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DETENTION MAPPING REPORT

BULGARIA

Bulgarian Helsinki Committee

Program for Legal Protection of Refugees and Migrants

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CONTENT

LIST OF ABBREVIATIONS

ACCS – Administrative Court City of Sofia

ACRS – Administrative Court Region of Sofia

BPD – Border Police Department

MOI – Ministry of Interior

RDMOI – Regional Directorate of the Ministry of Interior

SANC – State Agency for National Security

SAR – State Agency for Refugees with the Council of Ministers

SDMOI – Sofia Directorate of Interior

DETENTION CENTER – Special Home for Temporary Accommodation of Foreigners

TCN – third-country nationals

AC – administrative court

INTRODUCTION

In 2015 Europe was visited by over 50 million third-country nationals who crossed the external borders of the European Union more than 200 million times. In addition to these regular travels, armed conflicts worldwide brought about another 1.8 million irregular crossings of the borders of the European states.

Due to the drastically rising numbers of migrants irregularly crossing Bulgaria's national borders over the last several years, the issues of migration flows management and regulation have become part of the national security agenda. The topic of control over immigration has shifted from the political into the public debate. At present all European states are faced to various degrees with an identical dilemma. European citizens are expecting enhanced measures aimed at safeguarding internal security and public order. This is why the European and national institutions and administrations have focussed their attention on developing and implementing law enforcement policies that can ensure an efficient migration management within the overall set of measures for combatting terrorism and organised crime.

At the same time the EU Member States have generally reaffirmed their understanding that the protection of fundamental human rights is one of the most significant achievements of European civilization in terms of which there should be no backsliding. Hence the measures for strengthening immigration control are countered with the need to maintain efficient safeguards for the protection of the individual's human rights, which should be applied irrespective of nationality, origin, gender, education, other individual attributes and peculiarities or the way of entry and residence.

Therefore, it is assumed that legislative and practical solutions must meet the requirement for striking the balance between immigration control and the immigrants' fundamental rights, including in particular the protection of refugees, stateless persons and vulnerable categories of third-country nationals.

In the context of the above, during the last decade all European states have witnessed a gradual but exponential increase in the use of administrative detention as a tool for immigration control and reducing the number of irregular migrants and asylum-seekers. While administrative detention was initially used for the sole purpose of enforcing removal from the territory of the relevant state, nowadays it is increasingly applied also with respect to newly arrived immigrants, as well as asylum-seekers during the procedure for international protection. Thus the administrative detention of third-country nationals – a measure securing deportation – has become a preventive measure aimed at discouraging immigrants and deterring their illegal entry into the territory of European states. This trend has contributed to the assumption that today thousands of migrants are being detained, even though the exact number of detentions as of any particular time remains unknown and unmeasurable.[1]

[1] The Uncounted: The detention of migrants and asylum seekers in Europe, Global Detention Project Report, published on 17.12.2015, see at: the uncounted

On the other hand, however, research findings show that detention in itself is not efficient enough as a tool to prevent illegal migration and lower the number of foreigners irregularly entering or residing.[2] Furthermore, detention is most often justified by the authorities with the need to secure the migrants' return. This aim, however, cannot always be achieved in the course of detention, which makes it unnecessary. The latter is valid mostly in respect of migrants in a procedure of return to their country of origin or habitual residence who are in a situation of prolonged detention without any real prospects of being returned. 24,684 foreigners had deportation orders issued in conformity with the national legislation in Bulgaria in 2015. Out of them only 736 (3%) measures in respect of illegally residing persons have been carried out. As for the other European states, the rates, while not being that low, are similar.

Therefore, while administrative detention of irregular migrants is a widely spread practice across Europe, there has also been a more intensive use of alternatives to detention over recent years. This is in line with the spirit of the requirements set forth in a number of universal and regional (European) legal instruments defining the legal framework of alternatives to detention. The main reason for using alternatives, however, stems from the high price of administrative detention in all its aspects. On the one hand, the financial costs are substantial, as detention requires ensuring a minimum amount of resources for food, healthcare, security, and other administrative staff of detention centres, as well as judicial expenses for translation/interpretation and procedural representation within the regular review of the need to continue the detention. On the other hand, in purely humane terms detention, especially if prolonged, has durable negative consequences for the detainee's physical and mental health and the right to free movement[3], which *inter alia* may give rise to processes of alienation and radicalization to the detriment of the national and Pan-European security.

At the same time the existing national alternative to detention – weekly reporting to the authorities at the police department with jurisdiction over the area of residence (the so-called signed promise of appearance) cannot be applied to newly arrived immigrants due to objective reasons, namely the absence of relatives or friends on the national territory who could act as their guarantors by providing them with accommodation and subsistence during the return procedure. This circumstance is breeding ground for corruption and fraudulent practices in terms of issuing false guarantees or assistance in lodging unnecessary applications for international protection, which in addition to the criminal nature of such actions undermines the efficiency of immigration control.
The purpose of this report is making an analysis of the efficiency of the national practice in applying administrative detention of foreign nationals and the potential new alternatives to detention which, when put in place, would both improve the efficiency of immigration control and lower its financial and human costs.

[2] A. Edwards, UNHCR, 'Back to Basics: The Right to Liberty and Security of Persons and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants' (April 2011) http://www.refworld.org/docid/4dc935fd2.html
[3] Becoming Vulnerable in detention, DEVAS Report, JRS Europe (June 2010), Chapters 9 and 10 of the Report, http://detention-in-europe.org/images/stories/DEVAS/jrs-europe_becoming%20vulnerable%20in%20detention_june%202010_public_updated%20on%2012july10.pdf

The content of the Detention Mapping Report Bulgaria and the reasoning therein are based on the data gathered in the course of the following activities:

- Field research: the aim is mapping for a period of 6 months (1 November 2015 – 30 April 2016) of the population of irregular migrants detained by virtue of an imposed measure “detention” at the centres for administrative detention of foreigners – the special homes for temporary accommodation of foreigners (detention center) with the MOI Migration Directorate. The mapping aims to establish and analyse the extent to which the one single alternative laid down in the law is applied in practice, and whether the immigration authorities consider its application prior to ordering the coercive measure of last resort – detention at detention center. Another focus of the research is the duration of detention and the existence or real legal safeguards. The efficiency of the regular judicial review at the 6th and the 12th month of the detention for the purpose of determining the need for extension is also an element of the research. Finally, an analysis is made of whether the detention of foreign nationals is in conformity with the legitimate purpose thereof – securing the deportation procedure by means of return to the country of origin or readmission to a neighbouring country which will enforce it.

- Feasibility study: the aim is identifying best European practices in applying alternatives to the detention of foreign nationals, which could be implemented in the national practice without particular challenges in view of the existing institutional and financial limitations.

- Strategic affairs: the aim is ensuring a more consistent case law of the competent courts carrying out the judicial review of detention, which will help to establish some legal standards in terms of the grounds, duration and purpose of detention, and will encourage discussing and applying potential alternatives.

- National expert group: consists of representatives of all relevant bodies, institutions and organisations of the legislative, executive and judicial powers, as well as representatives of the civil society and the academic community who will ensure methodological guidance for the above activities, sum up the outcomes, make conclusions and recommendations, assist in drafting this report, and coordinate the key conclusions and recommendations that will serve as justification for the national Action Plan for alternatives to detention, and, if the need be, will make some recommendation for amendments to the legislation with the aim to introduce new alternatives.

For the purpose of this report, *the term “alternatives to administrative detention”* is used as a generic one for any legislative, political or practical initiatives allowing immigrants to get accommodation outside the police detention centres during the determination of their right to stay on the territory or while awaiting the execution of the coercive deportation measure imposed (return or readmission).

