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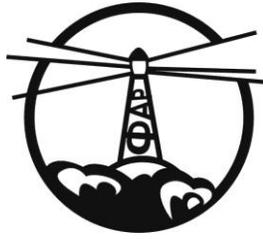
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**Advocacy Report**  
**on the “Red Line” Detention of Asylum Seekers**  
**upon Entry in Bulgaria**

by Dr. Valeria Ilareva,  
Foundation for Access to Rights – FAR

July 2018



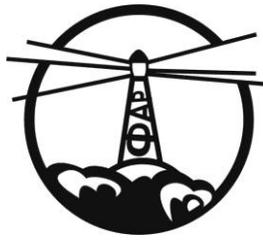
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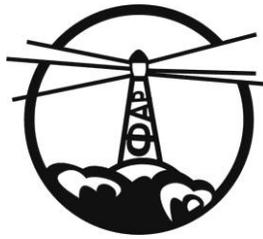
## Introduction

The legal framework of immigration detention in Bulgaria is based on two different branches of law: immigration law for irregular migrants and refugee law for asylum-seekers. Bulgaria formally introduced a specific detention regime for asylum-seekers in October 2015 (with entry into force on 01 January 2016), but in practice asylum-seekers have been detained both prior and after that as irregular migrants in a return procedure.<sup>1</sup> In December 2016 Bulgaria further introduced a third type of administrative detention of foreign nationals, which is not envisaged neither in EU law, nor in the European Convention on Human Rights: the so-called 'short-term accommodation' under Article 44, para.13 of the Law on Foreign Nationals in the Republic of Bulgaria<sup>2</sup>, which purpose by law

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<sup>1</sup>See, for example, Cordelia Foundation, Hungarian Helsinki Committee, Foundation for Access to Rights and Assistance Centre for Torture Survivors, *From Torture to Detention: Access of Torture Survivor and Traumatized Asylum Seekers to Rights and Care in Detention*, January 2016, pp.8-9, [http://www.farbg.eu/wp-content/uploads/2016/07/3.2.-EN-From\\_torture\\_to\\_detention.pdf](http://www.farbg.eu/wp-content/uploads/2016/07/3.2.-EN-From_torture_to_detention.pdf)

<sup>2</sup> State Gazette No. 97 of 6 December 2016



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is to establish the identity of the person and to decide on subsequent measures to be taken. This report addresses the blurred boundaries between detention and reception of asylum seekers upon their entry in Bulgaria and looks into immigration law detention of asylum seekers as irregular migrants.

## I. Increased use of detention upon entry

Although the number of both irregular entries and asylum seekers in Bulgaria has sharply decreased since 2016, the usage of immigration detention is significantly high. Furthermore, the average length of immigration detention has increased.

**Table 1. Size of immigration detention in Bulgaria**

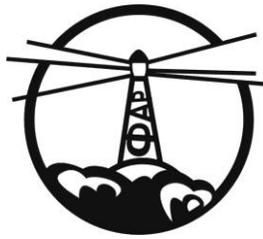
Year	Apprehended irregular immigrants in Bulgaria	Persons placed in immigration detention in that year	Immigration detainees who applied for asylum
2015	34 056	27 724	26 533
2016	18 844	18 391	16 382
2017	2 989	3 332	1 970

According to the official statistics of the Bulgarian Ministry of the Interior, in **2015** the number of persons apprehended as irregular immigrants on Bulgarian territory was 34 056.<sup>3</sup> For the same period, the number of persons who were placed in immigration detention in the three centres<sup>4</sup> in Bulgaria was 27 724<sup>5</sup>, that is, **81, 41%** of the total number of apprehended foreign nationals. Among the 27 724 immigration detainees, in

<sup>3</sup> Ministry of Interior, Monthly Information on the Migration Situation in the Republic of Bulgaria, December 2015, [https://www.mvr.bg/docs/default-source/planiraneotchetnost/3bfdd98b-mesechna\\_spravka\\_dekemvri\\_2015-pdf.pdf](https://www.mvr.bg/docs/default-source/planiraneotchetnost/3bfdd98b-mesechna_spravka_dekemvri_2015-pdf.pdf)

<sup>4</sup> The three centres, where immigration detainees were placed, are the one in Bousmantsi near Sofia, the one in Lyubimets and the one in Elhovo.

<sup>5</sup> Ministry of the Interior, Decision to grant access to public information No.812104-158 of 29.06.2018



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2015 the number of persons who submitted an application for international protection from the detention centre, was 26 533 persons<sup>6</sup>, that is, 95, 70 % of the total number of immigration detainees for the year.

In **2016**, the number of persons apprehended as irregular immigrants on Bulgarian territory was 18 844.<sup>7</sup> For the same period, the number of persons who were placed in immigration detention was 18 391<sup>8</sup>, that is, **97, 60%** of the total number of apprehended foreign nationals. Among the 18 391 immigration detainees, in 2016 the number of persons who submitted an application for international protection from the detention centre, was 16 382 persons<sup>9</sup>, that is, 89, 08 % of the total number of immigration detainees for the year.

In **2017**, the number of persons apprehended as irregular immigrants on Bulgarian territory was 2 989 new arrivals.<sup>10</sup> For the same period, the number of persons who were placed in immigration detention was 3 332<sup>11</sup>, that is, **111, 48 %** of the total number of apprehended newly arrived foreign nationals. Among the 3 332 immigration detainees, in 2017 the number of persons who submitted an application for international protection from the detention centre, was 1970 persons<sup>12</sup>.

The analysis of the above data leads to the conclusion that **although the number of third country nationals who crossed the Bulgarian border irregularly dropped significantly from 31 281 persons in 2015 to 2 989 persons in 2017, immigration detention has remained the main tool for migration management and recourse to it**

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<sup>6</sup>Ibid.

