

Global Detention Project Submission to the UN Committee on the Rights of the Child

72 Session (17 May 2016 - 03 Jun 2016)

Consideration of State Report – Bulgaria (Consolidated Third, Fourth and Fifth Periodic Reports)

Geneva, 14 April 2016

Issues concerning immigration detention

The Global Detention Project (GDP) welcomes the opportunity to provide information for consideration of the combined third, fourth, and fifth periodic report of Bulgaria (CRC/C/BGR/3-5) submitted to the UN Committee on the Rights of the Child (Committee). The GDP is an independent research centre based in Geneva that investigates immigration-related detention. As per the GDP's mandate, this submission focuses on the State party's laws and practices concerning detention for immigration- or asylum-related reasons.

This submission is made under Article 45(a) of the Convention on the Rights of the Child and mainly focuses on implementation of CRC Article 37 (b)(c)(d) on deprivation of liberty. Following the Day of General Discussion on The Rights of All Children in the Context of International Migration in 2012, the Committee endorsed the recommendation that "the detention of a child because of their or their parent's migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child. In this light States should expeditiously and completely cease the detention of children on the basis of their immigration status."¹

Legal Framework

The Foreigners in the Republic of Bulgaria Act (LFRB) No. 153/23.12.1998, (last Amended, SG No. 53/27.06.2014) regulates Bulgaria's migration policy, including entry requirements, visa, residence, expulsion, and immigration detention.²

¹ UN Committee on the Rights of the Child, *Report of the 2012 Day of General Discussion on the Rights of All Children in the Context of International Migration*, February 2013, para 78 www2.ohchr.org/english/bodies/crc/docs/discussion2012/2012CRC_DGD-Childrens_Rights_InternationalMigration.pdf.

² The Foreigners in the Republic of Bulgaria Act (LFRB) No. 153/23.12.1998, last Amendment, SG No. 53/27.06.2014 http://www.ilo.org/dyn/natlex/natlex4.listResults?p_lang=en&p_country=BGR&p_count=1346&p_classification=17&p_classcount=49

The language used in Bulgarian law avoids the language of detention and can be misleading. Throughout the LFRB “coercive administrative measures” lead to “compulsory accommodation” (LFRB Art. 44) while migrants are “accommodated” and not “detained” in “special accommodations for temporary placement of foreigners.” The Busmantsi and Lyubimets closed detention centres are officially referred to as “Special accommodation for temporary placement of foreigners” (LFRB Art. 44(7)). A third place of immigration detention, in Elhovo, is described as a “distribution” or “allocation/triage” centre.³ The word “detention” is used only once in the LFRB, with respect to accompanied minors, who can be placed in “involuntary detention” (see below). According to civil society sources the combined capacity of the three detention centres is approximately 1,000.

In 2015 the Global Detention Project and Access Info in Europe published the findings of a two-year investigation seeking basic details and statistics about immigration detention practices in 33 countries across Europe and North America. Bulgaria provided the locations of two types of facilities, those for the “accommodation of illegally staying third-country nationals who have been imposed compulsory administrative measures” and “Reception centers for the accommodation of illegally staying persons.” However, the data they provided on the numbers of migrants referred to “Homes for Temporary Placement of Foreigners that accommodate illegally staying persons.”⁴ Bulgaria failed to provide data on the number of detained minors for the investigation.

According to Bulgarian civil society groups, the Law on Asylum and Refugees (LAR) was amended in October 2015 to transpose the European Union Reception Conditions Directive and came into force on 1 January 2015. It grants “new powers to the State Agency for the Refugees (SAR) to operate closed-type reception centres.”⁵ The EU Reception Condition Directive allows the placement of asylum seekers in detention in limited circumstances and requires that minors be detained as a measure of last resort only (Art. 11).

Accompanied children

The Foreigners in the Republic of Bulgaria Act provides for different regimes for unaccompanied children and children migrating with their parents.

Specific provisions relating to detention of “accompanied juveniles or minors” are contained in LFRB Art. 44(9), which reads: “Exceptionally, if there are circumstances under Paragraph (6) [detention for unknown identity for hindering expulsion or if there is a risk of absconding] for the accompanied juveniles or minors it is issued an order for a compulsory accommodation in a special shelter up to three months. At the Special shelters referred to in Paragraph (7) [special accommodation for temporary placement of foreigners], there are separated

³ Centre for Legal Aid-Voice in Bulgaria, “Who gets Detained?” Jurisprudence Review (Part 1), 1 February 2016, <http://detainedinbg.com/blog/2016/02/01/reasons-for-detaining-migrants-easy-to-find-study-of-court-decisions-shows/>; Aida Asylum Information Database, *Country Report: Bulgaria*, Bulgarian Helsinki Committee, ECRE, October 2015, <http://www.asylumineurope.org/reports/country/bulgaria>.

⁴ Global Detention Project and Access Info Europe, *THE UNCOUNTED: The Detention of Migrants and Asylum Seekers in Europe*, Global Detention Project, 17 December 2015, <http://www.globaldetentionproject.org/publications/special-report/uncounted-detention-migrants-and-asylum-seekers-europe>.

⁵ Centre for Legal Aid-Voice in Bulgaria, “Who gets Detained?” Jurisprudence Review (Part 1), 1 February 2016.

rooms for the accommodation of juvenile and minor aliens that meet their certain needs and requirements”

LFRB provides for alternatives to detention (Art. 44(5)) whereby foreigners are to report weekly to the territorial structure of the Ministry of Interior. However, according to the Bulgarian Helsinki Committee, alternatives to detention are not used in practice.

Key Questions: How many children with families were detained in 2014 and 2015? Where were they detained and were they detained in special facilities for families? What was the average length of their detention? How many families with children benefited from alternatives to detention in 2014 and 2015?

