CONCLUDING ANALYSIS

of legal and administrative practice for the period 2019-2023

of project ACF/729 "Effective Legal Aid for Refugees and Migrants in Bulgaria - *continuation", funded by the Active Citizens Fund Bulgaria (Active Citizens Fund) by the EEA Financial Mechanism 2014 – 2021*

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LIST OF ABBREVIATIONS

ACSC – The Administrative Court – Sofia City

SAA – Social Assistance Agency

SAC - Supreme Administrative Court

UNHCR - Office of the United Nations High Commissioner for Refugees

SAR with CM - State Agency for Refugees with the Council of Ministers

SANS - State Agency for National Security

AP – Additional provisions

SSD – "Social Services" Directorate "

ECHR – European Convention on Human Rights

ECtHR - European Court of Human Rights

CPA – Child Protection Act

FRBA - Law on the Foreigners in Bulgaria

LAR – Law on Asylum and Refugees

CAM – Coercive Administrative Measure

ECJ - Court of Justice of the European Union

Detention Centre - Special Detention Facility for Foreign Nationals

I. INTRODUCTION

This analysis gives an overview and highlights of the judicial and administrative practice in the field of refugee and migration law, achieved during the joint four-year (2019-2023) implementation of the project "**Effective Legal Aid for Refugees and Migrants in Bulgaria**" by the Legal Aid Centre "Voice in Bulgaria" (**LAC**) and the Foundation for Access to Rights - **FAR**. The inclusion of our partners "**Mission Wings**" in the second phase of the project confirmed the key role of a multidisciplinary approach to migration and refugee dynamics. Our joint work in this complex area shows that a sustainable and effective migration strategy should be based on: accessible and objective legal procedures; social and psychological support in view of the humanitarian nature of refugees' problems; empowerment and open integrative pathways.

Lately we have been hearing about migrants in the sense of numbers. 7 000 people arrived in two days on the Italian island of Lampedusa. Over 100 000 have crossed the Mediterranean to reach the shores of Europe since the beginning of 2023. A total of 13 394 third-country[1] nationals were apprehended in Bulgaria in January-August 2023, according to official statistics from the Ministry of Interior.

At the same time, this project has enabled over 1 000 people to access legal aid, social and psychological support. Behind each case is the joint effort of the project partner organisations' teams and, above all, their work on an individual basis with each person who has sought their assistance. Behind every legal case there stands an individual person, an individual family, an individual story, an individual destiny.

In the European political sphere there is a growing discourse that precisely this basic principle of individual consideration of an individual refugee story has been applied in a too "stretched" manner. There has been some talk of reaching a 'compromise' or a 'deal on migration' between EU member states. But to what extent can a compromise and a deal on migration be a compromise and a deal on fundamental human rights?

Because migration and refugee law is one of the foundations of this fragile achievement called the guarantee of human rights. Experts on migration issues warn that, in practice, in view of current trends, we are en route to devaluing the 1951 Refugee Convention. The 1951 Convention is, at the same time, a key legal document, and its devaluation would lead to the erosion of one of the foundations of the legal protection of fundamental human rights.

The Geneva Convention relating to the Status of Refugees was approved in Geneva on 28 July 1951 by a special conference of the United Nations and entered into force on 22 April 1954. Supplemented by a protocol adopted in 1967 which extended its scope, originally limited to refugees displaced during World War II, it defines the concept of a refugee and establishes the rights and obligations associated with the refugee status. The 1967 Protocol, adopted six

[1] MONTHLY INFORMATION on the migration situation in the Republic of Bulgaria for August 2023, available at MINISTRY OF INTERIOR (mvr.bg).

years after the erection of the Berlin Wall, removed geographical and temporal restrictions, thus turning the Convention into a universal instrument.

This story is a reminder that we already have the foundations in place, recognizable reference points and universal tools with which to meet the intensive challenges of our time and find effective common human solutions. At European level, we have the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union and a multitude of international documents whose foundations underpin the universal and indivisible value of human dignity. The dignity of the individual person reminds us that behind the daily "statistics", migration "waves" and "flows" are individuals whose dignity, according to Article 1 of the EU Charter, is inviolable and must be respected and protected.

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II. Legal analysis of the development of case law under the LAR: Atty. Kaloyan Stoyanov, FAR

1. Changes in the legal framework of the LAR

A significant moment for the legal analysis in the reporting period under review is the fact that the special Law on Asylum and Refugees, under which the international protection proceedings are conducted, has undergone changes and amendments twice, in 2020 and in 2022.

While the second amendments are not significant and concern relatively few changes related to the rights of foreigners who have been granted temporary protection in Bulgaria, this is by no means the case with the amendments and supplements of 2020.

Significant changes have been made to Chapter Three of the LAR "GROUNDS FOR REFUSAL, TERMINATION AND WITHDRAWAL OF PROTECTION AND TERMINATION OF PROCEEDINGS", with the complete disappearance of Article 14, which concerns the suspension of administrative proceedings for protection.

Article 25 of the LAR on the representation of unaccompanied minors seeking or having received international protection is amended. This replaces the previous representative appointed by the municipal administration with the figure of a lawyer appointed by the National Legal Aid Bureau, where he or she is listed in a special register for legal aid.

There appears a new provision in the form of Article 25a of the LAR, which provides that the territorial units of the SAR should explicitly provide conditions for the reception of foreign minors seeking international protection.

Pursuant to amendments to Article 30a of the LAR, upon establishment of the belonging of a foreign national seeking international protection to a vulnerable group or a foreign national with special needs, identification and assessment of his/her specific needs shall be carried out and, if necessary, a support plan shall be drawn up.

There are some new obligations for foreigners who have been granted international protection, such as the new paragraph 2 of Article 35 of the LAR, according to which the foreigner is obliged to submit an application for the issuance of Bulgarian identity documents within 30 days after their registration in the population register.

In case of non-compliance with this obligation, there is also a penalty for foreign nationals. According to the newly introduced provision of Article 42(5) of the LAR, a foreign national who has been granted international protection and fails to submit an application for new identity documents in due time may be subject to proceedings for withdrawal or termination of the protection granted if the foreign national fails to provide evidence that he or she had objective reasons for failing to comply with his or her obligation.

The time limit for accelerated proceedings has also been changed, in accordance with the new wording of Article 70 of the BDS Act. Thus, instead of the previous deadline of 10 working days, the interviewing authority has 14 working days in which to apply the accelerated procedure and reject the application as clearly unfounded if the legal grounds for doing so exist.

2. Admissibility of subsequent applications for protection

In the accounting period 2019 - 2023, there was an extremely high number of decisions issued by the Interviewing Body of the SAR under the Council of Ministers, which blocked the path to the international protection proceedings and prevented the examination of the merits of the submitted subsequent applications. It is within the competence of the Interviewing Authority to carry out an admissibility assessment when a new application for protection is made by the same person for whom a refusal has already been issued and entered into force, or when his/her status has been revoked or terminated. The assessment concerns whether the applicant has submitted "new evidence" which was not considered in the previous proceedings.

The admissibility procedure, or as the law defines it in Chapter Six, Section III of the LAR, "*Procedure for the preliminary assessment of a subsequent application for international protection*," requires an assessment of whether the foreign national invokes any new circumstances that are relevant to his or her personal situation or to his or her country of origin. This assessment is within the competence of the interviewing authorities of the SAR under the Council of Ministers, which shall render their decision within 14 working days of the submission of the new - subsequent - application, on the basis of the written documents submitted by the applicant. The administrative act is subject to a single instance judicial review before the administrative court of the foreigner's current address.

Despite the overwhelming case-law on this type of single-instance proceedings, unfortunately it still remains contradictory on the interpretation of the term "new circumstances" in subsequent applications. This is largely due to the fact that the term in question does not enjoy a legal definition in the law and is therefore subject to interpretation by both the administrative authority and the courts.

It should be noted that in the prevailing case law, the administrative court has adopted the view that there is a substantial violation of procedural norms which justifies the annulment of the decision rendered when:

2.1. The interviewing authority has extended its assessment of the admissibility of the subsequent application by considering and assessing the merits of the new evidence submitted.

Pursuant to Article 33(2)(d) of Directive 2013/32/EU, new elements and facts are not required to be substantial, but only relevant to the grounds for international protection. According to Article 40(2) and (3) of the same (Procedural Directive), when deciding on the

admissibility of a subsequent application, a preliminary examination should be carried out in order to determine whether new elements or new facts have arisen or have been presented by the applicant in relation to that application. If it is concluded that they have been established or presented, they increase to a significant degree the likelihood that the person will be granted international protection.