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PART ONE

FIELD REASEARCH

1.1. PARAMETERS OF THE RESEARCH

Over the period 1 January 2015 – 30 April 2016 the research team carried out interviews with third-country nationals detained at the special homes for temporary accommodation of foreigners (detention center) with the Migration Directorate of the Ministry of Interior – Sofia (Busmantsi) and Lyubimets deportation centers, analyses of the statistical data provided by detention centers' administration, meetings with detention center staff (interviewers, psychologists, security guards, medical staff), and analyses of the documents relevant to the particular cases. The respondents were selected on the basis of a representative sample of the population in the detention centres, the focus being on those with prolonged detention (over 1 month), as well as on vulnerable groups, persons with repeated detention, persons with a final refusal of international protection by the State Agency for Refugees, persons without any real prospects for removal from the territory, and other similar data.

The gathering of information was based on personal interviews conducted with interpretation from the relevant languages, personal observation of the respondents by the team members, getting familiar with the types of documents – accommodation order, deportation order, take-over certificates, questionnaires, identity documents, applications for international protection, declarations for voluntary return, appeals, claims, applications for accommodation at an external address, applications for refusal of voluntary return to the country of origin, applications for international protection and declarations for their withdrawal, search and seizure records, court rulings, judgments, subpoena, communications, registration cards issued by SAR, decisions of SAR, etc.

Two statistical analyses were made on the basis of the field research: one of the total population in the two detention centres for the said 6-month period, and one of the sample selected on the basis of the criteria determined in advance, as described above, as well as interviews with the individuals selected.

The analysis of the *total population* is based on the following **parameters**: gender, nationality, age, the body issuing the coercive administrative measure, days of detention, category (persons with an application for protection lodged at the entry or inland, persons with an application lodged at the exit, persons with repeated applications for protection, and holders of humanitarian/refugee status), existence of an application for protection, and grounds for release.

The analysis of the *respondents* is made on the basis of the interviews conducted (questionnaire) by applying the following **three categories** of parameters:

I. Personal data: gender, nationality, age, family status, education, profession, residence of the family (spouse and children), existence of a residence address on the territory of Bulgaria, belonging to a vulnerable group (unaccompanied children, pregnant women, disabled persons, persons with mental disorders or chronic diseases, parents with many children, single parents).

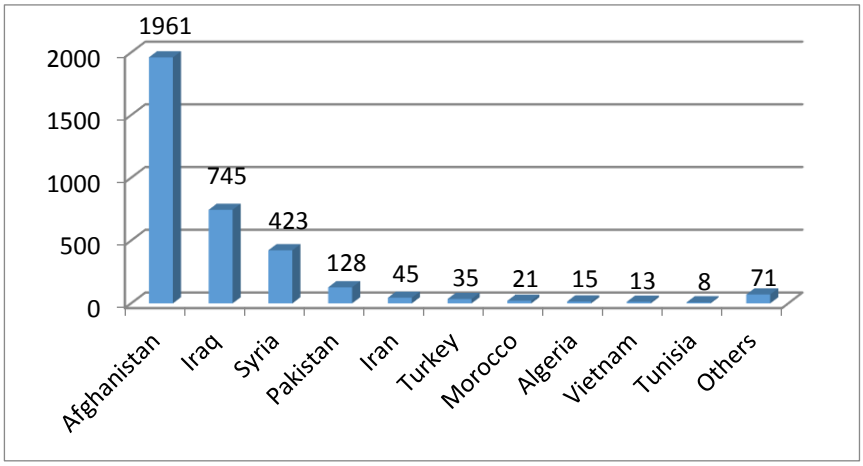
II. Detention: place of detention, the body imposing the coercive administrative measure, application by the third-country national (application for protection, application for voluntary return, others), existence of an alternative to detention applied prior to detention at the centre, an alternative measure requested after detention, data about the guarantor, availability of national documents, communication with the embassy of the country of origin during the fist, second and third semester, duration of detention and grounds for release.

III. Judicial review: presence of a lawyer at detention, outcome of the ex-officio judicial review at the 6th and 12th month, ensuring legal aid at court, compulsory bringing to the court, presence of an interpreter, an appeal filed against the detention order, outcome of the appeal (release, refusal of the appeal).

1.2. GENERAL PROFILE OF THIRD-COUNTRY NATIONALS DETAINED AT DETENTION CENTER

1.2.1. Detainees' profile

The total population of **3,465 third-country nationals** detained at the specialised homes for temporary accommodation of foreigners with the Migration Directorate of the Ministry of Interior, Busmantsi and Lyubimets detention centers, over the period 1 January 2015 – 30 April 2016 have the following nationalities:



As regards *Afghanistan*, the reasons identified for resettlement and immigration in Europe are the ongoing armed conflicts, both across the whole territory and in parts of it, in the course of over 30 years, which has forced millions of nationals of this state to flee and seek asylum in neighbouring countries (Pakistan, Iran). The political instability and the restrictive immigration policy in these two states with an established tradition of receiving Afghan citizens has recently resulted in a secondary, subsequent migration wave mainly towards European countries.

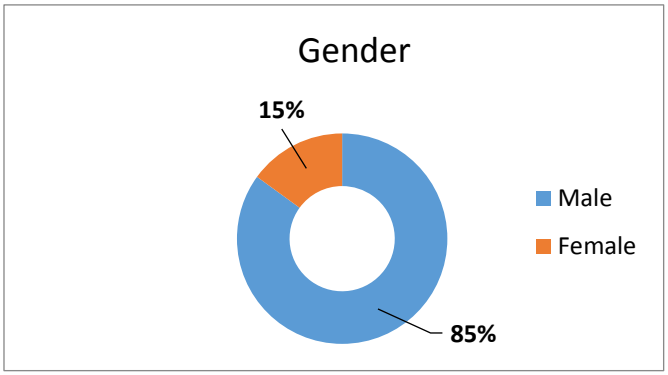
Since the fall of Saddam Hussein's regime in 2003 *Iraq* has been in a state of permanent instability and insecurity in economic, political and social terms. The burst-on to the international scene of the so-called Islamic State of Iraq and the Levant, also known as Daesh, forced thousands of Iraqis to flee their homeland and seek protection in neighbouring countries and Europe.

Since 2011 Syria has been in a state of civil war which has generated a wave of over 3 million refugees. While the majority of them are in neighbouring countries, hundreds of thousands are already on the territory of Europe, in particular in the European Union.

The above facts explain why 91% of the detainees at the two detention centers come from these three countries – Afghanistan (56%), Iraq (21%), and Syria (14%). In addition to these, detainees from another 36 countries have been identified in the centres, including persons seeking protection and persons who have been granted protection, economic migrants, persons with expired residence permits, etc.

The following **demographic profile of the population at detention centers** for the period of the research has been established:

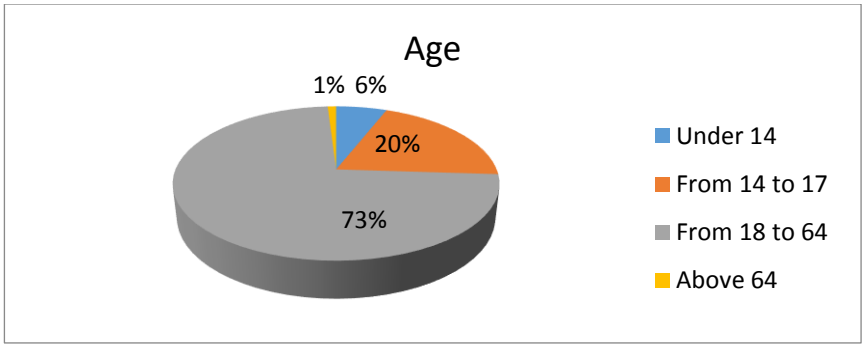
In terms of the gender of the TCNs detained:



Men account for 85% of the population at detention centers, and women for 15%. The main factor determining this distribution has been identified to be the circumstance that the predominant majority

of the immigrants come from traditional patriarchal families where women's rights are limited and initiatives are taken by men, and where it is unacceptable for women to travel on their own without being accompanied by a male family member – father, husband or son. The majority of the female detainees have arrived with their husbands and close relatives. The number of unaccompanied women (0.1%) is extremely low, close to statistically insignificant.