Unaccompanied children

As per LFRB Art. 44(9), “involuntary detention” does not apply to unaccompanied minors. The government reiterated this prohibition in its report to the European Migration Network: “According to the national legislation there is clear prohibition for detention of unaccompanied minors and juveniles in immigration detention centres – Art.44, Para 9 of LFRB. If unaccompanied minors and juveniles are subject of return decision, the body that has issued the order imposing the coercive administrative measure (Return Decision) shall notify the respective Social Support Directorate, which shall undertake protection measures pursuant to the Child Protection Act. According to the Art.28a of the LFRB, the State Agency for Child Protection shall temporarily provide for the unaccompanied minors and juveniles the necessary material support and care to meet their basic vital needs.”⁶

However, according to civil society sources and national human rights institutions, unlawful detention of unaccompanied minors takes place in practice. The Bulgarian Ombudsman, acting as National Prevention Mechanism under the Optional Protocol to the Convention against Torture (OPCAT), reported in February 2016 that there were “several cases of minors, listed in the [deportation and detention] orders of adults, without the persons in question knowing each other and without any family connection whatsoever between them. ... The children are formally listed as accompanied and the ban of the detention of unaccompanied minors is avoided. In reality, 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.”⁷

The Ombudsman detailed the practice whereby unaccompanied children are randomly assigned to adults travelling in the same group, at times even to adults of a different nationality (i.e. Afghan children assigned to Pakistani adults).

⁶ EMN FOCUSED STUDY 2014, *The use of detention and alternatives to detention in the context of immigration policies - BG EMN NCP*, European Commission, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/irregular-migration/index_en.htm

⁷ Centre for Legal Aid-Voice in Bulgaria, *Migrant Children in Detention: the Bulgarian Ombudsman Calls Out on the Unlawful Detention of Unaccompanied Minors, Detained*, 27 March 2016

According to the Ombudsman's office, the practice "is clearly a way for the authorities to facilitate the administrative detention of unaccompanied minors."⁸

The Bulgarian Helsinki Committee reports that neither the law nor the practice provide any mechanisms for identification of unaccompanied children.

Key Questions: How are foreign unaccompanied minors identified? Where are unaccompanied minors placed? What steps is the government taking to address the observation of the Ombudsman and to put an end to unlawful detention of unaccompanied minors and to sanction officials responsible for unlawfully assigning unaccompanied minors to unrelated adults? What is the outcome of litigation initiated by the Bulgarian Lawyers for Human Rights in some of these cases?⁹

Conditions of detention

The Ombudsman's annual report for 2015 states, "As a National Prevention Mechanism (NPM), the Ombudsman cannot remain indifferent to the continuing placement in the [closed centres] of families with children [...] [T]he special homes are unfit to house children, as they don't have the required conditions and the specially trained personnel. The NPM therefore recommends again that in regards to this target group, the possibility for applying alternatives to detention are considered."

According to recent civil society reports, detention centres are often overcrowded, have deficient hygiene, and insufficient shower and toilet capacity. Detainees seem to be responsible for cleaning the premises at their own cost. Other reported problems include poor nutrition, uneven access to health care and language assistance, no computer/Internet access, and inadequate recreation spaces for children.¹⁰ These observations confirm reports and recommendations following visits by the European Committee for the Prevention of Torture and the Council of Europe Commissioner on Human Rights.¹¹

Key Questions: Under what conditions are children detained? What steps are taken to address concerns raised by the Bulgarian Ombudsman, the European Committee for the Prevention of Torture and the Council of Europe Commissioner on Human Rights?

Civil society monitoring

⁸ Cheresheva, Mariya, *Bulgaria Evades Ban on Detaining Child Refugees*, Balkan Insight, 9 March 2016, <http://www.balkaninsight.com/en/article/bulgaria-evades-ban-on-detaining-child-refugees-03-08-2016#sthash.rXCERuys.dpuf>

⁹ Centre for Legal Aid-Voice in Bulgaria, *Migrant Children in Detention: the Bulgarian Ombudsman Calls Out on the Unlawful Detention of Unaccompanied Minors, Detained*, 27 March 2016

¹⁰ Aida Asylum Information Database, *Country Report: Bulgaria*, Bulgarian Helsinki Committee, ECRE, October 2015, <http://www.asylumineurope.org/reports/country/bulgaria>.

¹¹ European Committee for the Prevention of Torture, *Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*

from 18 to 29 October 2010, Council of Europe, CPT/Inf (2012) 9, 15 March 2012.

<http://www.cpt.coe.int/documents/bgr/2012-09-inf-eng.htm>, Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Bulgaria, from 9 to 11 February 2015, Council of Europe, CommDH(2015)12, 22 June 2015, <https://wcd.coe.int/ViewDoc.jsp?p=&id=2326497&Site=COE&direct=true>.

The Bulgarian Ombudsman, non-governmental organisations, lawyers, and the UN High Commissioner for Refugees all have access to immigration detention centres under LFRB Art. 39a(2). Access is also reportedly allowed in practice. Amendments to the Law on the Asylum and Refugees (LAR) grant access for NGOs and legal counsels to foreigners at border checkpoints where deportation and detention orders are very commonly issued by the Bulgarian Border Police. However, NGOs are mostly based in Sofia and may not have the resources to regularly travel to the border.¹²

¹² Radostina, Pavlova, *NGOs in Bulgaria Get Access to Border Points, But Harder Now to Stay Legal for Failed Asylum Seekers*, Voice in Bulgaria, Detained, 30 December 2015, <http://detainedinbg.com/blog/2015/12/30/ngos-get-access-to-border-points-but-harder-now-to-stay-legal-for-failed-asylum-seekers/>.