Therefore, the requirement of substantiality under Article 13(2)(4) of the LAR should only be applied in the sense given in Article 40(3) of Directive 2013/32/EU and it should not be assessed whether the elements and facts substantially justify the granting of protection, but only whether they are new and whether they are related to the grounds for granting international protection.

2.2. Further to the above, some courts have concluded that a significant change in the socio-political life of the country of origin may also lead to a change in circumstances which should be taken into account if a new application for protection is made. In these cases, the change in the country of origin should be considered as an independent ground for protection, as it may expose the applicant to risks of a general situation of insecurity and risk of refoulement. Therefore, a new application for protection, where there has been a substantial change in the situation in the country of origin, should be admissible in ordinary proceedings.

2.3. The interviewing authority has taken its decision outside the time-limit granted to it in the provision of Art. 1 of the LAR: The aforementioned violation of the time limit within which the authority had the power to decide automatically leads as a legal consequence to the application of the provision of Article 76b, para. 3 of the LAR, according to which „…*the subsequent application for international protection shall be deemed to be admitted to international protection proceedings*."

2.4. Reference should also be made to the recent case-law of the European Court of Justice (ECJ) and the interpretation of EU law given in the Judgment of 10 June 2021 of the Court of Justice in Case C-921/19 LH, ECLI:EU:C:2021:478. That judgment of the ECJ concerns the interpretation of Article 40(2) of Directive 2013/32/EU and Article 4(2) of Directive 2011/95/EC[2]. According to the same, EU law does not allow national legislation under which a document submitted by an applicant for international protection in support of a subsequent application is to be automatically presumed not to constitute a "new element or new fact" where the authenticity of that document cannot be established or the source of the document is not objectively verifiable. The ECJ states, on the one hand, that the assessment of the evidence submitted in support of an application for international protection cannot vary according to whether it is a first or a subsequent application and, on the other hand, that the member state concerned is obliged to cooperate with the applicant for the purposes of assessing the relevant elements of his or her subsequent application where the applicant submits documents in support of his or her application the authenticity of which cannot be determined.

Conclusions/Recommendations:

[2] Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification and status of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or persons eligible for subsidiary protection, and for the content of the protection granted.

- Powers of the interviewing authority: In assessing the admissibility of a subsequent application for protection, the interviewing authority should limit its decision solely to whether the applicant has presented new elements or new facts and evidence, without examining the merits. If the applicant has been able to do so, the application submitted should be admitted for examination in the ordinary proceedings.
- The reasons as to why the "new evidence" was not presented in the previous proceedings are not relevant. If the deciding authority wishes to discuss and consider the same, it may do so after admitting the application to examination and scheduling a personal interview.

3. Protection procedure in UP:

The said procedure is regulated in Article 70(1) of the BDS Act, which provides that *"In the presence of grounds under Article 13(1) within 14 working days of the registration of the foreigner, the interviewing authority may apply an accelerated procedure by taking a decision to reject the application as manifestly unfounded.*"

Unlike the previous proceedings we have considered above, also within the competence of the interviewing authority, the procedure in the UP concerns the first application for protection made by the applicant, not a subsequent one. Therefore, there is no possibility that this first application would not be admissible at all in international protection proceedings.

The UP performs all the actions foreseen for the initial registration, establishing the applicant's identity and refugee history through a personal interview. The administrative authority is only exempted from the obligation to request and obtain a written opinion from the State Agency for National Security, pursuant to Article 58, para. 10 of the LAR. This is motivated by the short timeframe of the procedure in which the interviewing authority aims to fit in.

With the decision under Article 70 of the LAR, the interviewing authority rejects the application as manifestly unfounded, when it has assessed that for the particular applicant there are no legal grounds for granting international protection in both types (Refugee Status and Humanitarian Status) and at the same time there exists one of the hypotheses exhaustively mentioned in Article 13, para. 1(1)-(15) of the LAR.

At the end of the reporting period, a worrying trend in the decisions taken by the interviewing body in the UP can be pointed out as the numerous refusals of applications for protection submitted by Russian citizens who flee due to the risk of mobilization in the army and participation in the war with Ukraine. This negative trend is worrying, in view of the explicit provision of Article 8(5)(5) of the LAR, which provides that acts of persecution may be "*criminal prosecution or penalties for refusal to be conscripted in the event of hostilities*...".

In turn, the national legislation is also supported by the provision of Article 9(2)(e) of Directive 2011/95/EU, according to which "*acts of persecution within the meaning of paragraph 1 may take*, inter alia, *the following forms: criminal prosecution or penalties for refusal of military service in the event of hostilities where military service would involve the commission of offences or acts falling within the scope of the grounds for expulsion referred to in Article 12(2)*".

All of the above leads to the conclusion that the decisions of the interviewing authority in the UP, rejecting the applications of male Russian citizens as manifestly unfounded, are in gross violation of substantive law. This conclusion is supported by the fact that on 21.09.2022 a Decree of the President of the Russian Federation was promulgated declaring partial mobilization in the country. As a consequence of this, changes in the legislation occurred, which provided for an increase in the penalty of imprisonment for refusal of military service. A number of restrictive measures against persons liable to conscription also emerged, including a ban on leaving the country.

The decision of the interviewing authority in the UP is subject to a first instance judicial review before the administrative court at the current address of the foreign national's registration card. For the time being, the case-law is still divided when considering and assessing the lawfulness of this type of proceedings. Some administrative courts find the decisions rendered in the UP against Russian citizens to be in violation of the substantive law, while others uphold the administrative acts.

The practice of administrative and judicial authorities regarding Afghan citizens fleeing before and after the Taliban seized power is identical. After the withdrawal of international troops from Afghanistan, the Taliban succeeded in taking over the entire country in just a few weeks. Those Afghan nationals who were not among those purposefully evacuated are still overwhelmingly denied protection in the UP and are subject to immigration detention. Despite the reported serious violations of human rights, the severe humanitarian crisis, the fact that so far neither the EU nor the USA have recognised the Taliban government, and the return of Afghan citizens to their country is objectively impossible, the SAR in general takes the position that the situation in Afghanistan does not in itself imply granting status.

Conclusion/Recommendations:

- The correct application of the substantive law is decisive for the quality and legality of the administrative acts adopted in UP.
- The administrative authority's effort to fit the procedure into the short time limits should not be at the expense of its quality.

4. Persons from a vulnerable group:

According to the interpretation given in para. 1, item 17 of the AP of the LAR, *„Vulnerable persons" are minors, unaccompanied minors, persons with disabilities, the elderly, pregnant women, single parents with children under the age of 18, victims of human trafficking, persons with serious health problems, persons with mental disorders and persons who have suffered torture, rape or other serious forms of mental, physical or sexual violence."* Due to their specific characteristics and vulnerability, these persons are at higher risk of violations of their basic human rights and are sometimes unable to protect or care for themselves. This has made it necessary to distinguish persons from a vulnerable group as a separate category of subjects and applicants under the LAR, to whom special attention should be paid.

On the part of the administrative authority, there is frequently a disregard and disregard for the characteristics of persons as belonging to a "vulnerable group". Often, during the proceedings, when arguments are put forward by the applicant about having suffered torture

and other forms of serious violence, they are left out of the scope and motivation of the administrative acts. Sometimes this is due to a denial and downplaying of the arguments put forward without any refuting evidence being presented by the deciding authority, and other times it is due to a total disregard of the allegations to the extent that they are not discussed in the judgments made.

The inconsistent administrative practice is very often observed when applications are submitted by single parents, most often women with minor children. One such example is the decision of an Interviewing Authority, which in September 2021 refused to allow another application for protection of a single mother from Iraq and her two minor children to be considered by the SAR. The woman left her country mainly because of violence on the part of her husband, and at the time of the ruling she had unsuccessfully applied for protection in Bulgaria with her children for over five years. Her younger son, who was born in Bulgaria, was found to have special needs in his psychological development through an expert psychological assessment and was recommended to work with a child psychiatrist. Despite publicly available data, including through a current UNICEF report, on the serious humanitarian situation of children in Iraq, SAR argues that children's well-being, social and psychological development as well as their fundamental rights would not be violated if they were returned to their country of origin. In this case, again, there is a worrying pattern in the assessment of the situation in the country of origin, especially with regard to certain groups of individuals such as women and children.