<sup>7</sup> Ministry of Interior, Monthly Information on the Migration Situation in the Republic of Bulgaria, December 2016, p. 3, [https://www.mvr.bg/docs/default-source/planiraneotchetnost/022cb329-mesechna\\_spravka\\_dekemvri\\_2016-pdf.pdf](https://www.mvr.bg/docs/default-source/planiraneotchetnost/022cb329-mesechna_spravka_dekemvri_2016-pdf.pdf)

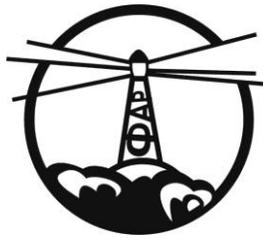
<sup>8</sup> Ministry of the Interior, Decision to grant access to public information No.812104-158 of 29.06.2018

<sup>9</sup>Ibid.

<sup>10</sup> Ministry of Interior, Monthly Information on the Migration Situation in the Republic of Bulgaria, December 2017, p. 2, [https://www.mvr.bg/docs/default-source/planiraneotchetnost/spravka\\_december\\_2017\\_internet.pdf?sfvrsn=a06f2dd5\\_2](https://www.mvr.bg/docs/default-source/planiraneotchetnost/spravka_december_2017_internet.pdf?sfvrsn=a06f2dd5_2)

<sup>11</sup> Ministry of the Interior, Decision to grant access to public information No.812104-158 of 29.06.2018

<sup>12</sup>Ibid.



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has even increased. Furthermore, the length of immigration detention has also increased, as seen in table 2 below.

**Table 2. Average length of immigration detention<sup>13</sup>**

Year	SHTAF – Sofia	SHTAF - Lyubimets	Distribution center in Elhovo
2015	25 days	24 days	7 days
2016	20 days	15 days	14 days
2017	59 days	52 days	20 days

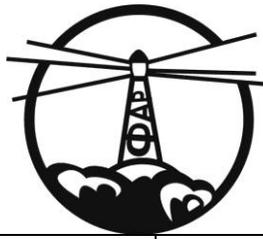
By amendments in the Law on Foreign Nationals in the Republic of Bulgaria (LFRB) made in December 2017, the possibilities of detainees to challenge the prolongation of the period of their detention were significantly reduced. Prior to the amendments, there was an automatic judicial review of the person's detention every 6 months, until the maximum time limit of 18 months was reached. Following the amendments, after the expiry of the initial 6 months of immigration detention, the Director of the Migration Directorate may issue an order for prolongation of the immigration detention for a period of up to 12 additional months. Judicial review of the latter order is no longer automatic, but conditioned on the submission of an appeal by the detainee within a deadline of 14 days.

The top three nationalities of immigration detainees in Bulgaria are **Afghanistan, Syria and Iraq**, as seen in table 3 below. The statistics indicates that most or all of these persons sought asylum in Bulgaria, while at the same time upon their entry in Bulgaria they were first subjected to immigration detention for the purpose of removal.

**Table 3. Nationalities of detained third country nationals<sup>14</sup>**

<sup>13</sup> Source: Ministry of the Interior, Decision to grant access to public information No.812104-158 of 29.06.2018

<sup>14</sup> Source: Ministry of the Interior, Monthly Information on the Migration Situation in the Republic of Bulgaria, December 2015, p. 2, [https://www.mvr.bg/docs/default-source/planiraneotchetnost/3bfdd98b-mesechna\\_spravka\\_dekemvri\\_2015-pdf.pdf](https://www.mvr.bg/docs/default-source/planiraneotchetnost/3bfdd98b-mesechna_spravka_dekemvri_2015-pdf.pdf); Ministry of the Interior, Monthly Information on the Migration Situation in the Republic of Bulgaria, December 2016, p. 3, <https://www.mvr.bg/docs/default->



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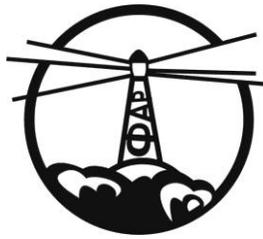
Nationality	2015	2016	2017
Afghanistan	33%	52%	37,9%
Iraq	24%	20%	18,0%
Syria	39%	13%	18,8%
Other	4%	15%	25,3%

The issue of arbitrary access to the asylum procedure in Bulgaria has persisted for many years and has resulted in immigration detention and sometimes *refoulement* of asylum seekers.<sup>15</sup> Thus, in the **Case of Kadzoev C-357/09 PPU**, the asylum seeker had been placed in immigration detention for the purpose of removal and his asylum application was registered as late as 7 months after it was made. Then Mr. Kadzoev's asylum application was processed and rejected as manifestly unfounded in the immigration detention centre, in spite of credible accounts that he was a torture victim. In national court proceedings, the question arose 'whether, when calculating the period of detention for the purpose of removal under Article 15(5) and (6) of Directive 2008/115, the period must be included during which the execution of the removal decision was suspended because of the examination of an application for asylum' (paragraph 40 of the [Judgment](#)). The Court of Justice noted that detention for the purpose of removal governed by Directive 2008/115 and detention of an asylum seeker '**fall under different legal rules**' (para.45). Consequently, the Luxembourg Court answered that a period during which a person has been held in a detention centre on the basis of a decision taken pursuant to the provisions of national and European law concerning asylum seekers may not be regarded as detention for the purpose of removal within the meaning of Article 15 of Directive 2008/115. The

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<sup>15</sup> Ilareva, Valeria, Information Note on Arbitrariness regarding Access to the Asylum Procedure in Bulgaria, January 2012, <http://www.farbg.eu/wp-content/uploads/2016/07/Information-Note-Access.pdf>



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latter was not the case with Mr. Kadzoev, whose detention during the asylum procedure had continued on the basis of the detention order for the purpose of removal.<sup>16</sup>