The distribution by age is, as follows:



The statistical data shows that the most numerous age group is 18-64, the majority of its members being men. Out of the persons aged under 18, the unaccompanied minors are 660 or 19% of the total population at detention centers.

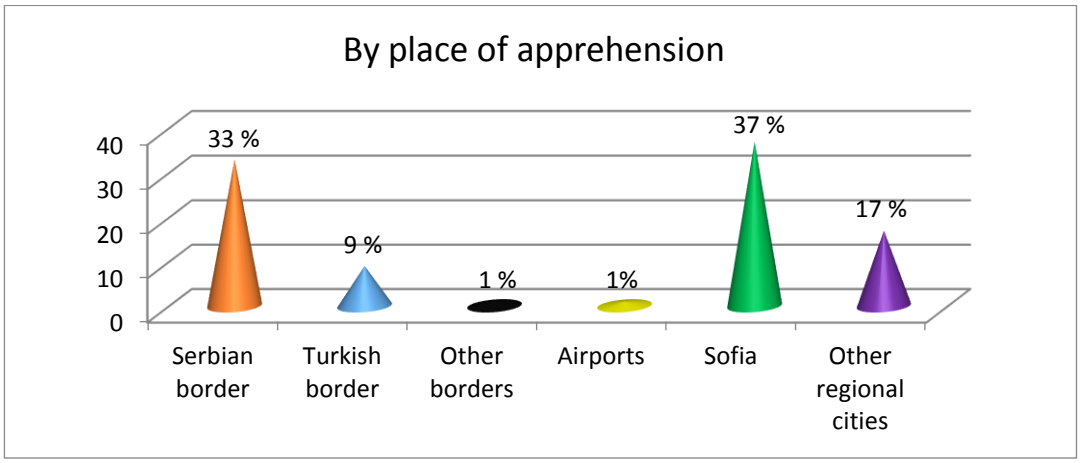
The detainees' profile is determined by demographic indicators in the relevant countries of origin. The statistical data for the three source countries of the migration flow towards Bulgaria during the period of the research (Afghanistan, Iraq and Syria) points to a high percentage of young people aged under 14, and a similar number of adults aged up to 64, namely:

Age	Afghanistan	Iraq	Syria
under 14	44%	40%	36%
from 15 to 64	53%	53%	61%
above 65	2%	3%	3,5%

Judging by this data, the relevant countries have a high birth rate coefficient in terms of both the general birth rate and the one in individual families. This high coefficient is particularly prominent in Afghanistan which ranks amongst the highest worldwide – an average of 6 births per woman. The data also shows a high coefficient for Iraq and Syria, respectively 4 and 3 births. By way of comparison, the coefficient for Bulgaria is 1.50.

The reason for the high birth rate coefficient has been identified as a combination of conservative-religious and cultural-patriarchal values which influence the decisions that the population monitored and their communities make on the acceptable number of children in the family. A major determining factor for Afghanistan is the short life expectancy (the average life expectancy is 40-45 years). The high birth rate for Iraq and Syria is determined mainly by cultural specifics, as life expectancy in these countries is by far higher, namely 60-64 years for Iraq and 70-71 years for Syria, which is close to the average life expectancy for Bulgaria (72-73 years

In terms of the place of apprehension, the distribution is, as follows:



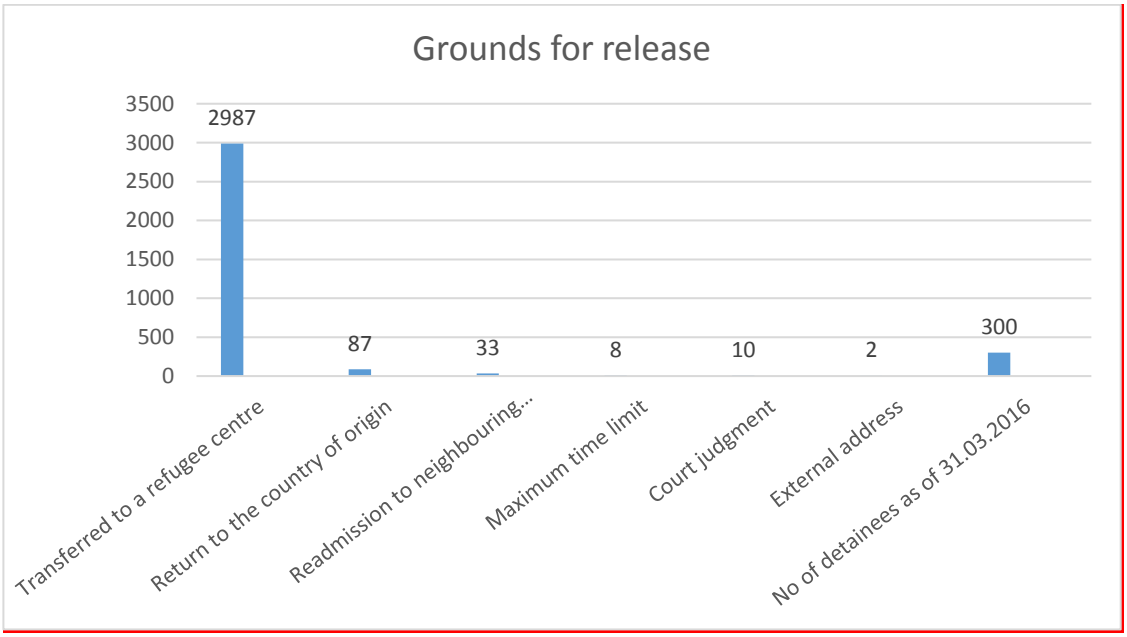
Based on the samples provided by the Migration Directorate of MOI, one can observe that below 10% of the detainees have been apprehended by Border Police along the Turkish-Bulgarian border. This is unusual, bearing in mind the statistical data for previous years, and, in particular, the fact that for the most part the migrants have entered the country from the territory of the Republic of Turkey. This low percentage is due to the following circumstance: both migrants and asylum-seekers perceive Bulgaria as a transit state and hence do not wish to lodge an application for international protection (100% of the newly arrived respondents). This is why, as soon as they find themselves on our territory they do their best to have no contacts whatsoever with the official authorities in order to avoid detention and the need to apply for protection as a means of preventing return to the country of origin or readmission into the state from which they entered Bulgaria (mainly the Republic of Turkey). This trend is also confirmed by the high percentage (54%) of third-country nationals apprehended inland (mostly in Sofia, as well as in the regions of Pazardzhik, Haskovo, Burgas, etc.) while awaiting the opportunity to illegally leave Bulgaria. An additional argument in support of this assumption is the percentage of TCNs apprehended at the exit (34%) – mostly at the border with the Republic of Serbia (33%).