Similarly, another large family from Iraq, which had applied for protection over a period of six years, was refused yet again by the SAR upon another application. With regard to the mother and one of the children, born in July 2021 in Bulgaria, the administrative authority again argued that the children would not be at risk as regards their development, well-being and rights if returned to their parents' country of origin.

In another international protection proceeding, in which the applicants are a couple from Venezuela, to whom a child was born in Bulgaria, the SAR directly disregarded the opinion of the Social Assistance Directorate regarding the minor child. Pursuant to the provision of Article 6a of the LAR, in conjunction with Article 15 of the Child Protection Act, when a child is involved in international protection proceedings, an opinion or report from the SSD, Child Protection Department, is required. This is necessary in order to respect the principle and the best interests of the child. In the present case, the competent administration, after an enquiry, has expressed the opinion that *"It is in the interest of the minor A. K. A. V. and her parents to be granted international protection in the Republic of Bulgaria in order to fully protect the rights and interests of the child."* This position has not been taken into account by the SAR, who have issued refusals of protection for the whole family. Even more worrying in this case is the fact that the refusals entered into force after they had been confirmed by the court.

As a positive example in the consideration of court proceedings concerning persons from a "vulnerable group", one could point to Decision No. 5916/28.10.2020 of the ACSC, Administrative Case No. 7155/2020, 3rd Chamber. The case concerns a woman from Afghanistan who is an applicant for international protection on the grounds that she is a victim of violence at the hands of her husband in her country of origin. The Court held that the specific violations of women's rights in Afghanistan, and in particular the manner in which they were treated and subjected to domestic violence, did not constitute a problem of a purely domestic

nature, but was a circumstance relevant to the refugee history of the applicant and her children. On those grounds, the administrative court annulled SAR's refusal to admit the Afghan national and her minor children to further international protection proceedings on the ground that they were victims of domestic violence at the hands of the father.

Conclusion/Recommendations:

- Persons from a "vulnerable group" are at greater risk of having their basic human rights violated and being unable to defend themselves without external assistance. The process of identification and assessment of these cases should be significantly improved.

- Allegations of violence suffered should not be ignored or rejected by administrative and judicial authorities without having been verified. Where necessary, specialists and experts in various fields should be consulted to substantiate such allegations.

5. Turkey - 'Third safe country'

At the end of the reporting period, the number of SAR refusals of applications for international protection of Syrian citizens increased. The administrative authority's reasoning is that the Syrian nationals had crossed and/or resided for different periods of time in the Republic of Turkey during their journey. This stay, although often illegal and without any regularisation of the status of the persons, gives the determining authority the grounds to apply the term 'third safe country' to the Republic of Turkey and to justify its refusal for the refugees coming from there.

Pursuant to § 1, item 9 of the AP of the LAR:

A "third safe country" is a country other than the country of origin where the foreign national applying for international protection has resided and:

а) has no reason to fear for his or her life or freedom on account of race, religion, nationality, membership of a particular social group or political opinion;

б) is protected from being returned to the territory of a country where the conditions for persecution and threats to his or her rights exist;

в) is not at risk of persecution or serious harm, such as torture, inhuman or degrading treatment or punishment;

г) there is a possibility to claim refugee status and, if granted, to benefit from international protection as a refugee;

д) there are reasonable grounds for believing that he or she will be admitted to the territory of that State.

On subsequent judicial review of such decisions, the courts of first instance are united in the understanding that, in order for the 'safe third country' hypothesis to apply, the conclusion of the administrative authority must be based on a proven link between the applicant and that third country.

So, in Decision No. 3454 of 29.05.2023, in Administrative Case No. 2280/2023, the ACSC, 20th Chamber, held that „*… the contested decision does not provide any reasoning and*

conclusions based on objective facts from which it can be established that there are sufficient grounds for believing that the applicant would be admitted to the territory of that state if returned from the Republic of Bulgaria." With these arguments, SAR's conclusion that Turkey is a "third safe country" was overturned by the court, on the complaint of a Syrian citizen who had been residing there without a settled status for a period of about 6 months.

In another similar case, again concerning a Syrian national who had been residing in Turkey for about 4 years without a settled status, the deciding court of first instance had refuted the administrative authority's "third safe country" conclusion on the basis of the reports submitted by the SAR's International Activities Department. Referring to the references used by the administrative authority, the court concluded that the first two prerequisites under points (a) and (b) of the definition in § 1(9) of the AP of the LAR did not apply to the foreign national in question. This is due, firstly, to the fact that the applicant's belonging to a particular branch of the Muslim religion was not examined and, secondly, to the fact that the risk of the applicant being returned from Turkey to the territory of his country of origin (Syria) was not categorically rejected. The Court held that there was no dispute between the parties as to whether there was a risk of serious harm and persecution to the applicant's life and person in his country of origin on account of the existence of an internal armed conflict there.

When considering Turkey as a "third safe country", separate attention should be paid to the way the term is viewed and interpreted by the Supreme Administrative Court. A number of decisions of the SAC of the Republic of Bulgaria have taken the view that Turkey falls within the definition of the term "third safe country", in accordance with § 1(9) of the AP of the LAR. This is correct, according to the SAC, where the foreign national in question is one who has resided legally in this country or where the foreign national in question has spent a significant period of time, albeit illegally, which has established a link between the person and the state. Another common argument is where members of the applicant's family have remained on the territory of that third country and reside there undisturbed. These conclusions are supported by the fact that the Aliens and International Protection Law and the Temporary Protection Regulation are in force in the Republic of Turkey, which provides a legal framework for legal stay and access to rights and services for persons in need of international protection, including access to education, health care and social services, following registration with the relevant authorities. Thus, the Supreme Court judges considered correct the conclusion that a future refoulement of the Syrian nationals to Turkey could not lead to violations of the principle of non-refoulement established in Article 33 of the Convention relating to the Status of Refugees and adopted in the provision of Article 4 para. 3 of the Law on Asylum and Refugees.

Conclusion/Recommendations:

- The guiding principle for the application of the term " safe third country" should be the presence or absence of an established link of the applicant with that country.

- The lack of a settled legal status for the person's residence in that third country may, to a large extent, put him or her at risk of being forcibly returned to their country of origin. Irrelevant to a sound decision should be the duration of the stay where the stay is irregular and the reasons why it remained unsettled.

6. Opinion of SANS in proceedings under the LAR

When, in proceedings under the LAR, an assessment is made as to the presence or absence of a threat to the national security of the Republic of Bulgaria, an opinion is required from the State Agency for National Security. The latter has the exclusive competence to make this assessment and to determine whether a person - a foreigner - constitutes a threat to the national security of the country.

Pursuant to the provision of Article 58(10) of the LAR *„Upon receipt of an application for protection, the competent authorities shall require a written opinion of the State Agency for National Security, which shall be taken into account in the general procedure. An opinion shall not be required in the cases referred to in Article 70."* This means that an opinion is always required, except in cases where accelerated proceedings apply / UP /.

Under the provisions of Article 12(1)(6) and (2)(4) of the LAR, Refugee Status and Humanitarian Status shall not be granted to a foreigner who is considered to pose a serious threat to national security. These provisions, which are part of the so-called exclusion clauses, are also referred to in Article 17(3) and (4) of the Law, applicable in proceedings for the revocation of international protection.

From a literal reading of both Article 58(10) and Article 78(7) of the LAR, it can be reasonably concluded that the opinion expressed by the SANS is not binding on the deciding authority under the LAR. However, the administrative authority represented by the SAR under the Council of Ministers, before which these proceedings are conducted, has established as a long-standing and lasting practice the understanding that it acts in the context of bound jurisdiction and the opinion sent by a specialised body such as the SANS is binding.

It is true that the SANS has the exclusive competence to assess and determine whether a person - a foreign national - poses a threat to the national security of the country. However, the assessment of whether to refuse international protection or to withdraw the status granted is within the exclusive competence of another authority, namely the President of the SAR under the Council of Ministers. The latter has the attributed statutory power to conduct the relevant proceedings under the special Law on Asylum and Refugees, in the course of which to carry out its own assessment of all the facts and circumstances, and not mechanically and solely on the basis of a written opinion from the SANS to issue its decisions. This leads to the conclusion that the assertion that the opinion expressed by SANS is binding and that the determining authority has binding competence under the LAR is not legally justifiable.

