnerable persons at the earliest possible stage and on a continuous basis.
12. With regard to conditions of detention, the Bulgarian authorities should hear the repeated complaints of detainees over the years and take measures to ensure that detention does not amount to inhuman and degrading treatment in violation of Bulgaria’s human rights obligations and does not threaten the health and life of detainees.
13. The application of solitary confinement to immigration detainees in Bulgaria has been arbitrary. Before imposing disciplinary punishments on detainees, there should be regulation of the conditions, procedure and remedies in this regard, which are stipulated in an act of law.
14. When persons are released from detention without any identity documents, they remain in a legal limbo without access to fundamental human rights and

there is a high risk of re-detention. This not only violates the human dignity of these persons, but also poses a serious risk to social cohesion and national security. Therefore, all persons who are released from detention should be granted legal status and related rights including access to work and welfare.

15. Immigration detention shall always serve a meaningful purpose. Otherwise, it is an unjust punishment of the detained person. The Bulgarian authorities shall take actions to implement the above listed measures so that the arbitrary detention of stateless persons is avoided.

EPILOGUE

Mr. H, who lost his wife and two children in the war in Bosnia and ever since 1992 has lived in Bulgaria, refers to his detention that lasted four months in 2015 and 2016 as “the most humiliating punishment” that he has suffered in his life. In his words, “to live in this place means that you have died and when you come out of here, it is as though you are born again”. Upon being released from detention, he was obliged to report weekly at the local police station, without however any regularisation of his status that would facilitate access to rights. Mr. H. reiterates that he is not a criminal, but he feels that he is being treated as one. Identification and recognition of a statelessness status would give Mr. H. and all persons in his situation a right to live a life with dignity. These persons would not be buried in detention, but they would be born again for a meaningful life.



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ENDNOTES



- ¹ Mr. T. is “accommodated” at the immigration detention centre in Bousmantsi, Sofia
- ² Case C-357/09 PPU, Judgement of the Court of Justice of the European Union, 30 November 2009
- ³ *Auad v Bulgaria* [2011] Application no 46390/10 (ECtHR)
- ⁴ *Ibid.*, para 133
- ⁵ *Kim v Russia* [2014] Application no 44260/13 (ECtHR) para 54
- ⁶ European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention: A Regional Toolkit for Practitioners* (2015). Further information is available on the European Network on Statelessness website, available at www.statelessness.eu [accessed 26 May 2016]
- ⁷ European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention in Malta* (2015); *Protecting Stateless Persons from Arbitrary Detention in the Netherlands* (2105); *Protecting Stateless Persons from Arbitrary Detention in Poland* (2015). These reports are available at <http://www.statelessness.eu/protecting-stateless-persons-from-detention>
- ⁸ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals
- ⁹ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection
- ¹⁰ Draft Law on a Law Amending and Supplementing the Law on Foreign Nationals in the Republic of Bulgaria, 602-01-23/28.04.2016
- ¹¹ Universal Declaration of Human Rights (adopted 10 December 1948, entered into force 23 March 1976) 999 UNTS 302, art 15
- ¹² Both conventions were signed by Bulgaria on 8 October 1968 and ratified on 21 September 1970
- ¹³ Bulgaria ratified this Protocol on 26 March 1992
- ¹⁴ Bulgaria ratified this Convention on 16 December 1986
- ¹⁵ This Optional Protocol was ratified on 1 June 2011
- ¹⁶ Bulgaria ratified this Convention on 8 August 1966
- ¹⁷ Bulgaria ratified this Convention on 3 June 1991
- ¹⁸ Bulgaria ratified this Convention and it entered into force on 7 September 1992
- ¹⁹ Bulgaria ratified this Convention on 03 May 1994
- ²⁰ CPT, *Public Statement Concerning Bulgaria*, Strasbourg, 26 March 2015, available at <http://www.cpt.coe.int/documents/bgr/2015-17-inf-eng.pdf> (accessed 14 June 2016)
- ²¹ In Bulgarian the provisions reads: “Международните договори, ратифицирани по конституционен ред, обнародвани и влезли в сила за Република България, са част от вътрешното право на страната. Те имат предимство пред тези норми на вътрешното законодателство, които им противоречат.”
- ²² More information about the reservations made by Bulgaria can be found at the UN Treaty Collection website: https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtsg_no=V-3&chapter=5&Temp=mtdsg2&clang=_en
- ²³ Bulgaria ratified this Convention and entered into force in Bulgaria in 2006
- ²⁴ European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention. A Regional Toolkit for Practitioners*, December 2015, page 7, <http://www.statelessness.eu/resources/protecting-stateless-persons-arbitrary-detention-regional-toolkit-practitioners>
- ²⁵ UN High Commissioner for Refugees (UNHCR), *Handbook on Protection of Stateless Persons* (2014), para 23