In terms of conformity to the purpose of detention:

Detention has been applied in conformity with the legitimate purpose as a protective measure for the enforcement of the coercive administrative measure “deportation” and “expulsion” **in the case of less**

than 3% of those detained at DETENTION CENTER (3.4%) who were either returned voluntarily or deported from Bulgaria. 87 persons (2.5%) of them were returned to their countries of origin, and 33 persons (0.9%) were readmitted into third (neighbouring) states on the basis of effective bilateral or multilateral readmission agreements.

The statistical sample received from the Migration Directorate shows that, over the period of the field research, out of the total population of detainees and new arrivals at both detention centers **96% of the inmates have been released on the basis of applications for protection lodged**. Very few persons were released after the expiry of the maximum time limit of 18 months – 8 persons; 10 third-country nationals were released by virtue of a court judgment, and two on the grounds of a declaration filed for accommodation at an external address.



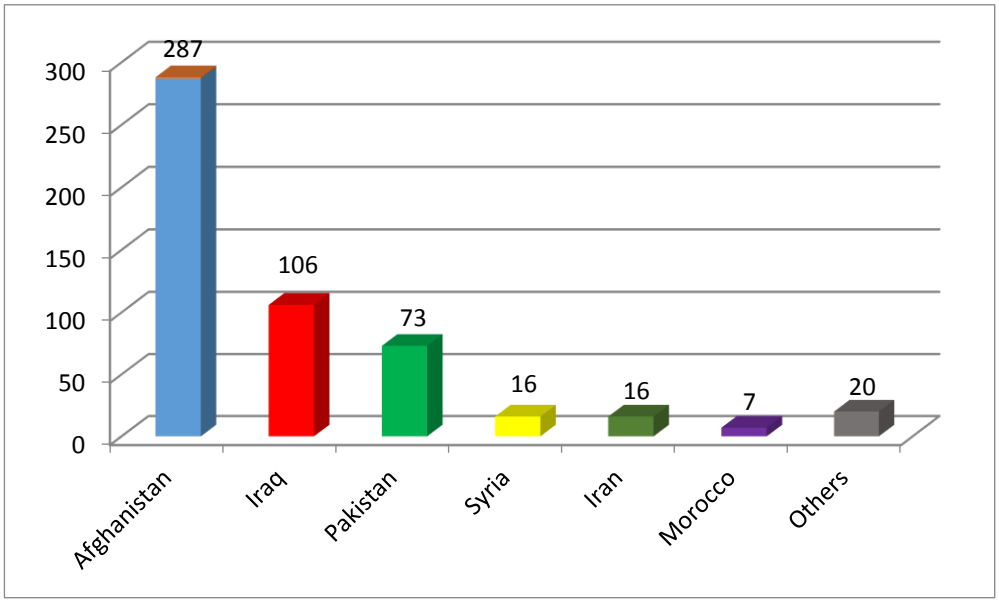
It has been established that, given the absence of any other legal alternative for release from the detention center, the majority of the TCNs detained have been forced to lodge applications for international protection with the aim of being taken out of the detention centres, regardless of the fact that the prevailing part of the very same persons have declared that **Bulgaria is not their desired destination – 99.8% of the inmates** for the six-month period of the research.

Application for protection lodged			
Status:	*Sofia (Busmantsi) detention center*	*Lyubimets detention center*	TOTAL
Yes	2,182	1,142	3,324
No	96	45	141

As regards the place of lodging the application, 61% of the applications were lodged by persons apprehended at the entry or inland, 38% of the persons lodging the application at the State Agency for Refugees were apprehended at the exit. Amongst these, there is a relatively high percentage of unaccompanied minors – 19%. The number of detainees with a repeated application is very small – below 1% of the inmates at detention centers.

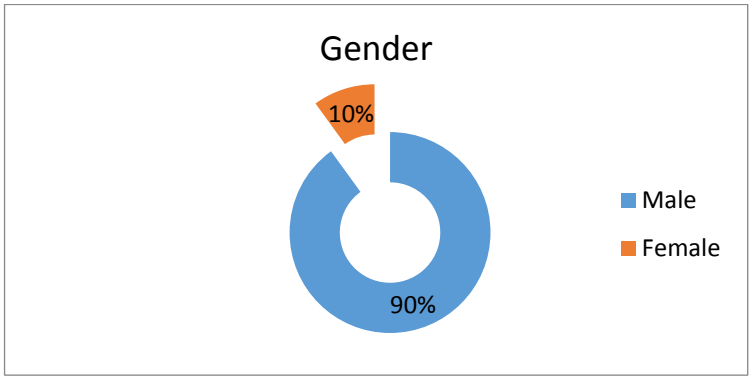
1.2.2. Respondents' profile

Over the period 30 November 2015 – 30 April 2016 the research team interviewed, at both detention centers, a total of **524 persons** whose profile is, in its main features, in line with the general profile of the third-country nationals detained at detention centers.



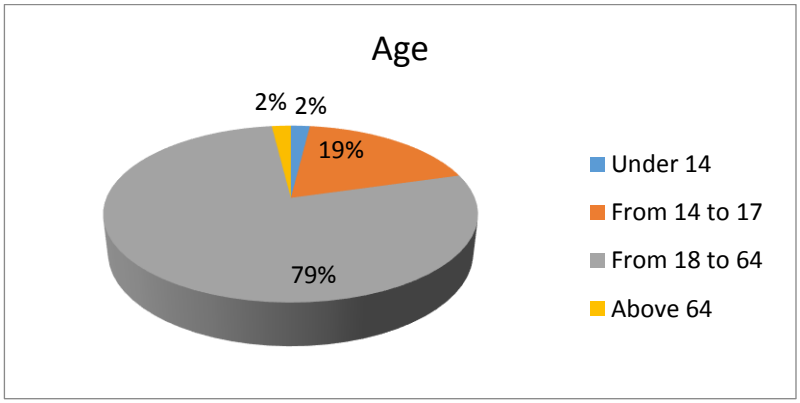
The research covered persons meeting the general profile, as well as persons with prolonged detention, persons from vulnerable groups, and specific cases. The first ranking state – both in the general statistics and in the individual cases – is Afghanistan with an enviable share of 55%. It is once again followed by Iraq 22%, and Pakistan 14%. The reason why Syria's third-ranking position is taken by Pakistan is that during the research period the overwhelming majority of Syrian nationals were released within one week after detention, as the circumstances relevant to their applications for protection were clear. Some exceptions to the general practice were found: they were due to considerations presented by the State Agency for National Security (SANS) in relation to potential risks to the national security or public order in the Republic of Bulgaria.

In terms of gender, the male/female ratio almost corresponds with the ratio of the general population at both detention centers – 10 male: 1 female.

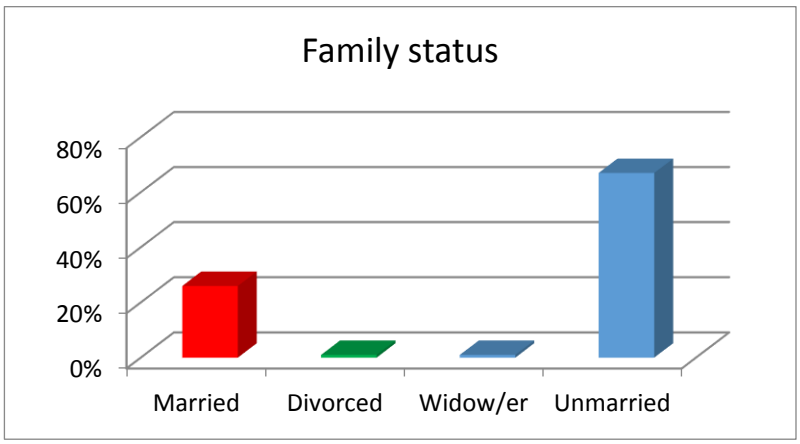


In terms of the age structure, while the majority of the detainees were adults, the team did its best to interview a sufficient number of persons aged under 18, irrespective of whether they were accompanied or unaccompanied, with the aim to clarify the reasons for their detention and identify their specific needs and problems.