In this respect, the judgment of 22 September 2022, in Case C-159/21, on a reference for a preliminary ruling from Hungary, the ECJ ruled on the question referred to above. The proceedings concerned a third-country national whose refugee status had been revoked and who had been refused subsidiary protection on the basis of an unreasoned opinion issued by the Office for the Protection of the Constitution and the Counter-Terrorism Centre of Hungary. In the opinion, the Hungarian authorities concluded that the foreign national's stay constituted a danger to national security. That decision was challenged by the person before the Budapest City Court (the referring court), which decided to stay the proceedings and refer the matter to the ECJ.

The latter held that Hungary's national legislation was incompatible with Article 23 of Directive 2013/32/EU, which provides for access to the information which has been collected and on the basis of which the decision is or will be taken. An exception to this right is allowed

where disclosure of the information or its sources could endanger national security. In such cases, however, member states should grant access to the information or sources in question to the competent authorities and make the person concerned at least substantially aware of the reasoning of the specialised national security agency. Това изисква създаването на процедура в националното законодателство, която да гарантира правото на защита на кандидата. Тази процедура следва да даде на заинтересованото лице или на неговия адвокат възможност за достъп до класифицираната информация, за да се гарантира правото на защита на лицето и да може да се приеме, че държавата членка е изпълнила задължението си по член 23, параграф 1, втора алинея, буква б) от Директива 2013/32/ЕС. Такава процедура към настоящия момент липсва в националната уредба на България.

In the present case, the ECJ also found violations of the general principle of the right to good administration enshrined in Article 41 of the EU Charter of Fundamental Rights and of Article 47 of the Charter, according to which everyone has the right to an effective remedy before the courts.

The Court also clarifies that the provisions of Directives 2013/32 and 2011/95 do not allow the authority deciding on applications for international protection to systematically rely on unreasoned opinions issued by authorities with specialised functions relating to national security who have established that a person poses a threat to national security. When considering whether to revoke or refuse international protection on the basis of national security concerns, the determining authority should not rely on the unmotivated opinion of specialised bodies. The Court recognises that part of the information provided by the authorities responsible for national security may, where appropriate, be subject to confidentiality rules, within the limits set out in Article 23(1) of the Procedural Directive. However, the scope of this information and its relevance to the decision must be freely assessed by the determining authority. The determining authority must therefore have all the necessary information and be able to make its own assessment of the facts and circumstances in order to determine the scope of its decision and to provide a full statement of the grounds for that decision.

The judgment of the ECJ in Case C-159/21 is of key importance for changing the administrative and judicial practice in Bulgaria and is binding for the competent authorities under the LAR, which have adopted and enforced the understanding that the opinion of the SANS is of binding and mandatory nature.

Conclusion/Recommendations:

- In spite of the opinion expressed by the SANS concerning the national security of the country, the decisions to refuse international protection or to revoke the granted status are within the exclusive competence of the SAR under the Council of Ministers.
- The assertion that the opinion expressed by the SANS is binding and that the adjudicating authority has binding jurisdiction under the LAR is legally unmotivated.
- The Chairman of the SAR should make his own assessment of the facts and not mechanically and only on the basis of the opinion expressed by the SANS, to issue his decisions.
- The judgment in Case C-159/21 of the ECJ requires the establishment of a procedure in national law to guarantee the right to protection of the persons concerned by the opinions of the specialised bodies entrusted with the protection of national security. That

procedure should enable the person concerned or his or her lawyer to have access to the classified information.

7. Preliminary references to the ECJ in proceedings under the LAR

In the reporting period there were two references for a preliminary ruling from the ACSC to the Court of Justice of the European Union in Luxembourg in connection with proceedings under the LAR.

7.1. Domestic violence as a ground for international protection: Case C 621/21 ECJ

In a case brought by FAR, the Advocate General of the ECJ concludes that a woman who is a victim of domestic violence can be granted international protection. The conclusions of Advocate General Richard de Latour in Case C-621/21, published on 20 April 2023, found that a woman victim of forced marriage and domestic violence could be granted refugee status on the basis of her membership of a "**particular social group**". The opinion is the result of a preliminary ruling by the ACSC on whether international protection should be granted and, if so, what kind, given the specific nature of the violence to which these women are exposed in their countries of origin. The Advocate General's conclusions are not binding, but the ECJ will normally take them into account when giving a final decision in a case.

The Advocate General's conclusion paves the way for women who suffer serious abuse in their homes to receive adequate protection. Although the problem affects many asylum seekers in Bulgaria and the EU, until now these women have not been considered eligible for refugee status or subsidiary protection. Domestic violence against women seeking international protection is treated in most cases as a domestic and criminal problem, not qualifying for the conditions of the granting of status.

7.2. Human rights of migrants residing in legal limbo for decades: ECJ case C-352/23

The subject-matter of the proceedings is a decision of the Vice-President of the SAR under the Council of Ministers, taken in a general procedure, rejecting an eleventh subsequent application for international protection of a Tanzanian national. In the present case, the foreign national has been in the Republic of Bulgaria for 27 years and has been subjected to several coercive administrative measures under the FNBA, which include compulsory "Return to the country of origin", but the implementation of the same has remained unsuccessful. This circumstance in the present case could also be considered as the inapplicability of the provisions of the FNBA in the present case and to the individual concerned.

Thus, the foreign national has claimed subsidiary protection on the basis of Article 9(8) of the LAR, given his specific situation not in his country of origin, but in Bulgaria, where for a significant period of time he has been deprived of access to fundamental human rights guaranteed by the ECHR and the EU Charter of Fundamental Rights.

On the basis of the foregoing, the ACSC considered that the necessary conditions for a reference for a preliminary ruling to the ECJ exist, given that no other decisions of the latter on identical issues have been identified which would help to resolve the dispute raised, namely whether there is a ground under the LAR for the granting of international protection on humanitarian grounds.

With the above-mentioned Decision, the ACSC suspends the proceedings and raises key questions concerning the residence of persons caught in the "legal vacuum" of national law.

The questions are:

(1) Should Recital 15 of the Preamble, Article 2(h) and Article 3 of Directive 2011/95 of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, the uniform status for refugees or persons eligible for subsidiary protection and the content of the protection granted be interpreted? – as enabling a Member State to introduce national arrangements for the granting of international protection based on compassionate or humanitarian grounds which bear no relation to the logic and spirit of Directive 2011/95 under Recital 15 of the Preamble and Article 2(h) thereof (another type of protection), or in that case, too, must the regulated national option of granting protection "on humanitarian grounds" be compatible with the standards of international protection under Article 3 of Directive 2011/95?

(2) Does Recital 12 of the Preamble and Article 14(2) of Directive 2008/15 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, in conjunction with Article 1 [human dignity] of the Charter and Article 4 of the Charter [Prohibition of torture and of inhuman or degrading treatment or punishment], a mandatory obligation for a member state to issue written confirmation to third-country nationals certifying that they are unlawfully staying but cannot yet be removed?

(3) In a national legal framework where the only legal provision governing the status of a third-country national on 'humanitarian grounds' is contained in Article 9(8) of the LAR [humanitarian status on other humanitarian grounds], is an interpretation of that national provision which bears no relation to the nature and grounds of Directive 2011/95 compatible with Recital 15 of the Preamble and Articles 2(h) and 3 of Directive 2011/95?

(4) For the purposes of the application of Directive 2011/95, do Articles 1, 4 and 7 of the Charter [Respect for private and family life] require an assessment of whether the prolonged stay without settled status of a third-country national in a Member State constitutes an independent ground on 'imperative humanitarian grounds' for the provision of international protection?

(5) Does the positive obligation of a Member State to ensure compliance with Articles 1 and 4 of the Charter allow for an expansive interpretation of the national measure under Article 9(8) of the LAR which goes beyond the logic and standards of international protection under Directive 2011/95 and requires an interpretation which is solely consistent with compliance with the fundamental rights of an absolute nature under Articles 1 and 4 of the Charter?

(6) Can the failure to grant protection under Article 9(8) of the LAR to a third-country national in the applicant's situation result in a failure by a member state to comply with its obligations under Article 1, Article 4 and Article 7 of the Charter?