- ²⁶ Judgment No.53 of 21 April 2015 relating to case No. 101/2015, the Administrative Court of Dobrich
- ²⁷ Judgment of 18 March 2014 in case No.327/2014 of the Sofia City Administrative Court, available online at [http://85.91.141.110/BCAP/ADMC/WebData.nsf/ActsByCaseNo/BF502817DD836FD7C2257CA0004B20F1/\\$FILE/temp4171764462962965796A5646D0D5636C2257CA0003FCA98.pdf](http://85.91.141.110/BCAP/ADMC/WebData.nsf/ActsByCaseNo/BF502817DD836FD7C2257CA0004B20F1/$FILE/temp4171764462962965796A5646D0D5636C2257CA0003FCA98.pdf) (last visited on 15 June 2016); Judgment No.53 of 21 April 2015 in case No. 101/2015 the Administrative Court of Dobrich
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- ³⁰ Interview on 19 April 2016 with experts Mr. Agopov and Mrs. Stoyanova from the Commission for Protection against Discrimination (in Bulgarian: Комисия за защита от дискриминация)
- ³¹ During the interview with the expert from the Ombudsman's office, Mrs. Svilena Ignatova, on 28 April 2016, she pointed out that this legal provision was introduced in national law in 2011 following the intervention by the Ombudsman in the case of a stateless person of Armenian origin, whose situation is described in the 2009 and 2010 Annual Reports of the Ombudsman of the Republic of Bulgaria.
- ³² In Bulgarian the name of the law is: Закон за чужденците в Република България
- ³³ According to the Ministry of Interior data, 98 persons with 'unknown citizenship' have received permanent residence permits in Bulgaria in the period from 2007 until 31 May 2016. (Source: Decision No.212164-54 of 21 June 2016 to provide access to public information, Ministry of the Interior of the Republic of Bulgaria.)
- ³⁴ Cases No.1347/2012, 6/2013, 7/2013, 7720/2013 before the Sofia City Administrative Court
- ³⁵ In Bulgarian the name of the law is: Закон за българските лични документи
- ³⁶ In Bulgarian: "удостоверение за пътуване зад граница на лице без гражданство"
- ³⁷ Law on Bulgarian Citizenship, article 59.1.8
- ³⁸ The official registration number of the Draft Law is 602-01-23/28.04.2016. Updates on the progress of its readings in the Bulgarian Parliament are available on the following link: <http://www.parliament.bg/bg/bills/ID/42119/> (last visited on 15 June 2016).
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- ⁴¹ *Amie and Others v Bulgaria* [2013] Application no 58149/08 (EctHR), paragraph 133, available online at <http://www.asylumlawdatabase.eu/en/content/ecthr-auad-v-bulgaria-application-no-4639010> (Last visited on 17 June 2016)