In December 2015, in transposition of the EU Reception Conditions Directive<sup>17</sup>, Bulgaria introduced<sup>18</sup> a time limit to register an asylum seeker following the submission of an application for international protection - namely, 6 working days, if the application was submitted through a detention centre of the Migration Directorate.<sup>19</sup> Furthermore, since 1 January 2016 Bulgaria started to apply detention of asylum seekers under the Law on Asylum and Refugees (LAR), in parallel to the already existing regime of detention of removable irregular migrants under the Law on Foreign Nationals in the Republic of Bulgaria (LFRB). These changes, however, did not lead to a reduction in the average period that detainees spent in immigration detention under the LFRB. While in 2016 the average length of immigration detention was 20 days in the centre in Sofia and 15 days in the centre in Lyubimets, in 2017 the average length increased to 59 days in Sofia and 52 days in Lyubimets.<sup>20</sup>

**The introduction of a special regime for detention of asylum seekers under the EU Reception Conditions Directive did not lead to discontinuation of the practice of detaining asylum seekers as removable irregular immigrants prior to giving them access to the asylum procedure.<sup>21</sup> What is more, the practice of examining one's**

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<sup>16</sup> Ilareva, Valeria, *Detention of asylum seekers: interaction between the Return and Reception Conditions Directives in Bulgaria*, November 2015, <http://eumigrationlawblog.eu/detention-of-asylum-seekers-interaction-between-the-return-and-reception-conditions-directives-in-bulgaria/>

<sup>17</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection

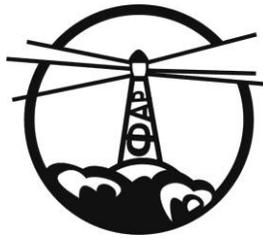
<sup>18</sup> State Gazette No.101 of 22 December 2015

<sup>19</sup> Article 58, paragraph 4 of the Law on Asylum and Refugees.

<sup>20</sup> Source: Ministry of the Interior, Decision to grant access to public information No.812104-158 of 29.06.2018

<sup>21</sup> For example, the following evidence was collected by FAR in 2016 and published in the [Analytical report on the exercise by detained immigrants of the right to be heard in Bulgaria](#):

*“The average length of the period between the submission of an application for international protection and registration by the SAR is as follows: For the interviewed Pakistani nationals: 4 months and 5 days. This number includes four unaccompanied minors who had to wait 3 months on average to be registered by SAR after submitting applications for international protection; For the*



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**application for international protection while the person is placed in detention for the purpose of removal under the LFRB was not abandoned, but even reinforced.**

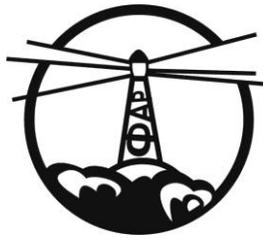
According to Article 20(2) of the Ordinance on Immigrant Detention Centres<sup>22</sup> ‘*a foreign national shall be released from the immigrant detention centre when an application for international protection under the Law on Asylum and Refugees has been filed and the grounds provided for in Article 44(12) of the LFRB no longer exist*’. According to Article 44(12) of the LFRB, immigration detention is not to be discontinued when there are serious grounds to believe that the foreign national has filed a *subsequent* application for international protection with the sole purpose of delaying his/her return. In the latter case the extension of detention can be appealed in court. This legislative solution is based on the rule that when a detained foreign national files an application for international protection, the return process is ceased by law and detention for the purpose of return is no longer justified. Therefore, the asylum seeker must be released from immigration detention. In practice, however, the law is often breached by the Bulgarian authorities and asylum seekers are left in immigration detention, even after they are formally admitted to the asylum procedure. In 2016 FAR asked the Ministry of the Interior how many detained foreign nationals, who find themselves at the immigration detention centres in Sofia and Lyubimets and had filed a *first* application for international protection, were registered as asylum seekers by the State Agency for Refugees (SAR). According to the answer<sup>23</sup> received, as of 18 July 2016 the numbers were as follows: there were 409 detained foreign nationals in the Sofia Detention Centre of whom 337 had applied for asylum and 222 in the

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*2 interviewed Syrian nationals: 2 months and 12 days; For the interviewed Lebanese national: 1 month; For the interviewed Turkish national: 3 months; For the interviewed family with a 9-year old child from Iran: 1 month; For the two cases of Iraqi nationals, including single father with a 7-year old child: 5 months; For the interviewed Moroccan national: 1 month; For the 3 interviewed Afghani nationals, including 2 unaccompanied minors: 2 months.”*

<sup>22</sup>The full name of the Ordinance in Bulgarian is “Наредба № 13-1201 от 01.06.2010 г. за реда за временно настаняване на чужденци в специалните домове за временно настаняване на чужденци и в техните звена и за организацията и дейността им”.

<sup>23</sup> Ministry of the Interior, Decision No 812104-75/21.07.2016 on granting access to public information



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Lyubimets Detention Centre of whom 53 had applied for asylum.<sup>24</sup> In 2017 the Bulgarian Helsinki Committee identified 77 asylum seekers whose asylum procedures were carried out and completed while they were placed in immigration detention.<sup>25</sup> In 2018 we asked the State Agency for Refugees (SAR) whether they carry out asylum interviews with immigration detainees at the centres of the Migration Directorate (SHTAFs) and, if yes, what the legal ground is for that. SAR replied that “*(i)n case there are obstacles for the foreigner to be handed over for accommodation by SAR, the procedural actions are carried out in the SHTAF until the obstacles for handing over the foreigner cease to exist*”<sup>26</sup>. It has not been explained what these ‘obstacles’ for releasing the person from immigration detention are in view of the fact the asylum procedure ceases the implementation of the return and thus immigration detention does not serve a lawful purpose.