The court's ruling in this strategic case has the potential to address the situation of foreigners who, for one reason or another, have lost the legal right to reside in Bulgaria or in the EU and cannot be returned to their country of origin. Despite being permanently settled in

their host societies, these people have been undocumented for decades, with limited access to services and often on the brink of survival.

…

II. Proceedings under the FNBA: ***Atty. Todor Iliev, CLA***

1. Involuntary return to country of origin or other safe country

During the project period, a number of cases were brought against the imposition of CAM under Art. 1(3) of the FNBA "*Return to country of origin, transit country or third country*" (all imposed on the basis of Article 41(4) of the FNBA - terminated with a final refusal or terminated proceedings for international protection under the LAR.

Appeals against return orders are based mainly on the following arguments: **(i)** in the majority of proceedings, they have been served without the participation of an interpreter from and in a language the person knows; **(ii)** serving without giving the addressee the opportunity to participate in the administrative proceedings; **(iii)** failure to assess whether the country to which the foreigner is to be returned is a safe country in view of the prohibition in Article 44a(5) of the FNBA on return to a country where his or her life and freedom are threatened and he or she is exposed to the risk of persecution, torture or inhuman treatment.

The Court overwhelmingly accepts that the infringements listed above are insubstantial and do not restrict the right of defence, insofar as the persons against whom the relevant CAM has been issued have the possibility to appeal the return order before the court. The Court thus rules: „*The administrative court reasonably held that the order was not issued in breach of essential administrative procedural rules. There is no evidence in the case to the contrary, as it is evident from the grounds of the contested order, part of which, in accordance with Interpretative Decision No 16 of 31.03.1975 of the GMCS, is proposal reg. No 5364r-3457/18.02.2022, the order was issued in a fully clarified factual situation under the conditions of Article 34(4) of the Code of Administrative Procedure. Therefore, the failure to hear the cassation applicant immediately before the measure was imposed on him, assessed in the context of the legally relevant facts established in the case, does not constitute a violation of the administrative procedure rules, even less of the category of essential, which would require the annulment of the issued order. The Chamber agrees with the conclusions of the Court of First Instance that the applicant's rights of defence have not been infringed in the context of the adoption of the order, in so far as it considers that the right to a hearing is not absolute and that it is permissible to impose restrictions on the right to a hearing under strict conditions expressly established by the legislature, such as those provided for in Article 34(4) of the KPA. The above is in line with the view taken by the Court of Justice of the European Union in its judgment of 11.12.2014 in Case C-249/13, according to which the purpose of the right to be heard before a decision on return is taken is to enable the national administration to examine the file in order to take a decision in full knowledge of the facts and to give proper reasons for that decision so that, if necessary, the person concerned can actually exercise his or her rights.*“ (***Decision No 8908/13.10.2022 in administrative case No 6016/2022 of the SAC***).

Pursuant to Article 44a(5) of the LAR, a foreigner who has been subjected to a compulsory administrative return measure shall not be returned to a country where his or her

life and liberty are threatened and he or she is in danger of persecution, torture or inhuman or degrading treatment. However, a number of judicial decisions have held that the administrative authorities imposing such measures have no obligation to carry out an independent examination as to whether there is a risk of persecution, in so far as the grounds for imposing a CAM have been terminated by the refusal of proceedings under the LAR. Според съдебната практика SAR е органът, който единствено дължи такава преценка и заключението на този орган е достатъчно основание да се приеме, че за живота и сигурността на чужденеца не съществува риск.

In this sense, the following decisions of the ACSC have entered into force: *'The objections in the appeal concerning the lack of security assessment in the country of origin - A., as well as the violation of Article 44a(5) of the LAR are unfounded. The issues of the situation in A. and whether the country appears to be safe in respect of the foreigner are subject to consideration in proceedings under the LAR initiated on an application for international protection*" (**Decision No 7974/22.12.2022 in Administrative Case No 7821/2022 of the ACSC**).

In another decision, the ACSC held: „*Further, the Court finds that the applicant's allegations / both in the complaint and in the hearing, as well as the evidence submitted in support thereof are irrelevant to the dispute. /(* for the presence of a return risk.*). They would be relevant only in the proceedings for granting international protection or asylum, but would have no bearing on the outcome of the present dispute, in view of the provision of Article 41(4) of the FNBA, read in conjunction with Article 66 of the LAR.*."(***Decision No 4071/17.06.2022 in administrative case No 111/2022 of the ACSC***).

This understanding of the court is extremely worrisome, especially in the following cases: (i) the person is in principle eligible under the LAR for the granting of status, but is refused because of a SANS opinion that he or she poses a threat to national security; (ii) the SAR confirms that there is a risk to the person's life and security in his or her country of origin, but refuses to grant protection on the grounds that there is a third safe country where the foreigner could settle undisturbed. As mentioned previously, such instances are observed especially in the case of Syrian nationals, where SAR considers that their return to Syria is impossible due to the general situation in the country, but Turkey, if the person has resided there, is determined as a third safe country. At the same time, when imposing a CAM, it is their return to the country of origin that is ordered, despite the fact that another state authority, in this case the SAR, has established by a final decision that their mere presence there puts them in danger, the refusal to grant status being rather based on particular exclusionary hypotheses.

The only difference in the established case law is observed in cases of persons who are family members of a Bulgarian citizen. In these cases, the court found an infringement of the right to private and family life guaranteed by Article 8 of the ECHR. In this respect, Decision No. 5460/20.09.2022 in Administrative Case 5530/2022 of the *ACSC*, 43 s-c entered into force.: „*The objection that the appellant was not given the opportunity to participate in the administrative proceedings and to defend his rights in relation to the facts concerning his marital status, the period of his residence in the country, the proceedings under the LAR, for which he submitted evidence before the court, is well-founded. The latter is necessary in order to prevent the imposition of the CAM from violating the fundamental right to privacy within the meaning of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The violation of the fundamental right to privacy is one guaranteed by the Convention which the authority is obliged to respect. The obligation to make the above assessment follows from the interpretation of the national legislation, in accordance with the relevant European legislation - 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 (Directive 2008/115/EC/Directive)….“

Conclusion/Recommendations:

- Attention should be given to the substantial failures of the administrative and judicial authorities to respect the guarantees of the right to participate and to be heard in the proceedings, in accordance with the considerations set out in the judgment of the ECJ in Case C 277/11, M., of 22 November 2012.

- As an administrative measure of a coercive nature imposing restrictions on the rights and conduct of the person against whom the measure is imposed, refoulement should not apply automatically. The measure imposed should comply with the principles of proportionality and effectiveness, in particular by making an assessment under Article 44a(5) of the FNBA as to whether the foreigner's return to the country concerned would involve a risk to his or her life and liberty or whether he or she would be in danger of persecution, torture or inhuman and degrading treatment, notwithstanding the fact that the grounds for the imposition of this measure may have resulted in the refusal of proceedings under the LAR.

2. Immigration detention

2.1. The measure: Enforced accommodation in Detention Centre

Immigration detention is imposed on an exceptional basis and is only permissible where no other, less severe alternative measures can be applied in a given case. It shall be applied only for the purpose of preparing the return or removal of a person and only if there is a risk of absconding or the foreign national is evading or obstructing the preparation of the return or removal process. When it becomes clear that there is no longer a reasonable prospect of removal, or the conditions for detention are no longer present, detention shall cease to be justified and the detained person shall be released immediately.

In the framework of this project, a number of cases against immigration detention of third-country nationals have been pursued. In view of the trends observed, a generalised conclusion can be drawn that detention in detention centres is automatically applied without prior thorough and individual assessment of the specific circumstances.

Case law has overwhelmingly sanctioned the excessive and automatic use of immigration detention. In this sense, the nature of detention in the Detention Centre as the most severe coercive administrative measure with the effect of deprivation of liberty is ignored; the possibility of imposing alternative lighter measures provided for in Art. 5(2-3) of the FNBA; the "risk of absconding" is unjustifiably based solely on the circumstances that the foreigner on whom the CAM is imposed has no right of residence, does not have documents, or entered the country in an "illegal" manner. In this sense are:

„*In the present case, it is established beyond dispute that the foreigner is subject to a compulsory administrative measure "Return to the country of origin - Afghanistan". There is also a report that there is a risk of absconding in order to arrange the return. The applicant does not prove, or even claim, that he is lawfully resident in the country. The factual findings made by the authority justify the conclusion that at the time of the order there was a real risk that the foreign national would abscond (within the meaning of section 1(4c) of the FNBA) and thus that the enforcement of the measure imposed on him would be prevented. In this case, it is undisputed that the person has already crossed the border illegally, has no identity documents,*

has no relatives in the country and has no means of support.." (***Decision No. 11766/19.12.2022 in administrative case No. 10336/2022 of the SAC***).