Profile of the TCNs interviewed by age structure:



Family status of the TCNs interviewed:



Two main factors have been identified as determining the data of the percentages indicated – cultural and religious peculiarities and the family status of TCNs.

The high percentage of unmarried men (70% of the respondents) has been established to be due to the following three main reasons most often declared:

- the thousands of kilometres which, according to the respondents, they have to go after leaving their homeland to reach the initially desired final destination, and the uncertainty as to the way of moving and the access to means of transportation along the route;

- the potential challenges they foresee as emerging along the route to the final destination (for example, unclarity in terms of the specific smugglers whose services they will have to use, climatic conditions, lack of basic living conditions, hygiene and food);

- the financial resources they have available at the point of setting out and the resources they plan to have upon arrival in the state of final destination which they assess as insufficient or even scarce and which prohibit travelling with other family members (elderly parents, unmarried brothers and sisters, grandparents, close collateral relatives – uncle, aunt, cousins, and for the married ones – spouse and children). The respondents declare almost unanimously that, in addition to being easier in view of all the hurdles and risks along the way, it is by far cheaper for a single man to travel the long distance crossing several states before the final destination, bearing in mind the related costs.

Moreover, the responses point to the understanding that in the respondents' countries of origin, with no exception, the woman is considered to be absolutely dependent on the man, hence it is inappropriate for her to be exposed to the uncertainties along the migration routes unless it is imperative for her to also leave due to an imminent risk for her life and security or an absolute impossibility to ensure a substituting male relative (father, father-in-law, brother, another adult male relative) who can provide care and subsistence after the departure of the male person responsible for her (father, husband, brother).

The opinion shared in the context of the above is that female dependants should not be left behind alone in the country of origin. Nevertheless, the number of married men interviewed is low – only 27% – which shows that for the most part third-country nationals of the profile established are more willing to emigrate into another state if they are not married; and that for married TCNs emigration into another state is a solution of last resort under predominantly compelling circumstances.

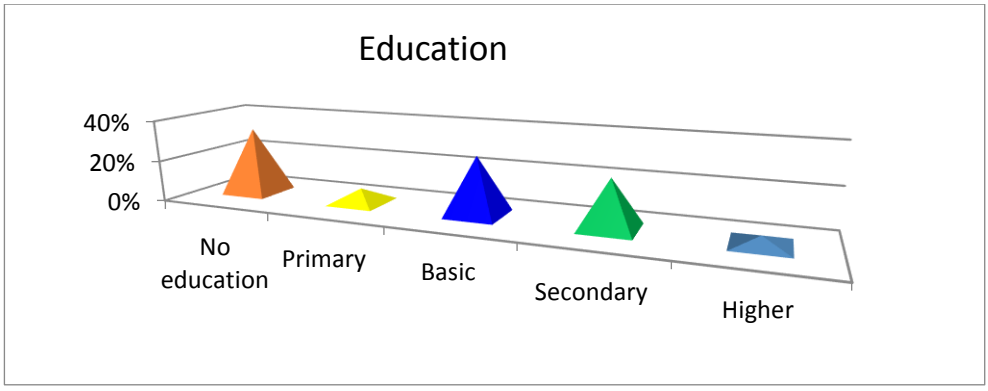
As for the educational background of the TCNs interviewed, the majority do not have education, followed by those with basic and secondary education.

The respondents with primary and higher education account for the lowest percentage. Bearing in mind that 55% of the respondents come from Afghanistan, which is one of the countries with the lowest literacy rate, the highest percentage of illiterate respondents matches their profile.

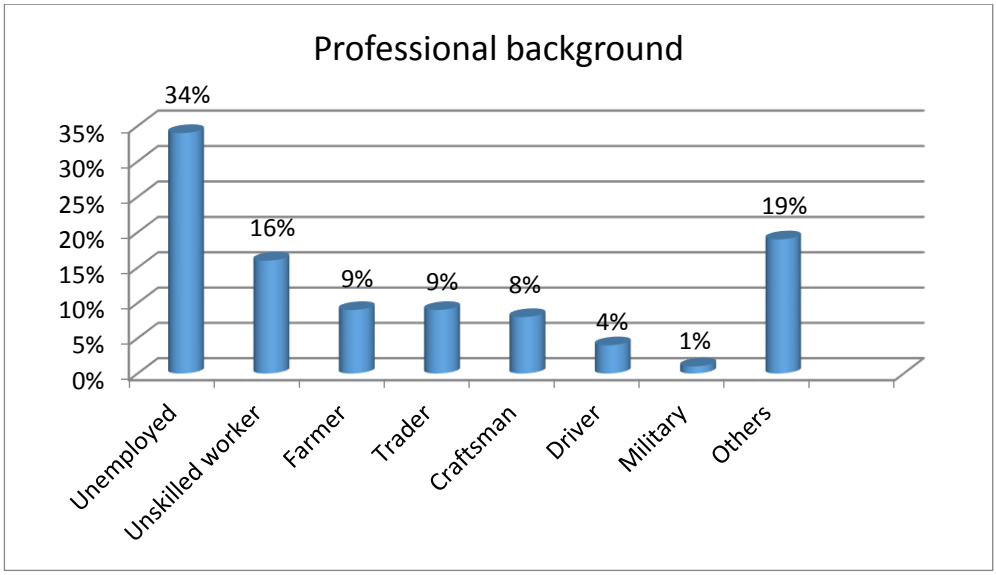
Profile in terms of the literacy rate of the TCNs interviewed:

Main countries of origin:	Afghanistan	Iraq	Pakistan	Syria
Literacy rate	38%	80%	59%	86%

In respect of countries such as Iraq and Syria where the literacy rate is traditionally high, the research findings indicate a drop in the rate of basic literacy over recent years due to the unstable situation in these states and the internal armed conflicts which substantially hinder the access to schools and basic education and training.

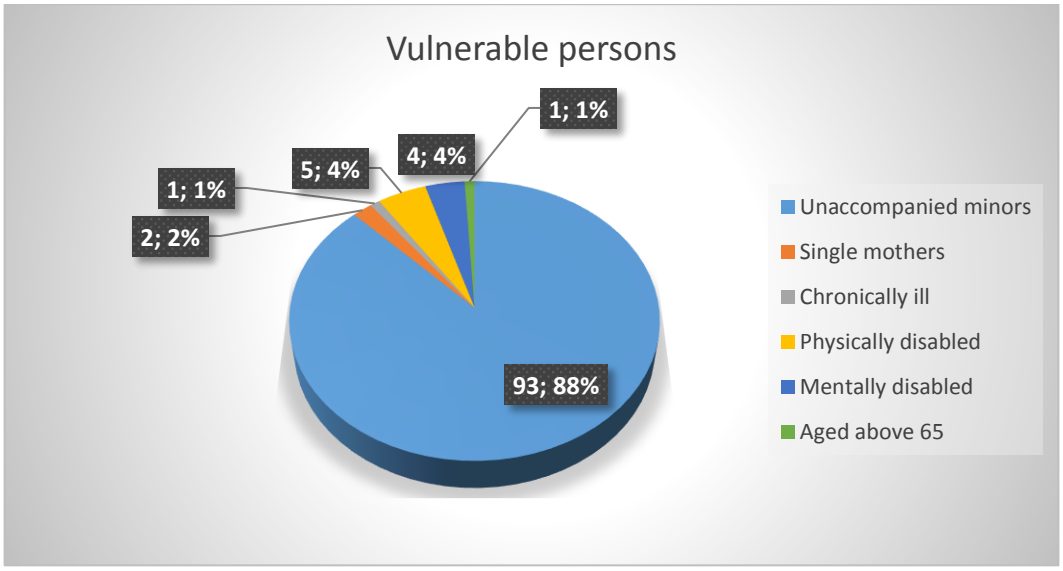


The professional profile of the persons with whom individual interviews were conducted is in direct correlation with the literacy rate and the educational background.