Lawyers in Bulgaria have challenged in court the lawfulness of asylum decisions taken on the basis of asylum procedures carried out in detention under Article 15 of the EU Return Directive<sup>27</sup>. The national court however had refused to acknowledge that the infringement of the asylum procedure in such cases had been a substantial one, because “the outcome of the asylum procedure would have been the same, even if the asylum seeker had not been in immigration detention”<sup>28</sup>. The court had based its conclusion on the reasoning that, although in conditions of immigration detention, the asylum interview was conducted by a competent authority with an interpreter. In spite of this discouraging case law, in 2018 a breakthrough was achieved in the court case of a person assisted by FAR lawyers. By

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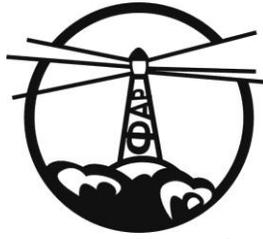
<sup>24</sup> Foundation for Access to Rights, [Analytical report on the exercise by detained immigrants of the right to be heard in Bulgaria](#), September 2016

<sup>25</sup> Bulgarian Helsinki Committee, AIDA Report on Bulgaria, 2017 Update, <http://www.asylumineurope.org/reports/country/bulgaria>

<sup>26</sup> State Agency for Refugees, Decision No. RD05-466 of 19.06.2018 on granting access to public information.

<sup>27</sup> 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

<sup>28</sup> European Council on Refugees and Exiles, Preliminary Deference? The impact of judgements of the Court of Justice of the EU in cases X.Y.Z., A.B.C. and CIMADE and Gisti on national law and the use of the EU Charter of Fundamental Rights, March 2017, pages 61 and 62, <https://www.ecre.org/wp-content/uploads/2017/03/CIEU-study-Feb-2017-NEW.pdf>



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[Judgment No 977 of 16 February 2018](#), case No 2311/2017, the Sofia City Administrative Court found that the conduction of the personal interview with the applicant in an immigration detention center constituted a serious breach of the administrative procedural rules and thus led to unlawfulness of the negative asylum decision.

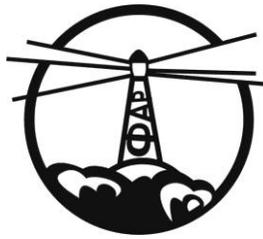
In December 2016 Bulgaria further introduced **a third type of administrative detention of foreign nationals**, which is not envisaged neither in EU law, nor in the European Convention on Human Rights: **the so-called ‘short-term accommodation’** under Article 44, para.13 of the Law on Foreign Nationals in the Republic of Bulgaria<sup>29</sup>, which purpose by law is to establish the identity of the person and to decide on subsequent measures to be taken. While the time limit for immigration detention for the purpose of return is 18 months, the statutory time limit for this preliminary ‘short-term’ detention is 30 days. By law, ‘short-term’ detention takes place in ‘special units’ at the detention centres of the Migration Directorate. The order for ‘short-term’ accommodation may be appealed in accordance with the general procedure for appealing individual administrative acts under the Bulgarian Code on Administrative Procedure. The latter provides for a 14-days preclusive term to appeal the administrative act before the court. The judgment of the first level court is subsequently subject to appeal before the Supreme Administrative Court. The Law on Foreign Nationals states that the appeal does not suspend the implementation of the order for ‘short-term accommodation’ and that the court should decide the case ‘immediately’. However, in the only case of judicial review of such an order so far<sup>30</sup>, the first level court issued its judgment on the lawfulness of the short-term accommodation in question following the expiration of its period of 30 days.

By law, the order for ‘short-term accommodation’ should be issued “following an individual assessment of the principle of proportionality”. The official statistics of the Ministry of the

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<sup>29</sup> State Gazette No. 97 of 6 December 2016

<sup>30</sup> Sofia City Administrative Court, Judgment of 17 May 2018 in case No.4050/2018



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Interior however speaks that 'short-term' detention is being imposed to persons of different nationalities, but mostly Syrians.

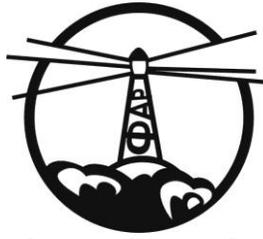
**Table 4. 'Short-term' detention in Bulgaria<sup>31</sup>**

Country	Lyubimets centre 01.01.2018 – 14.06.2018	Sofia centre 01.01.2018 – 14.06.2018	Sofia centre 2017
Algeria	2		
Afghanistan	17	2	3
Stateless		1	
Iraq	21	53	
Iran	5		
Congo	1		
Lebanon		1	
Pakistan	2	2	1
Syria	35	26	2
Turkey	2	2	1
<b>TOTAL</b>	<b>85</b>	<b>87</b>	<b>7</b>

The average length of the application of 'short-term' detention so far is 19 days in the centre in Lyubimets and 15 days in the centre in Sofia.<sup>32</sup> The official statistics also reveals that most of the short-term detained third country nationals are asylum seekers. Out of the

<sup>31</sup> Source: Ministry of the Interior, Decision No.812104-158 of 29.06.2018 on granting access to public information

<sup>32</sup> Source: Ibid.



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85 persons detained in Lyubimets, 65 persons submitted asylum applications; out of the 94 persons detained in Sofia, 73 persons submitted asylum applications.<sup>33</sup>

It is noteworthy that the introduction of ‘short-term’ detention in law aimed to legalize the already existing practice of de facto detaining persons who crossed the border irregularly in the so-called ‘Distribution Centre’ in Elhovo. For example, reports from 2015 contain data that the handing over of persons from the Border Police to the Distribution Centre in Elhovo took place without any detention orders:

*“All border applicants, except those who arrived openly at border crossing points, are being sent by the border police to Elhovo Allocation (triage) centre, which violates the present national legal arrangements. Additionally, the referral is conducted without detention orders, thus can be qualified as an illegal deprivation of liberty.”<sup>34</sup>*