„*In the present case, the conditions referred to in the provision of Article 44(6) of the FNBA for the compulsory placement of the applicant in the Detention Centre were present, insofar as he was placed under an administrative measure under Article 39a(6) of the Act. (1) (2) of the FNBA, which has not been challenged in the case, and the evidence gathered compels the conclusion that the foreigner does not have identity documents and that there is a risk that she will obstruct the implementation of the return measure. The order expressly states that the person is obstructing the execution of the order because they lack funds and documents, and these facts have not been disputed in the course of the proceedings*." (***Decision No 11425/12.12.2022 in Administrative Case No 9838/2022 of the SAC***).

There is a difference in the perception of the judicial panels here only with regard to foreigners who are permanently established and have established ties in Bulgaria. Thus, in its Judgment No. 4110/20.06.2022, in Administrative Case No. 5331/2022 of the ACSC, by which the court revoked the forced placement of the appellant and allowed the provisional execution of the judicial act, it is stated:

„*The fact alleged by the complainant A. P. B. Rizi that he possesses a valid identity document issued by his country of origin, which was handed over to officials from the administration of the SAR - MC already at the time of the initial registration of the application for international protection - on 19.01.2022 is not disputed by the procedural representatives of the defendant.(After the conclusion of the hearing in the case was submitted information from the SAR - MS, confirming this fact - l114). It has been categorically established that during the verification carried out by the officers of the Migration Department of the Ministry of Interior the applicant was found at the address at which he was allowed to reside by the Decision of the Director of the RRC – C. of* SAR *–CM of 31.05.2022. The administrative file does not contain any data on any violations of public order and/or criminal offences committed by the applicant, as well as on any possible actions for leaving the territory of the country, including the address at which he was allowed to reside by the decision of the President of the RRC – C., TP SAR - CM. In the current proceedings, declarations pursuant to Article 72(5) of the Regulations for the Implementation of the Law on Foreigners in the Republic of Bulgaria were submitted by the owners of the accommodation provided for the applicant's use, notarised on 26.07.2023 (p. 39 and p. 40), confirming their commitment to provide him with shelter and maintenance for the period of his stay in the country. In his testimony, witness I. DUROVA (l. 107 and l. 108) stated that since the beginning of February 2022 the applicant had not only resided at that address but had also participated in the activities of the Cultural Centre located there, and had been employed until the decision refusing him international protection came into force in May 2023. Documents attesting to the existence of sufficient resources, including foreseeable sources of such resources, with which the fulfilment of the obligation assumed by the Bulgarian citizens to provide maintenance to the applicant for the period of his residence in the territory of the country could be secured were also submitted. Contrary to the objective evidence thus provided, the administrative authority relied solely on the applicant's clear unwillingness to return to his country of origin and his confirmed intention to settle in another EU member state, Germany, stated in an interview conducted immediately before the contested order was issued and documented in the report of 09.07.2023. On the basis of these allegations, without examining the possibility of applying the alternative precautionary measures provided for in Article 44(5) of the FNBA, it is declaratively stated that there is no possibility of applying them, motivated by the existence of a risk of absconding*." (***Judgment No 5167/31.07.2023 in administrative case No 6963/2023 of the ACSC***).

Further, deprivation of liberty for immigration control should not be imposed without consideration of the particular situation of the addressee of the measure, including a detailed assessment of their potential vulnerabilities. In particular, the detention of persons who are considered vulnerable because of their age, state of health or past experience may, depending on the circumstances of the individual case, result in a violation of the prohibition of torture and other cruel, inhuman or degrading treatment.

During the project, a number of cases of third country nationals belonging to a vulnerable group within the meaning of § 1. item 4b. of the FNBA were conducted. Despite the existence of vulnerability, they are placed in the Detention Centre without an assessment of whether their deprivation of liberty could contribute to further aggravating their personal situation. It is extremely worrying that the majority view of the judicial authorities is that, insofar as these are persons in unlawful detention who have no right of access to social services, the "accommodation" provided by the MOI authorities is in fact in their interests and the only way they could receive any care, including specialised medical care.

In this sense, the court held that: "*The applicant's complaint that, in view of the submitted opinion of psychologists, she falls into the group of vulnerable persons within the meaning of paragraph 1, point 4b of the* AP *of LAR and will need medical care is unfounded. The first instance court correctly held that she would be provided with the necessary minimum living conditions in the Detention Centre, including medical specialists, which she would not be able to secure due to the lack of a place to live and means of subsistence.*" (***Decision No 4262/05.05.2022 in administrative case No 2547/2022 of the SAC***).

In another decision, the court points out: „*The placement in a detention centre is a temporary measure in relation to illegally staying foreigners on the territory of the Republic of Bulgaria, which aims to provide them with shelter, food, care and medical services to meet their basic living needs. The measure is temporary until the foreigner is removed from the country. Asylum seekers in a foreign country and foreigners with illegal status need support because they do not have a social environment in the host country, they do not speak the language, they are not integrated, it is difficult for them to adapt, most of them have experienced traumatic events in their country of origin. Providing accommodation in such institutions as the Detention Centre is entirely in their interest and is aimed at protecting them from stress in an unfamiliar environment and without support and provision of shelter, food and medical care. Placement in a Detention Centre is not a deprivation of liberty…*" (***Judgment No 5909/19.10.2021 in administrative case No 9707/2020 of the ACSC fully confirmed by SAC***).

Conclusion/Recommendations:

- Immigration detention should be applied in a much more limited way and as a measure of last resort. Illegal presence in the country or illegal entry itself should not be the only circumstance to be taken into account when imposing immigration detention.. The competent authorities have the legal obligation to carry out an objective assessment of whether the specific case permits the imposition of a lighter precautionary measure than those referred to in Article 44(5)(1)-(3) of the FNBA, stating in a reasoned manner why it is necessary to impose such a measure against the specific person, as well as why each of these measures is inapplicable and/or would be ineffective if imposed.

- It is a worrying trend that the nature of the Detention Centre remains unclear to many tribunals. An understanding of what constitutes a Detention Centre and what function it performs is essential to form a judgement as to whether detention is proportionate, appropriate and justified in an individual instance. It

is recommended to organize additional trainings for magistrates (including prosecutors from the District Prosecutor's Office and the Supreme Administrative Prosecutor's Office, who are parties in cases involving the mentioned matter), during which they should be acquainted in detail with the material conditions in the Detention Centre, including the medical such, the established internal rules and regime, etc.

- Detention Centre should not be regarded as a place providing a social service which is in the interest of the accommodated foreigners. These are closed premises which have all the characteristics of a detention facility. Their regime does not differ substantially from that established in prisons in the Republic of Bulgaria. The purpose of these administrative units, established within the Migration Directorate of the Ministry of Interior, is not to assist foreign citizens in an illegal residence by providing them with food, shelter and medical care, but only to ensure the process of their removal.

- Deprivation of liberty through the administrative measure of immigration detention cannot be an alternative to homelessness and lack of social capacities. For years, project partner organisations have been advocating for the development and introduction of alternative measures to immigration detention that shift the focus away from prohibitions and restrictions towards a more pragmatic and holistic approach to resolving the matter through its successful management (e.g. case management) and with the active participation of the person concerned. Moreover, the need to introduce and develop alternatives to immigration detention corresponds to the obligation of the national competent authorities to apply the measure of "compulsory detention in a detention centre" as a last resort only for the purposes strictly provided for by law. The need for an alternative is dictated by the very nature of immigration detention.

2.2. Extension of immigration detention

The implementation of the present project coincides in time with the transfer of the cassation cases with the subject matter of the FNBA and the LAR from one division of the SAC (which for years had been ruling on cases related to this matter) to another division. This change has noticeably altered the case-law on the placement of foreigners in detention centres, especially as regards the extension of their immigration detention..