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- ⁴⁸ See, in particular, the following article on the detention of a stateless asylum seeker in Bulgaria: Ilareva, Valeria, *Bulgaria's Treatment of Asylum Seekers*, *Forced Migration Review*, issue 29, December 2007, <http://www.fmreview.org/FMRpdfs/FMR29/FMR29.pdf>, page 60-61
- ⁴⁹ Case C-357/09 PPU, Said Shamilovich Kadzoev (Huchbarov), Judgment of the Court (Grand Chamber) of 30 November 2009, paragraph 67, available online at <http://curia.europa.eu/juris/document/document.jsf?sessionId=9ea7d0f130d572f4bbda180f449d831bccc5984c424d.e34Kaxilc3eQc40LaxqMbN4OchyTe0?text=&docid=72526&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1271393> (last visited on 17 June 2016)
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- ⁵⁷ Decision No.212164-54 of 21 June 2016 to provide access to public information, Ministry of the Interior of the Republic of Bulgaria
- ⁵⁸ Ministry of Interior of the Republic of Bulgaria, Decision No.812100-12241/16.05.2016 on granting access to public information
- ⁵⁹ Decision No.812100-33744 of 14 October 2015 to provide access to public information, Ministry of the Interior of the Republic of Bulgaria
- ⁶⁰ Upon request UNHCR can obtain Access to individual files. Source: Study interview with the UNHCR Protection Officer, Mrs. Petya Karayaneva, which took place on 12 April 2016
- ⁶¹ Decision No.812100-12241 of 16 May 2016 to provide access to public information, Ministry of the Interior of the Republic of Bulgaria
- ⁶² Decision No.95-00-257/20.06.2016 to grant partial access to public information, Ministry of Foreign Affairs of the Republic of Bulgaria
- ⁶³ Decision No.812104-67/6.7.2016 to grant access to public information, Ministry of the Interior
- ⁶⁴ Decision No.415 of 30 May 2016 to provide access to public information, State Agency for Refugees. SAR replied that they do not keep statistical data on the countries of origin of the stateless asylum seekers.
- ⁶⁵ Decision No.212164-54 of 21 June 2016 to provide access to public information, Ministry of the Interior of the Republic of Bulgaria
- ⁶⁶ The 'continuous' residence is a residence permit for up to one year, which is renewable upon application
- ⁶⁷ Ibid.
- ⁶⁸ Decision No.95-00-46/23.06.2016 on granting access to public information, Ministry of Justice of the Republic of Bulgaria
- ⁶⁹ See, e.g., The Equal Rights Trust, *Guidelines to Protect Stateless Persons from Arbitrary Detention*, June 2012, Paras.19-22, Accessed on 18 June 2016 at <http://www.equalrightstrust.org/ertdocumentbank/guidelines%20complete.pdf>; European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention. A Regional Toolkit for Practitioners*, December 2015, page 7, <http://www.statelessness.eu/resources/protecting-stateless-persons-arbitrary-detention-regional-toolkit-practitioners>