### **The government’s rationale for the increased use of detention**

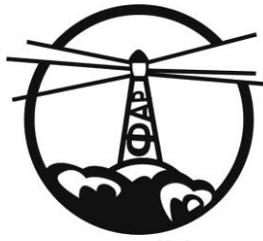
When the ‘Distribution center’ in Elhovo, a former school campus, was opened in 2013, it was given as an example of one of the ‘**urgent measures**’ of a **temporary nature** to tackle the “*refugee wave*” situation in Bulgaria. The then Minister of the Interior, Tsvetelin Yovchev, presented it to address “*the problem of finding places for asylum seekers*”<sup>35</sup>, although in practice it constituted a place for deprivation of liberty outside the law. According to a press release of the Ministry of the Interior, titled “*A Distribution Centre is established in Elhovo, which will assist the initial processing of the refugees, stopped at the Bulgarian – Turkish border*”, the Prosecutor General stated that “*the creation of the*

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<sup>33</sup> Source: *ibid.*

<sup>34</sup> Bulgarian Helsinki Committee, AIDA Report on Bulgaria, Fourth Update October 2015, page 20, <http://www.asylumineurope.org/reports/country/bulgaria> ; Foundation for Access to Rights – FAR, *An alarming “legalization” of the “distribution center” in Elhovo is being prepared*, April 2016, <http://www.farbg.eu/bg/elhovo/>

<sup>35</sup> Bulgarian National Radio, *A temporary distribution centre in Elhovo starts to act in two weeks* (In Bulgarian: “До две седмици започва да действа временният разпределителен център в Елхово”), 17.09.2013, <http://bnr.bg/post/100072629/do-dve-sedmici-zapochva-da-deistva-vremenniyat-razpredelitelnen-centyr-v-elhovo>



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*distribution center will have two main objectives: humanitarian and solving administrative and criminal law problems”.*<sup>36</sup>

Although the number of asylum seekers in Bulgaria dropped from 20 391 in 2015 to 3700 in 2017<sup>37</sup>, the above line of rhetoric has continued. ‘Exceptional measures of a temporary character’ like mass detention are ‘normalized’ in the public discourse through a two-sided argumentation: on the one side, they are presented as ‘humanitarian’ response (detention under all three legal regimes in Bulgaria is called ‘accommodation’ in law) and, on the other hand, they are cited as actions taken to solve public order and national security threats.

As pointed out in the Annual Report on Migration and Asylum in Bulgaria for 2017, published by the European Migration Network, the refugee issue was used by political actors throughout the political spectrum in the public debate on winning electoral support in the parliamentary elections in 2017.<sup>38</sup> Since May 2017 Bulgaria is governed by a coalition between the party “Citizens for European Development of Bulgaria” (GERB) and a union of three nationalist formations under the name “United Patriots”. The co-chairperson of “United Patriots”, Valery Simeonov, declared that one of the priorities of the party is “*non- admission of migrants and refugees on the territory of the country and immediate deportation of those who have come illegally in the country*”<sup>39</sup>.

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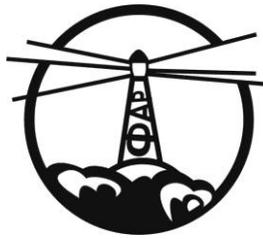
<sup>36</sup> Ministry of the Interior, *A Distribution Centre is established in Elhovo, which will assist the initial processing of the refugees, stopped at the Bulgarian – Turkish border* (In Bulgarian: “В Елхово се създава разпределителен център, който ще подпомага първоначалното обработване на спрениите на българо – турската граница бежанци”), 17 септември 2013,

[https://www.mvr.bg/press/%D0%BD%D0%B0%D1%87%D0%B0%D0%BB%D0%BE/%D0%BF%D1%80%D0%B5%D0%B3%D0%BB%D0%B5%D0%B4/%D0%BD%D0%BE%D0%B2%D0%B8%D0%BD%D0%B8/news130917\\_07](https://www.mvr.bg/press/%D0%BD%D0%B0%D1%87%D0%B0%D0%BB%D0%BE/%D0%BF%D1%80%D0%B5%D0%B3%D0%BB%D0%B5%D0%B4/%D0%BD%D0%BE%D0%B2%D0%B8%D0%BD%D0%B8/news130917_07)

<sup>37</sup> Source: State Agency for Refugees, <https://www.aref.government.bg/index.php/bg/aktualna-informacia-i-spravki>

<sup>38</sup>European Migration Network, Annual Report on Migration and Asylum, National Report, part 2, Bulgaria, page 8, [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/03a\\_bulgaria\\_arm\\_2017\\_part2.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/03a_bulgaria_arm_2017_part2.pdf)

<sup>39</sup>Clubz.bg, Valery Simeonov: “Let’s not admit refugees and migrants in the country” (In Bulgarian: Валери Симеонов, „Да не допускаме бежанци и имигранти в страната“), 19.04.2017, <https://clubz.bg/52978-valeri-simeonov-da-ne-dopuskame-bejanci-i-migranti-v-stranata>



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In fact, the reduced number of entries by asylum seekers in Bulgaria is a result of the policy of “protecting the external borders of the European Union”, proclaimed as one of the achievements of Bulgaria. The Bulgarian government is boastful with the fence built across the Bulgarian-Turkish border. In June 2018 the Prime Minister Boyko Borisov was quoted saying: *“The facility is larger than that built by Victor Orban. Construction has long been completed, we simply do not make any noise about it. Now the 237 km long fence is equipped with video and thermal cameras. Recently, border guards received 80 new Nissan jeeps.”*<sup>40</sup>. Before the ‘mini summit’ of the European Union leaders on the topic of migration in Brussels on 24 June 2018, Mr Borisov had announced at the National Assembly that he would present the Commission with four proposals: a stop to the migrant flow, guaranteeing all external borders, outsourced migrant centres outside the European Union and indoor-type centres for refugees already in the European Union.<sup>41</sup>