While the previous chambers of the SAC have categorically expressed the position that the lack of willingness for voluntary return of a foreigner is indeed an obstacle for the execution of a CAM imposed on him or her, but in the absence of evidence that the foreigner will change his or her position regarding his or her return and in the absence of an alternative way for the CAM to be executed, the detention is no longer justified insofar as it is clear that the measure will not be executed regardless of the extended deadlines. Furthermore, in assessing the substantive and legal requirements for an extension of the period of detention in a Detention Centre, regard should be had to Article 15(6) of Directive 2008/115, which requires the relevant authority, before examining whether there has been a lack of cooperation by the third-country national, to be able to demonstrate that the removal operations have continued longer than

foreseen notwithstanding reasonable efforts made, which requires the State concerned to demonstrate that it has made and is still actively making efforts to secure the issue of travel documents to the third-country national.

At present, the already established practice of the SAC follows the principle that the unwillingness to voluntarily return should be interpreted as a refusal to cooperate with the implementation of the CAM, which in turn is a prerequisite for the extension of the placement up to the maximum period of 18 months. The lack of active efforts on the part of the specialised administration was ignored by the Court by the fact that the public authorities held periodic discussions with the foreigners with a view to persuading them to return voluntarily, which the Court interpreted as actions to implement the CAM which, although ineffective, were sufficient.

The following decisions of the SAC are indicative of this position:

„*In the light of the evidence in the case, the Chamber considers the conclusion of the first instance court to be correct that in the present case the prerequisites for the extension of the period of the foreigner's placement in the Detention Centre provided for in Article 44(8) of the FNBA and Article 15(6) of Directive 2008/115 are present. It is evident from the proof in the case that the applicant does not have a valid document for return to his country of origin, does not cooperate with the competent authorities for the organization of his removal as repeatedly, as evidenced by the reports submitted in the case /l. 19, p. 21, p. 23, p. 25 and p. 27 of the case file/, expresses categorical refusal to voluntary return to his country of origin. The administrative court correctly assessed this conduct of the applicant as a refusal to cooperate with the competent authorities within the meaning of Article 44(8) of the FNBA. Given the lack of cooperation in the present case, there was also a delay in the procedure for obtaining the documents necessary for the removal of the foreign national, in so far as it is established beyond dispute in the case-law that a passport is issued by the Embassy of the Kingdom of Morocco only to established Moroccan nationals who voluntarily declare their wish to return to Morocco.*“ (***Decision No 10694/24.11.2022 in administrative case No 8981/2022 of the SAC***).

„*Taking into account the evidence in the case, the present Chamber considers that the conclusion of the court of first instance that in the present case the prerequisites for the extension of the period of the foreigner's placement in the Detention Centre provided for in Article 44(8) of the FNBA and Article 15(6) of Directive 2008/115 respectively are not present is incorrect. It is apparent from the evidence in the case that S Kuriba does not have a valid document for return to his country of origin (Algeria), does not cooperate with the competent authorities in organising his removal and repeatedly, as evidenced by the reports submitted in the case, expresses his firm refusal to return voluntarily to his country of origin and to cooperate with the Algerian Embassy in establishing his identity and issuing him with a travel document. The present instance considers this conduct of the foreigner as a refusal to cooperate with the competent authorities within the meaning of Article 44(8) of the FNBA. The administrative authority's conclusions that the refusal of the foreign national to return voluntarily to his country of origin constitutes, by its very nature, conduct which avoids or impedes the preparation of his return or the process of his removal from the country are lawful. These circumstances are relevant not only for the assessment of the initial detention of the foreigner under Art. "b" of Directive 2008/115 and for the continuation of detention in the hypothesis of Article 15 § 6 lit. "a" of the same Directive, but also under Article 44(8), third sentence, of the FNBA. In view of the undisputed finding in the case of the discussions held with the alien and his acquaintance with the procedure for issuing a passport, in which he must take an active part, the case establishes active action on the part of the competent authorities to*

implement the return measure imposed on him." (***Decision No 11765/19.12.2022 in administrative case No 10383/2022 of the SAC***).

„*The evidence in the case shows that B. Hussain does not have a valid document for return to his country of origin, does not cooperate with the competent authorities to organise his removal, refuses to return voluntarily to his country of origin. Given the lack of cooperation, there is also a delay in the procedure for obtaining the necessary documents for his removal. Therefore, the powers of the administrative authority were lawfully exercised in its assessment of the need to extend the period of the foreign national's forced placement in the Detention Centre.*." (***Decision No. 6617/05.07.2022 in administrative case No. 4899/2022 of the SAC***).

It is important to note that the practice of the SAC as established in this way has a legitimate impact on the practice of the panels of the ACSC, which in previous periods have adopted positions contrary to the one thus stated. As a consequence, at the moment the opinions of the majority of the judges of the ACSC dealing with the matter almost completely overlap with the restrictive interpretation of the SAC on the extension of the periods of forced placement of foreigners with an imposed CAM.

Conclusion/Recommendations:

When extending the time limits for immigration detention of a foreigner in a return procedure, the competent authorities and the court should assess, in accordance with the reasoning in the ECJ judgment of 30.11.2009 in Case C-357/09 PPU ECJ (Kadzoev), whether in the particular case there is a real and not a hypothetical possibility of removal. In the absence of such a possibility, the continuation of the detention in the Detention Centre is de facto devoid of legal meaning. Continuation of immigration detention should not be conditional on the person concerned agreeing to his or her deportation. Irrespective of the person's procedural conduct, the issue at stake in these proceedings is whether or not there is a reasonable prospect of return. The contrary constitutes unjustified criminal repression imposed on the foreign national because he or she refuses to return voluntarily to his or her country of origin or another third country.

…

III. Working with Vulnerable Groups: Diana Dimova, leader and expert "Mission Wings"

1. A general picture

Mission Wings Foundation is working on the project with vulnerable groups of children and adults seeking temporary or international protection - from Syria, Afghanistan, Iraq, Palestine, Iran, North African countries, Ukraine and others. Approximately 240 asylum seekers, /received status/ or refused international protection, living in the region of the municipalities of Harmanli, Svilengrad, Dimitrovgrad, Galabovo, Stara Zagora and Nova Zagora received support in information activities, consultative social and psychological assistance with the aim to recover from the traumatic experience and activate them in the management of their own lives in the local communities. The target group is highly vulnerable due to their severe traumatic experiences in their countries of origin and the reasons that brought them to the country to seek asylum and protection.

The main profile of people arriving from the southern border is young boys and men 15-30 years old mostly from Syria and women and children later in the family reunification procedure.

The main profile of arrivals from the northern border are mothers with children and elderly people, mostly women, from Ukraine. The foundation had to create in a very extreme

regime the necessary organization to coordinate efforts at regional level among stakeholders - institutions, organizations and informal active volunteer groups to reach this new target group, unexpected and unplanned by the project. A network of support services for refugees arriving from Ukraine was established and developed, in which Mission Wings had and continues to have a leading regional role.

There is a clear tendency for refugees from Syria, Afghanistan and other countries in the Middle East region to remain in the background, without investment of capacity to work with them, which leads to typical risks for this group to fall into a serious humanitarian situation such as homelessness, lack of access to basic social and medical services, social isolation. A serious challenge is the lack of teams to work on the ground in the area, especially given that the Bulgarian-Turkish border is one of the busiest external borders of the EU, where many serious violations of the fundamental rights of migrants occur through their forced return.

Moreover, according to the information presented so far, at the European level there is talk of serious changes in the policy and management of migration processes at our external borders, such as the introduction of fast-track procedures at the border, pre-screening, immigration detention. This would lead to a refocusing of our national migration policy, which in turn would reinforce to a greater extent the need for well-developed expert teams working on the ground in the region.

The difficulty of finding a livelihood - a home and a job is a huge challenge for most refugees. During the project period, the team was able to roll out activities to reach the most vulnerable - children and women with traumatic experiences. On average, about 120 asylum seekers or beneficiaries were supported per month and expressed different needs. Nearly 100 live at external addresses in the region of the municipalities of Harmanli, Svilengrad, Dimitrovgrad, Haskovo, Stara and Nova Zagora.

Ignorance of the language, the local culture and the institutional system leads to almost complete isolation of refugees and migrants in the country, and in particular in the region of mainly Haskovo region, no matter what their legal status is. The pandemic situation, the impact and consequences of which were still being felt, albeit less so now, further complicated the social functioning of these children and adults and hindered their access to services, the escalation of family conflicts continued. This has largely impaired their quality of life and placed them at risk in relation to various aspects of daily life.