The high illiteracy rate is directly proportional to the almost identical unemployment rate – over 1/3 of the respondents. Similarly, a relatively high number of those who did not have permanent employment and did unskilled work – 16%. About 9% of the respondent were seasonal workers in agriculture. The chart shows that the remaining 40% of the respondents exercised a certain profession in the country of origin – trader, craftsman, driver, translator, civil servant, etc.

As a result of the interviews a total of 105 persons have been identified as belonging to a **vulnerable group**, namely 93 unaccompanied minors detained, two single mothers, 1 person with a chronic disease – diabetes, 5 persons with physical disabilities, 4 with mental disorders, and 1 person aged over 65. It has been established that the persons from vulnerable groups account for a substantial percentage of the total number of the respondents: 20% of the total of 524 TCNs interviewed at the detention centres.



More than three interviews have been conducted, by way of rule, with all the persons from vulnerable categories, in particular with unaccompanied minors.

During the interviews with **unaccompanied minors**, most of them reported that their families had intentionally exposed them to this risk by explaining to them that they were to leave on their own before the departure of the parents and the other family members with the aim to receive international or another type of protection in, by all means, a western or northern European country, which would automatically entitle them to applying for family reunification.

When reviewing the documents of the unaccompanied minors detained, the research team established that all of them had been included in the orders of adults who were not related to them. The children thus “attached” reported that they had no relationship whatsoever with these persons. Cases have been observed where unaccompanied minors were entered in the detention orders of

adults from a different country of origin who were formally designated as the “persons accompanying them”.

As regards the persons from the other vulnerable groups, detention at DETENTION CENTER has been determined to be highly undesirable due to their special needs – long-term treatment, medical monitoring, etc. – which cannot be adequately met under the conditions of detention. The immigration authorities themselves are making efforts to find solutions and release these persons from the DETENTION CENTERs within short time limits, which explains the low number and percentage of detainees from this group, as well as the aggregate short duration of their detention.

1.3. DETENTION (FORCED ACCOMMODATION AT DETENTION CENTER)

1.3.1. Authorities

According to the data from the interviews and the information gathered from the interviewees’ documents, the police authorities in the city and the region of Sofia, in particular the authorities of SDMOI and RDMOI-Sofia Region, rank first in terms of the number of acts issued for the detention of TCNs – over 30% of the respondents. The respondents reported that after crossing the Turkish-Bulgarian border unhindered they had got on vehicles taking them to the capital city and its vicinity. The document data shows that the main places of apprehension of TCNs are the entry into Sofia (Trakia highway), hostels and addresses in the area of the Lions Bridge square and the Women Marketplace in Sofia. The reason for staying in Sofia, as declared by the respondents, was the need to make arrangements for their subsequent movement to the state of final destination in Europe and await the appropriate moment for the travel.

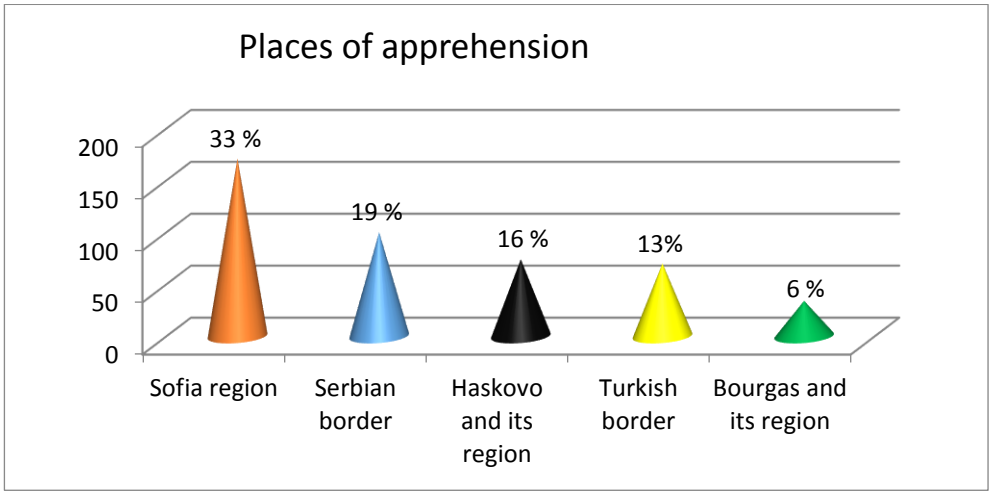
The authorities ranking second in terms of the number of acts issued for the detention of TCNs are the ones along the border of the Republic of Bulgaria with the Republic of Serbia – 19% of the respondents, in particular the following bodies of the CD Border Police: Dragoman RDBP, Belogradchik BPD, Bregovo BPD, Kalotina BPD, Oltomantzi BPD, Tran BPD, and Chiprovtzi BPD. The respondents pointed to the above mentioned route which is the only land one towards western Europe.

The region ranking next in terms of acts issued for the detention of TCNs is the city of Haskovo and the surrounding region, including the territory of the town of Harmanli and SAR’s Harmanli RRC, mostly by the police authorities of Haskovo RDMOI. The vicinity to the Turkish-Bulgarian border and SAR’s reception centre predetermine the high number of detentions in this region. The respondents report different reasons for their detention in this specific area, including illegal stay in the country after crossing the border with the Republic of Turkey, and the need to go back to SAR’s RRC for renewing the registration card, receiving a permission, etc.

The area ranking fourth – surprisingly, due to the unexpectedly low percentage of detention acts issued – is the border of Bulgaria with the Republic of Turkey: only 13% of the total coercive administrative measures imposed with respect to the population monitored at DETENTION CENTERs. The measures have been imposed mostly by the following bodies of CD Border Police: Elhovo BPD, Malko Tarnovo BPD, Sredetz BPD, Svilengrad BPD, and Lessovo BPD. Taking into account the publicly available data about the fact that the land border with the Republic of Turkey is the main entry point of illegal migration into the country, it was logical for the preliminary forecasts to point to the highest percentage of apprehensions by the border and other police authorities in that particular area – an assumption which was categorically disproved.

Bourgas RDMOI which is in the immediate vicinity of the Turkish border ranks fifth amongst the bodies imposing detention measures on the population monitored at DETENTION CENTERs over the six-month period – 6% of the respondents. The interviews conducted showed that these were persons apprehended not far from the border but outside its area or persons who had been hiding while awaiting the arrangements for moving on.

The numbers of TCNs apprehended and detained at the other borders or on the territory of other regions is very small and statistically irrelevant – mostly the regions of Varna, Pazarjik, Sliven, Stara Zagora, etc.