## II. Detention places and detention conditions

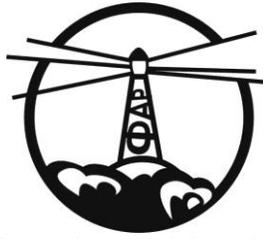
According to the terminology adopted in Bulgarian legislation, foreign nationals who are subject to removal are ‘*coercively accommodated*’ under the Law on Foreign Nationals in the Republic of Bulgaria (LFRB). Furthermore, irregular migrants whose identity needs to be established may be subjected to ‘*short-term accommodation*’ under the LFRB. The LFRB does not use the term ‘detention’, although in practice the law refers to deprivation of liberty on administrative grounds. The places where foreign nationals are ‘accommodated’ under the LFRB are called ‘*Special Homes for Temporary Accommodation of Foreigners*’ (SHTAF). These are the official names of immigrant detention centres in Bulgaria. Likewise, asylum detention under the Law on Asylum and Refugees (LAR) is named ‘*temporary*

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<sup>40</sup> Dnevnik, *Quote of the Day. Borisov: “Our fence is larger than the one of Victor Orban, we do not make noise.* (In Bulgarian: [Нашата ограда е по-голяма от тази на Орбан, но не вдигаме шум](#)”), 27 June 2018

<sup>41</sup> Dnevnik, *Borisov wants an immediate closure of EU borders and admission of only those fleeing war* (In Bulgarian: [“Борисов иска незабавно затваряне на границите на ЕС и да се допускат само бягащи от война”](#)), 22 June 2018 ;

Dnevnik, *Borisov has introduced Orban to his ideas about migrants* (In Bulgarian: [“Борисов е запознал Орбан с идеите си за мигрантите”](#)), 22 June 2018



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*accommodation*' in a *'closed-type centre*'. The detention centre in Elhovo was named a *'Distribution Centre'*<sup>42</sup>.

The misleading terminology used in Bulgarian law makes it even more important to highlight that **in this type of “accommodation” people are deprived of a fundamental human right – the right to liberty. These centers are not homes.** The buildings where detention takes place have the infrastructure of a prison: high walls, barbed wire, grills, security guards, cameras and restricted access. However, unlike prisoners, who have the right to go on home leave for good behavior, detained immigrants are not allowed to leave the center. They do not know the period of time for which they will be detained. Some cases extend for weeks, others for months or even years.<sup>43</sup> It is noteworthy that the European Parliament amended the term “temporary custody”, used in the EU Commission’s proposal for a directive on the return of illegally staying third country nationals, to “detention”. This demonstrates official recognition of realities in practice “given the deprivation of freedom it entails and its duration, up to six months, which is far from temporary”<sup>44</sup>.

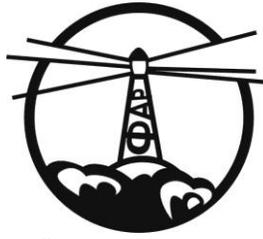
In Bulgaria there are three immigration detention centres: one is in the Busmantsi neighbourhood of the capital Sofia with a capacity of 400 persons, another one is in the town of Lyubimets with a capacity of 300 persons and the third one is the “distribution centre” in the town of Elhovo. Since 29 January 2017 the distribution centre in Elhovo is

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<sup>42</sup> The Minister of the Interior, Mr. Tsvetlin Yovchev, issued Order № Iz - 1887 / 25.09.2013, which was based on Order No. P-165 / 30.08.2013 of the Prime Minister of the Republic of Bulgaria, Mr. Plamen Oresharski. By Order № Iz - 1887 / 25.09.2013 the Distribution Center in Elhovo was established. Its management was delegated to the Director of Migration Directorate at the Ministry of Interior. However, the possibility to establish and open such a “Distribution Center” is not envisaged neither in the Law on Foreign Nationals in the Republic of Bulgaria, nor in the Law on Asylum and Refugees.

<sup>43</sup> Statewatch: Ilareva, Valeria, *Immigration Detention in International Law and Practice (In search of solutions to the challenges faced in Bulgaria)*, 2008, pp. 2-3 <http://www.statewatch.org/news/2008/jan/valeria-illareva-immigration-detention-bulgaria.pdf>

<sup>44</sup> European Parliament, Committee on Civil Liberties, Justice and Home Affairs, *Report on the proposal for a directive of the European parliament and the Council on common standards and procedures in Member States for returning illegally staying third-country nationals*, A6-0339/2007, 20.09.2007, Amendment 10



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undergoing “reorganizational and repair activities”<sup>45</sup> and all foreign nationals are redirected to the other two detention centres of the Migration Directorate (Busmantsi and Lyubimets).

In the framework of the Red Line project in 2018, FAR lawyers conducted monitoring visits at the Busmantsi detention centre near Sofia. We interviewed 8 detainees: a 45-years-old man, a citizen of Turkey; an 18-years-old girl, a Turkish citizen; a 40-years-old Iraqi man; a 27-years-old Nigerian man; a 19-years-old Syrian man; a 37-years-old Nigerian man, a 25-years-old Guinean man and a 40-years-old Syrian man. In the description of the detention conditions below, the testimonies of these people are incorporated. Furthermore, regarding the detention conditions in the Lyubimets detention centre, we will cite the findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), published on 4 May 2018<sup>46</sup>, regarding their visit to the centre in the period from 25 September to 6 October 2017.

The Busmantsi detention centre was inaugurated and started to function in 2006, while the Lyubimets detention centre was opened in 2011. Although the Lyubimets detention centre is known to have better material conditions than the Busmantsi one, the CPT concluded that the “*material conditions were generally very poor*”<sup>47</sup>. The custodial staff is equipped with truncheons and pepper spray as special means. However, CPT is “*concerned by the fact that some custodial staff carried truncheons permanently, including inside the accommodation areas and in full view of detained foreign nationals. This is an intimidating and unjustified practice; the Committee recommends that it cease without delay*”<sup>48</sup>.