In many cases, the complete dependence on employers, landlords, even representatives of institutions leads to violations of the fundamental rights of migrants and asylum seekers through labour exploitation, etc. The lack of basic knowledge about the functioning of the community keeps them in the position of victims, dependent individuals on those who help them. Having sufficient awareness among refugees was essential to prevent their abuse.

2. Advocacy

The main focus of the work was advocating the rights of migrants and asylum seekers. This included encouraging refugees to acquire knowledge and skills to help them improve their way of life, including being active to exercise their rights and participate in community life, including on public decisions that affect them. Empowerment measures were implemented to improve their conditions and skills to exercise their rights and participate in economic and public life, including decision-making processes.

Advocacy included influencing local and regional, and on some topics national institutions relevant to asylum seekers, workshops and discussions between refugees and representatives of institutions. Topics included - access to protection procedures for refugees arriving from the southern border; reporting violence and other crimes or irregularities, as well as corrupt practices; respect for the rights of children, especially unaccompanied children; civil activism, including protest actions against actions or inactions of institutions violating refugees'

rights; amplifying the voice of refugee groups on certain issues in order to change the status quo.

Each new case is carefully screened by a team and if a high vulnerability is suspected, a vulnerability assessment process is agreed and initiated. This is a thorough process that includes an assessment of the individual's core areas of functioning in order to gauge their level of autonomy. A comprehensive multidisciplinary approach is applied, carefully assessing the severity of all applied factors that are relevant to his or her particular situation. A subsequent process is the development of the intervention plan, which is carried out in collaboration with the person, so that a sense of authorship can be gained, and hence motivation and activity to bring about the desired personal change.

3. Psychological outreach

Experts work within the paradigm of a systems approach to therapeutic work. Individual sessions enable psychological counselling for people with traumatic experiences in their country of origin. The objectives of the work are:

- ensure access to professional help and support for traumatised persons;
- minimise the risk of re-traumatisation;
- to reduce harm and negative impacts to the lowest possible level and in any case to achieve positive change;
- reduce negative experiences, prevent or reduce the potential negative effects of psychological trauma;
- mobilize the victims' resources;
- to provide psychological care for the victims in order to assist them in returning to an adaptive level of functioning;
- facilitate the provision of coordinated multidisciplinary and inter-institutional support for victims;
- provide access to individual and group work for victims.

In the course of the work, ongoing emotional support and validation of experiences is provided in a protected environment - a separate physical space that meets conditions of security and confidentiality. Regular meetings are arranged to provide psychological support, which is an essential element of the process of recovery, reintegration and social adaptationEmotional needs; the client's mental health; coping capacity; the presence and type of communication problems; the experience of traumatic events; symptoms and management; adaptation; dealing with certain life tasks; exploring the client's attitudes towards the problem of violence and improving their understanding of it; identifying appropriate coping strategies and support in the process of implementing them.

Accept and respect the coping strategies that the client has developed and used to date in attempting to cope. They are supported to express their painful experiences which are validated. Assistance is provided to build a sense of safety. The right to choice and to control one's own recovery process is respected and supported. The strengths of the individual are supported, and the ability to adapt and sustainably cope with the symptoms of trauma is emphasised. Understanding is shown in the context of the life experience and environment from which the person/family comes.

4. Gender-based violence

One of the priority target groups is victims of gender-based violence. Identifying and supporting these mostly women and children is a difficult and ongoing process. Many women do not recognize the violence that has been perpetrated against them as a problem, or are ashamed to share, because of existing traditional understandings of the role of women in the

culture from which they come. The practices found in the work are related to: physical violence (Afghanistan); forced marriages, some with the sale of the girl, even children (Syria); genital mutilation (underage girls from Eritrea), sexual exploitation (Tunisia, Morocco). Women hardly share about experiences of violence. It usually takes a long time to share about the trauma. Most often, when a woman feels immediately threatened, then she seeks help. Social, legal and psychological support is provided for them all the time. The services are completely free of charge to all who have sought help.

Due to cultural specificities, victims of gender-based violence find it difficult to seek and receive help from institutions and social services in Bulgaria. They are highly discriminated against because of their origin, especially people from the Middle East or Africa. Because of the language barrier, they cannot easily find someone who will listen to their story and seek or provide help. Access to social services continues to be extremely difficult. There are cases where this access is even wrongfully denied.

In particular, issues of gender-based violence and discrimination against migrants and asylum seekers are once again facing a serious lack of capacity in the form of a shortage of expert teams, services, representation, support and empowerment. Public attitudes, the politicization and polarization of the refugee issue, the risk of criminalization of refugee work, puts serious pressure on teams working in the field and contributes to this shortage. At the same time, work and resource shortages exacerbate crisis situations related to migration dynamics.

5. Violent pushbacks to Turkish territory

Bulgaria is a transit country on the refugee route. Over the last 2021-2023, there has been a significant increase in the number of asylum seekers crossing the green border from the south (the border with Turkey). A huge number of reports reach NGOs about violent pushbacks by border authorities.

Documenting incidents of violent pushback at the borders has become an important part of the team's daily routine due to the emergency situation at the borders and in the country. Nearly 700 people arriving directly from the border with Turkey passed through the Consultation Centre in Harmanli during the period. They received first aid and advocacy to access the protection procedure. The practices they shared were: stripping to their underwear, robbing of personal belongings, phones and money, beating with police batons, harassing police dogs, illegal detention for 24-72 hours in unregulated premises.

6. Highlighted trends

Direct work with vulnerable persons continues and is maintained at a very high pace due to the high dynamics on the ground. Everyone is provided with information according to their needs in different areas, empowerment and autonomization work is carried out..

There is a higher awareness of the target group and more active demand for their rights. In recent months, refugees have started to lodge complaints with the organisation about unlawful acts committed against them by other persons, often employees of institutions. This is a huge progress in working with them. On the one hand, it recognizes the quality of the trust relationship with the staff of the organization, and on the other hand, it testifies to a beginning process of realization of one's own rights.

It is still ongoing for the most traumatized and severely traumatized individuals to be provided with the opportunity for comprehensive protection and stabilization efforts, for which crisis intervention and therapy are emergency measures. They need more effort and resources because of their vulnerability.

The social work carried out during the period continues to be extensive and concerns support in the areas of meeting basic needs, job search, access to services in the community, external address and autonomy problems, family relations, integration issues. Unfortunately,

the proportion of those in need of crisis intervention due to serious difficulties in their functioning remains high. This has largely redirected the team's efforts to help those most in need.

The risk of homelessness of asylum seekers and beneficiaries increases due to the overload of the reception and registration system in the country due to the increased flow.

The war in Ukraine has also led to the need for a lot of extra activity to be coordinated and organised with different institutions. These are extraordinary activities and efforts that could not have been planned in advance, but it was inevitable to mobilize the resources in the organization.

Conclusion/Recommendations

- There is a need to focus resources and strengthen partnerships with stakeholders in the Harmanli area due to the complex situation of reception, accommodation and services, the low capacity and limited resources of institutions to work with refugees, the evidence of violations of their rights and the presence of corrupt practices.
- It is necessary to work more intensively with the SAA and the subordinate SSDs in the regions of the country in order to create favourable conditions for the reception of refugees and migrants in the local social services, which at this stage in most cases remain conservative and closed for this target group..
- To develop fostering services for unaccompanied refugee children, particularly working to build the capacity of foster parents with a refugee background who are integrated into the country.
- Support active participation in the management of processes, for example by introducing a Refugee Council in each RRC, the functioning of which should be specified in the Rules of Procedure. Such a form could ensure the participation of refugees in the decision-making process concerning their stay in the centres. In this way they could be involved in solving the problems of the refugee centres in the country.
- Specify explicitly a procedure in the RRC in the country for the submission of complaints, signals and suggestions by refugees, of which they have the right to be regularly informed.
- Provide more information sessions in the Detention Centre and RRCs to help raise awareness and hence prevention on various topics among refugees.
- Hold regular multi-agency meetings on various issues initiated by the RRCs in the field, involving as many stakeholders as possible.

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IV. Conclusion

This analysis aims to serve experts from different disciplines working with migrants and asylum seekers, taking into account the complex and dynamic context of migration processes. Despite its title, the analysis does not claim to be exhaustive and final. Just at the time of writing, in the last few days, events have taken place in Nagorno-Karabakh, Israel and the Gaza Strip. That is why we believe that our work together does not end here and will continue, because we know that we still have a long and difficult road ahead of us.