1.3.2. Reasons for detention

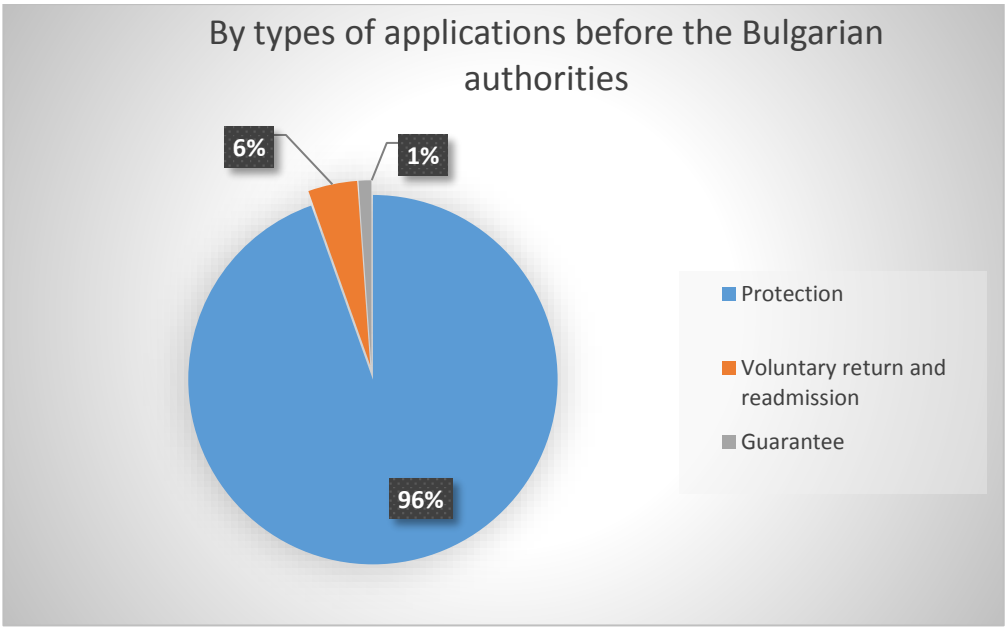
The review of the documents for the detention of TCNs shows that almost 100% of the orders for forced removal to the border of the Republic of Bulgaria are on the grounds of “illegal entry into the territory of the Republic of Bulgaria”. By way of principle, such grounds of the detention order imply readmission of the persons detained within a short time from the Republic of Bulgaria into the neighbouring countries from which they entered, unless they lodge an application for protection. A

probable explanation why readmission was not carried out and instead detention was applied relates to the fact that in percentage terms the number of TCNs apprehended at the exit by far exceeds the number of those apprehended at the entry. This very fact makes the execution of readmission inapplicable in both legal and factual terms, as the third-country nationals were detained by the authorities of CD Border Police on the territory of the country in their attempt to illegally leave it – either irregularly or outside the points designated for that purpose.

The only exception to the above conclusion for the period of the field research is the border with the Republic of Turkey, as the bilateral Bulgarian-Turkish protocol for applying the readmission agreement with the EU was signed on 5 May 2016, and its application is planned to start in early June 2016, i.e. after the end of the field research.

The number of detention acts issued on grounds other that the above is relatively small, in most cases the grounds being: expiry of the residence permit – 1 person ; foreigners residing in the country for many years, without having ever had a residence permit – 1 person; foreigners with an expulsion order imposed by the State Agency for National Security – 4 persons; foreigners who have served an imprisonment sentence (the majority of them – for attempted illegal entry into Bulgaria) – 2 persons, and asylum-seekers returned from other EU states in accordance with the Dublin Regulation – 10 persons.

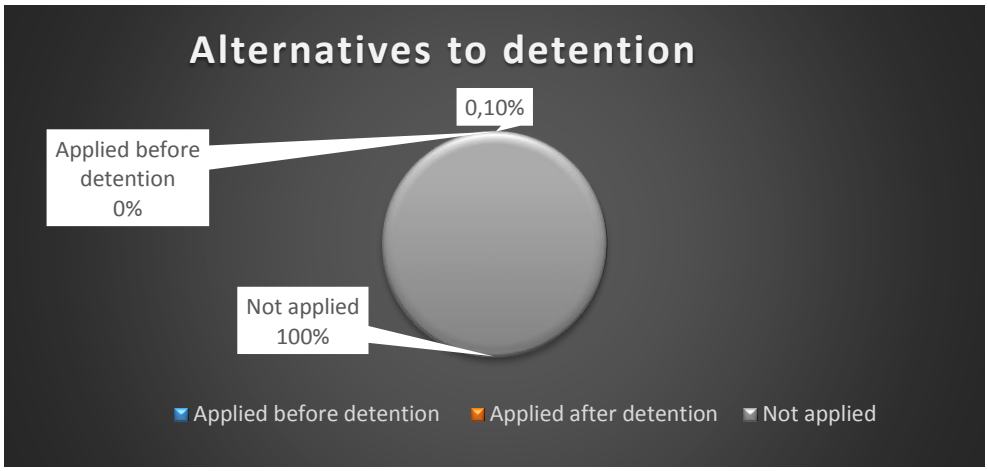
In spite of the order imposed, 96% of the detainees lodged applications for protection, only 4% applications for voluntary return or readmission, and 1% applications for the only alternative to the detention of TCNs – signed promise of appearance.



1.3.3. Considering an alternative to detention

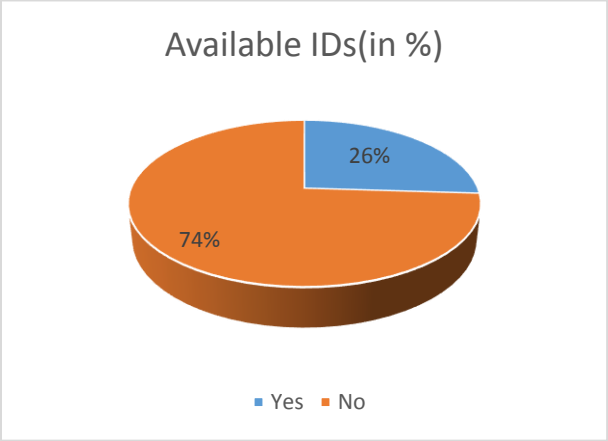
At the issuing of the order for detention at DETENTION CENTER, an alternative to detention **was not considered** by the issuing authority for **99.9%** of the detainees, and only one of the respondents was allowed a 30-day time limit to voluntarily leave the country.

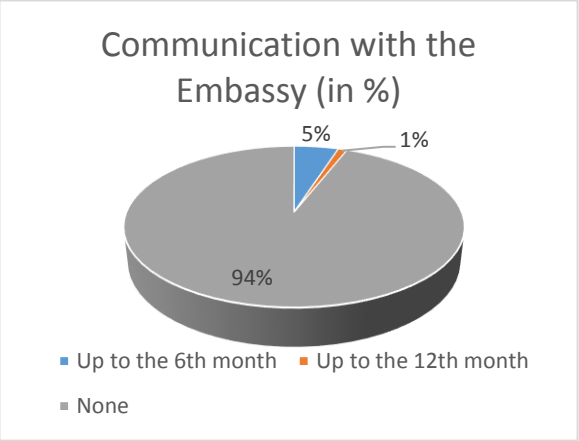
After the detention within the period up to the 6th month, the only applicable legal alternative to detention – weekly reporting by the foreigner to the authorities at the MOI territorial structure with jurisdiction over the residence address, as declared by the guarantor – has been requested by **6 persons**. Such an alternative measure was approved for **1 person**, and the remaining persons either had their applications rejected or were released on other grounds. During the research period no interviews were conducted with persons spending more than 6 months at DETENTION CENTER and lodging meanwhile applications for a guarantee.