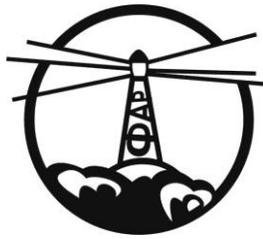
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<sup>45</sup> Ministry of the Interior, Decision No.812104-158 of 29.06.2018 on granting access to public information

<sup>46</sup> CPT, 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 25 September to 6 October 2017, Strasbourg, 4 May 2018, [https://rm.coe.int/16807c4b74?utm\\_source=ECRE+Newsletters&utm\\_campaign=9ebbf0fe1EMAIL\\_CAMPAIN\\_2018\\_05\\_25\\_03\\_06&utm\\_medium=email&utm\\_term=0\\_3ec9497afd-9ebbf0fe1-42228888](https://rm.coe.int/16807c4b74?utm_source=ECRE+Newsletters&utm_campaign=9ebbf0fe1EMAIL_CAMPAIN_2018_05_25_03_06&utm_medium=email&utm_term=0_3ec9497afd-9ebbf0fe1-42228888)

<sup>47</sup>Ibid., page 5

<sup>48</sup>Ibid., paragraph 46



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The dormitories in both detention centre are equipped with bunk beds and occasionally with other furniture - mainly lockers. The furniture is broken-down and dirty. The bedding is also dirty. The CPT noted that in Lyubimets *“mattresses were infested with bed bugs”*.<sup>49</sup> Four detainees interviewed by FAR in Busmantsi shared that there were bugs in the rooms and they had itches from bug bites: *“There are bed bugs in the room and cockroaches. They bite and take blood.”*, as one of the persons worded it.

Both in Busmantsi and Lyubimets another main complaint by detainees is the lack of access to the toilets during the night when the dormitories are locked. Two of FAR’s interviewees in Busmantsi shared that the room was locked from 10:30 p.m. to 8 a.m.; one interviewee shared that the room was locked from 10:30 p.m. to 7 a.m. All of them were frustrated that during the time when the room was locked, they couldn’t go to the toilet.

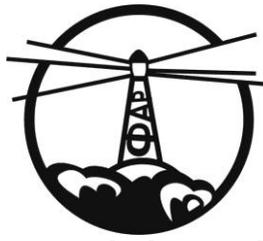
Busmantsi interviewees also pointed out to the hygiene of the center. One detainee complained that the toilet was dirty. Another detainee shared that they were doing the cleaning: *“We do the cleaning ourselves. There is no cleaner. It is supposed to have a cleaner. I am human. They treat me with respect in another EU country. In Bulgaria they treat us like animals. Everywhere stinks.”*

During their visit to the Lyubimets centre, the CPT noted that there were 43 minors (including infants) *“and absolutely nothing was provided for them, no adapted food and clothes, no toys, and it was difficult to obtain nappies for infants and sanitary materials for women”*<sup>50</sup>. Furthermore, CPT observed that the detention was dangerous for women and minors since they had to *“share the same dormitories with often unrelated adult men”*. The adult men were detained with their families. At the same time women and minors shared

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<sup>49</sup>Ibid., paragraphs 48 - 50

<sup>50</sup> Ibid.



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the dormitory with these unknown men being locked during the night and in the lack of electricity. The electricity is switched off between 11 p.m. and 7 a.m.<sup>51</sup>

**Table 5: Number of women and children in immigration detention<sup>52</sup>**

Year	Sofia		Lyubimets		Elhovo	
	Women	Children	Women	Children	Women	Children
<b>2015</b>	501	1444	705	1450	1782	4573
<b>2016</b>	363	1517	989	1788	1008	2763
<b>2017</b>	305	301	429	427	3	8

Women and children are also detained under the regime of “short-term detention”. According to the statistics of the Ministry of the Interior<sup>53</sup>, so far 35 women and 28 accompanied children were ‘short-term’ detained in the Busmantsi detention centre, and 15 women and 14 accompanied children – in the Lyubimets detention centre.

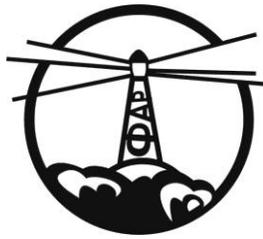
Regarding the activities at the center, the CPT delegation “*could not find a working radio or TV set, there was nothing to read and no board games, and there was no gym and no playground for children*”. However, the delegation found as a positive feature that there was “*an open-door policy during the day and the daily access (between 9 a.m. and noon and between 2 p.m. and 4 p.m.) to a spacious (but bare) asphalted outdoor area*”<sup>54</sup>. A detainee interviewed in Busmantsi by FAR shared that he can go out to an open air space for one hour in the morning, one hour in the afternoon and one hour in the evening. During the winter he could go out only for one hour once. This was also confirmed by another detainee - he was allowed to go out three times per day for one hour – at 12:00; 15:00 and 17:30h.

<sup>51</sup>Ibid., paragraphs 48 - 50

<sup>52</sup> Source: Ministry of the Interior, Decision No 812104 – 158 of 29 June 2018 to provide access to public information

<sup>53</sup>Decision No 812104 – 158 of 29 June 2018 to provide access to public information

<sup>54</sup> CPT, 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 25 September to 6 October 2017, Strasbourg, 4 May 2018, paras. 48-50



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Food in both detention centres is provided three times per day. The food is provided by a catering company. The CPT took notes of complaints about the not sufficient quality of the food. Two interviewed detainees in Busmantsi also complained about the quality of the food, while another one said *“The food is not the problem. I want to be free.”* According to the CPT report, in Lyubimets the detainees were allowed to make additional purchases at a shop, but the prices there were quite high. One detainee in Busmantsi shared that he wrote an application to the management of the center that he wanted to go out to a small shop near the detention centre together with policemen to buy cigarettes and food. There was no answer to the application. He didn’t understand why he was not allowed to go to the shop with the policeman.