- ⁷⁰ Draft Law Amending and Supplementing the Law on Foreign Nationals in the Republic of Bulgaria. The official registration number of the Draft Law is 602 01 23/28.04.2016. Updates on the progress of its readings in the Bulgarian Parliament are available via the following link: <http://www.parliament.bg/bg/bills/ID/42119/> (last visited on 15 June 2016). An unofficial English translation of the proposed provisions is included in Annex 1 to this report.
- ⁷¹ The progress of the legislative procedure could be followed on the web site of the Parliament at <http://parliament.bg/bg/bills/ID/42238/> (accessed on 28 July 2016)
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- ⁷³ Gyalai, Gábor. "Hungarian Constitutional Court declares that lawful stay requirement in statelessness determination breaches international law", 2 March 2015. Accessed on 17/6/2016 at <http://www.statelessness.eu/blog/hungarian-constitutional-court-declares-lawful-stay-requirement-statelessness-determination>
- ⁷⁴ The Implementing Regulation of the Law (in Bulgarian: Правилник за прилагане) is a sub-law adopted by the Government (unlike the laws that are adopted by the Parliament); it specifies the procedure and conditions for implementation of the provisions in the law.
- ⁷⁵ European Court of Human Rights, Judgment on the Case of Auad v. Bulgaria (Application no. 46390/10), 11 October 2011, Paragraph 139
- ⁷⁶ European Court of Human Rights, Judgment on the Case of Amie and Others v. Bulgaria (Application no. 58149/08), 12 February 2013, Paragraph 77
- ⁷⁷ FRONTEX is the European Agency for the Management of Operational Cooperation at the External Borders
- ⁷⁸ Study Interview with Mrs. Iliana Savova, Director of the Refugees and Migrants Section at the Bulgarian Helsinki Committee, 26 April 2016
- ⁷⁹ Center for Legal Aid – Voice in Bulgaria, *Reasons for Detaining Migrants Easy to Find, Study of Court Decisions Shows*, 1 February 2016, Accessed on 17 June 2016 at <http://detainedinbg.com/blog/2016/02/01/reasons-for-detaining-migrants-easy-to-find-study-of-court-decisions-shows/>
- ⁸⁰ For example, in case No.8986/2009 before the Sofia City Administrative Court (SCAC) the stateless person was regarded as a citizen of Russia; in case No.13868/2010 before the Supreme Administrative Court the stateless person was regarded as a citizen of Bosnia and Herzegovina; in case No. 11929/2015 before the SCAC the stateless person was regarded as a citizen of Afghanistan; etc.
- ⁸¹ European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention: A Regional Toolkit for Practitioners* (2015), pp.14-15
- ⁸² For a detailed analysis of the transposition of Article 15 of Directive 2008/115/EC in Bulgarian national law, see Ilareva, Valeria, in collaboration with National Judge Nataliya Angelova, *Completed Questionnaire for the project Contention National Report – Bulgaria*, 2014, Accessed on 17 June 2016 at <http://contention.eu/docs/country-reports/BulgariaFinal.pdf>
- ⁸³ Paragraph 40 of the Draft Law introducing new paragraph 13 in Article 44 of the LFRB.
- ⁸⁴ Decision No.212104-54 of 21 June 2016 to grant access to public information, Ministry of the Interior of the Republic of Bulgaria
- ⁸⁵ CJEU, Judgment of 11 December 2014 in Case C-249/13, Boudjlida, paragraph 30
- ⁸⁶ CJEU, Judgment of 22 November 2012 in Case C-277/11, M. M., paragraph 85
- ⁸⁷ This included a notary act for his house; proofs that he had a running company; a declaration certified by a notary and other similar acts
- ⁸⁸ Mr. H. suffered severe military violence in the war in Bosnia (1992-1995), during which his wife and two small children were killed. This is the reason why he left his country in 1992. After this incident Mr. H. shares that "he is no longer alive" and "it would never be the same". According to an Expert Opinion issued by a psychologist visiting Mr. H. at the Bousmantsi detention centre, he makes every effort to avoid situations that reminds him of his past, because thinking about what happened is too painful and unbearable for him. According to the expert psychological opinion, immigration detention is experienced by Mr. H. as a repeated retraumatisation.
- ⁸⁹ Article 46a, paragraph 2 of the LFRB
- ⁹⁰ Sofia City Administrative Court, Judgment of 30 November 2015 in case No. 9907/2015
- ⁹¹ Article 46a, paragraph 4 of the LFRB
- ⁹² Supreme Administrative Court, Ruling of 27 May 2010 in case No. 2724/2010
- ⁹³ This is also confirmed by the Analysis of the case law conducted by the Bulgarian Lawyers for Human Rights Foundation in the project 'Improving the judicial guarantees for lawful detention of immigrants' (2016), pages 15-16 of the report (not yet published)
- ⁹⁴ Bulgarian law does not differentiate between 'return' and 'removal'. According to Article 3 (4) of the EU Return Directive, 'return decision' means an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return. According to Article 3(5), 'removal' means the enforcement of the obligation to return, namely the physical transportation out of the Member State. The return decisions in Bulgaria always contain 'orders for removal', because they are 'orders for coercive taking to the border' as they are named. That is, by definition and title, these orders do not envisage a possibility for voluntary return, although formally the law declares that such a period for voluntary return should be granted. In this context, in the established administrative practice in Bulgaria the 'orders for coercive taking to the border' are usually accompanied by an order for immigration detention. The same holds true for the other type of 'return and removal' orders in Bulgaria, the 'expulsion' orders in the terms of the LFRB, which are issued on national security grounds.
- ⁹⁵ European Court of Human Rights, Judgment on the Case of Auad v. Bulgaria (Application no. 46390/10), 11 October 2011, paragraph 132
- ⁹⁶ Ibid.
- ⁹⁷ This is also confirmed by the Analysis of the case law conducted by the Bulgarian Lawyers for Human Rights Foundation in the project 'Improving the judicial guarantees for lawful detention of immigrants' (2016), pages 21-22; 25-31 of the report (not yet published)
- ⁹⁸ Sofia City Administrative Court (06 June 2014) case No.1535/2014
- ⁹⁹ Court of Justice of the European Union (05 June 2014) case C-146/14 PPU
- ¹⁰⁰ Paragraph 85 of the judgment
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- ¹⁰³ Analysis of the case law conducted by the Bulgarian Lawyers for Human Rights Foundation in the EPIM-funded project 'Improving the judicial guarantees for lawful detention of immigrants' (2016), pages 22-23 of the report (not yet published)
- ¹⁰⁴ This is also confirmed by the Bulgarian Helsinki Committee's synthesis report in their EPIM-funded project 'Free to Go: Detention as a last, not a first resort' (October 2016, Accessed 26 October at available at http://www.bghelsinki.org/media/uploads/documents/reports/special/2016-10_Detention_mapping_report_2016_EN.pdf) which analysed the administrative practice in the application of immigration detention in Bulgaria. Also, in their case-law analysis, cited above, the Bulgarian Lawyers for Human Rights Foundation noted that "from the reviewed judicial acts it can be concluded that the court rarely discusses the question whether it was possible to impose a less coercive measure. In some of the cases where there is a discussion, the court finds that the issue is part of the administrative discretion of the authorities and therefore not subject to judicial review" (page 10 of the report).
- ¹⁰⁵ Sofia City Administrative Court, Ruling of 8 April 2010 in case No.2425/2010
- ¹⁰⁶ One of the recommendations, made in the recent study of the Bulgarian Helsinki Committee on the administrative practice of immigration detention in Bulgaria, is introduction of possible new alternatives to detention: see Ibid.
- ¹⁰⁷ European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention: A Regional Toolkit for Practitioners* (2015), page 21
- ¹⁰⁸ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection
- ¹⁰⁹ European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention: A Regional Toolkit for Practitioners* (2015), Section 2.6.

- ¹¹⁰ Decision No.212164-54 of 21 June 2016 to provide access to public information, Ministry of the Interior of the Republic of Bulgaria
- ¹¹¹ Article 44, paragraph 9 of LFRB
- ¹¹² Ibid.
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- ¹²⁷ In September 2016, this would be between 2,50 and 5 Euro, as 1 Bulgarian leva is 0,51 Euro
- ¹²⁸ Study interview with a senior expert from the NCTHB, which took place on 22 April 2016

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Our Network has developed rapidly since we launched in 2012, attracting over 100 members in 39 European countries (see shaded area of map). Our London-based Secretariat coordinates ENS's law & policy, awareness-raising and capacity-building activities. For information about Network activities or membership enquiries contact ENS Director Chris Nash (chris.nash@statelessness.eu).



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