Immigration detainees in Bulgaria are allowed to receive visits by relatives and friends upon a prior appointment. The visits are allowed every Tuesday and Thursday between 2pm and 4pm and can last for up to 30 minutes. Upon their visit to the Lyubimets detention centre, the CPT noted that *“(v)isits were also allowed up to twice per week (upon request) and took place under open conditions but in the presence of staff”<sup>55</sup>*. Lawyers can visit detainees every working day between 9am and 4pm. Detainees are responsible for contracting a lawyer by themselves: either from the NGOs visiting the centres or private ones.

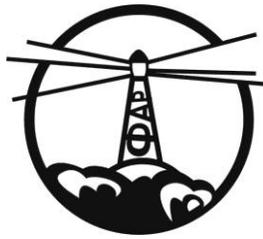
One of the persisting problems in the Bulgarian detention centres, noted also in previous reports<sup>56</sup>, is the lack of language interpreters at the detention centres. Upon its visit to the detention centre in Lyubimets, the CPT noted the absence of interpretation arrangements at the center and recommended that the *“use of fellow detainees as interpreters should, in principle, be avoided”<sup>57</sup>*. One of the interviewed detainees in the Busmantsi centre did not

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<sup>55</sup>Ibid. paragraph 61

<sup>56</sup> Foundation for Access to Rights, [Analytical report on the exercise by detained immigrants of the right to be heard in Bulgaria](#), September 2016

<sup>57</sup>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 25 September to 6



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have copies of the detention and return orders issued against him – since he did not understand their content and it was not translated to him, he refused to sign the documents and therefore the officials refused to give him copies.

The CPT noted that “*inter-detainee violence was common*”. The Director of the Lyubimets center reported to the delegation of a mass brawl between adult men that happened a few months before the visit. It resulted in injuries, even one of the detainees required hospitalization. A criminal investigation was opened and ongoing at the time of the visit.<sup>58</sup> There were 2 psychologists at the Lyubimets center, but at the time of the visit of CPT one was on maternal leave and the other on holiday for two weeks.

*“The CPT must stress once again the need for particular attention to be paid to the mental health and psychological state of foreign nationals in custody, some of whom are asylum seekers and may have experienced difficult situations – including torture or other forms of ill-treatment – in other countries. The Committee recommends that the Bulgarian authorities strive to improve the level of psychological assistance to foreign nationals detained at the Special Home for Accommodation of Foreigners in Lyubimets, including the provision of interpretation.”<sup>59</sup>*

## Conclusion

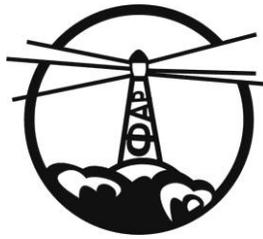
Courts in Bulgaria unequivocally consider the above described “accommodation” as detention. In the only case, in which a ‘short-term’ detainee managed to appeal his “accommodation” so far, the Court found the order to be unlawful. In the first place, the national court noted that the fact that the person had already been issued a return decision discredited the purpose of ‘short-term’ detention, which was to decide on the subsequent measures to be taken. Secondly, the court noted that the order did not meet the standard of

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October 2017, Strasbourg, 4 May 2018, paragraphs 59 – 60. See also the evidence collected by FAR under the HEAR project at <http://hear.farbg.eu/evidence-collection/case-studies/majeed/>

<sup>58</sup>Ibid., paragraph 47

<sup>59</sup>Ibid., paragraph 57



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proportionality as it contained no individual reasoning and there was no differentiated approach in deciding on the duration of the measure.<sup>60</sup>

By Ruling of 4 January 2018<sup>61</sup> the Supreme Administrative Court ordered the immediate release from immigration detention of an asylum seeker and stated that the submission of an application for international protection is a statutory fact that puts an end to immigration detention. For the first time the highest Bulgarian court ruled that asylum seekers could directly apply to the court for their immediate release from immigration detention once they have lodged a first application for international protection. The reasoning of the court has been that the return procedure is suspended and therefore removal detention of asylum seekers does not serve a lawful purpose.

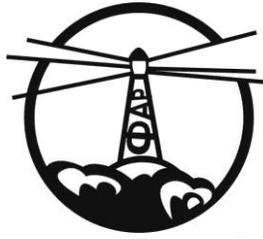
Indeed, one of the most devastating consequences from return detention for asylum seekers is the risk of *refoulement* and the feeling of lack of rule of law. “*If I go back, I am going to die*”, shared one of the detainees interviewed by FAR in Busmantsi. “*Bringing me here is like killing me softly*”, he explained when referring to the detention place.

The consequences from the disproportionate use of detention go beyond the personal lives of asylum seekers and negatively affect the host society as a whole. As lawyers, who provide legal assistance at the detention centres, we often hear detainees say that they want to go not only out of the detention centre, but also out of “this country”. Detention re-traumatizes asylum seekers. Treatment of foreign nationals upon their entry in the country determines their perception of Bulgaria and their willingness to stay on its territory after their release. This means that detention leads to an increase of secondary movements of third country nationals towards Western Europe. One of the main apples of discourse during the ‘mini summit’ of the European Union leaders on the topic of migration in

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<sup>60</sup> Sofia City Administrative Court, Judgment of 17 May 2018 in case No.4050/2018

<sup>61</sup> Supreme Administrative Court of the Republic of Bulgaria, [Ruling No.77 of 4 January 2018](#) in case No. 13014/2017



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Brussels on 24 June 2018 has been the implementation of Dublin Regulation returns of third country nationals. This is an issue that jeopardizes to divide the European Union.<sup>62</sup>

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<sup>62</sup> See, e.g., Al Jazeera, [Divided EU leaders meet over migration at 'mini-summit'](#), 24 June 2018