1.3.4. Actions related to the execution of return

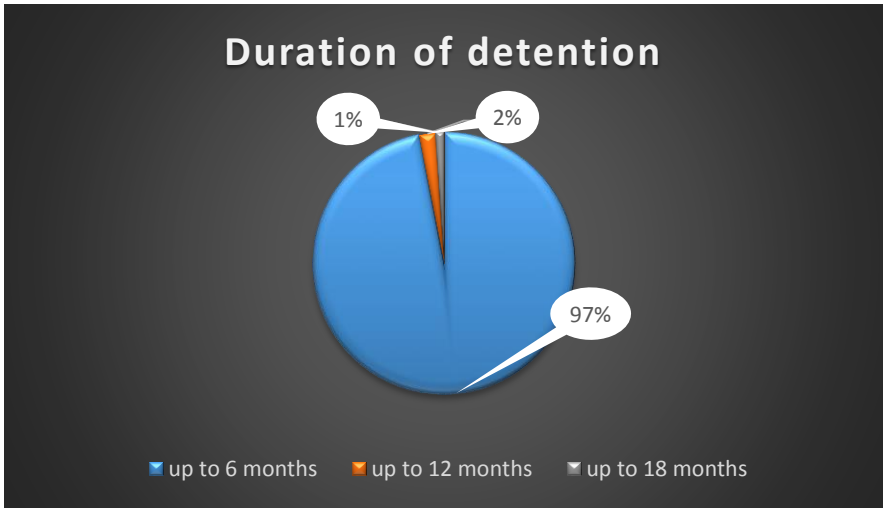
The actions related to issuing and enforcing the deportation order and the order for detention at DETENTION CENTER pursue a single aim: the return of TCNs to their country of origin, the persons being detained at DETENTION CENTER pending deportation. As a result of gathering the necessary data by means of different methods during the field research it was established that most of the TCNs did not have IDs (74%) and did not want to voluntarily return to their country of origin which they had just left. Hence the number of those having communicated with their Embassy with the aim of voluntary return is insignificant – during the first 6 months of detention only 5%, and up to the 12th month – below 1% of the detainees.



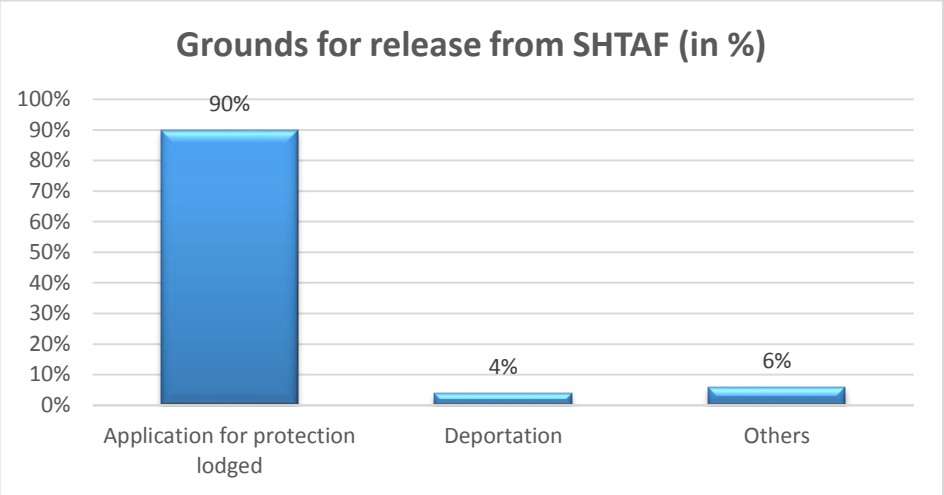


Out of the persons detained for 6 months or over, 73% did not want to communicate with the Embassy of the relevant country of origin.

The duration of detention at both DETENTION CENTERs during the research period in percentages, based on a breakdown by 6, 12 and up to the 18th month is, as follows:



The prevailing period of TCN detention was about 1 month after the issuing of the order during which 80% of the detainees were released:



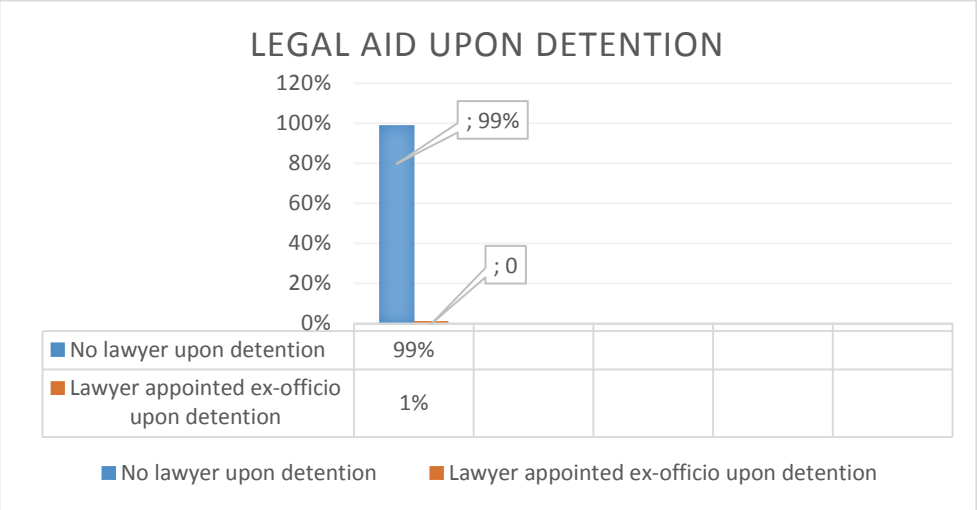
The findings of the research show that the highest number of persons were released on the grounds of applications lodged for international protection in the Republic of Bulgaria, with referral to the registration-and-reception centres of the State Agency for Refugees (SAR) – 472 persons or 90%. A deportation order was applied in respect of only 12 TCNs (4%). The persons applying for voluntary return were accommodated at DETENTION CENTER for an average period of 3 months before being taken out of the country.

Nine persons were returned as of the time of the research on the basis of readmission agreements with the Republic of Greece and the Republic of Turkey. There were four persons spending the maximum detention time of 18 months at DETENTION CENTER. Four persons were released by virtue of a court decision. Only two out of the TCNs detained were released on the basis of an external adress/a guarantee.

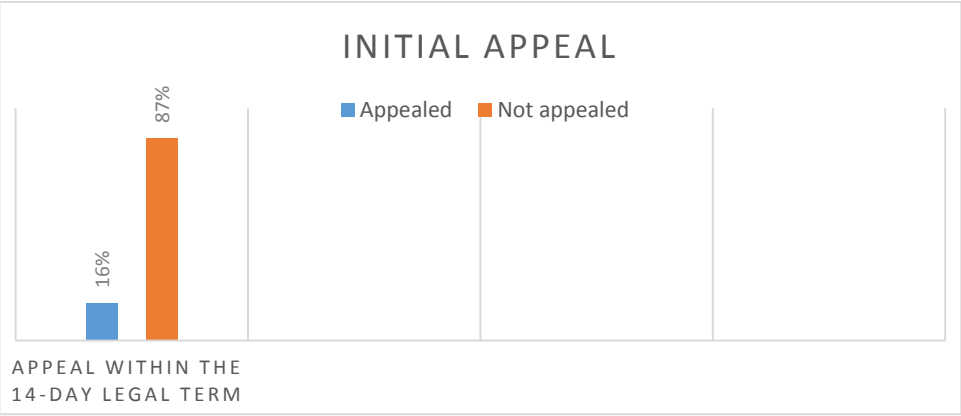
1.4. EFFICIENCY OF THE JUDICIAL REVIEW OF DETENTION

1.4.1. Safeguards upon detention

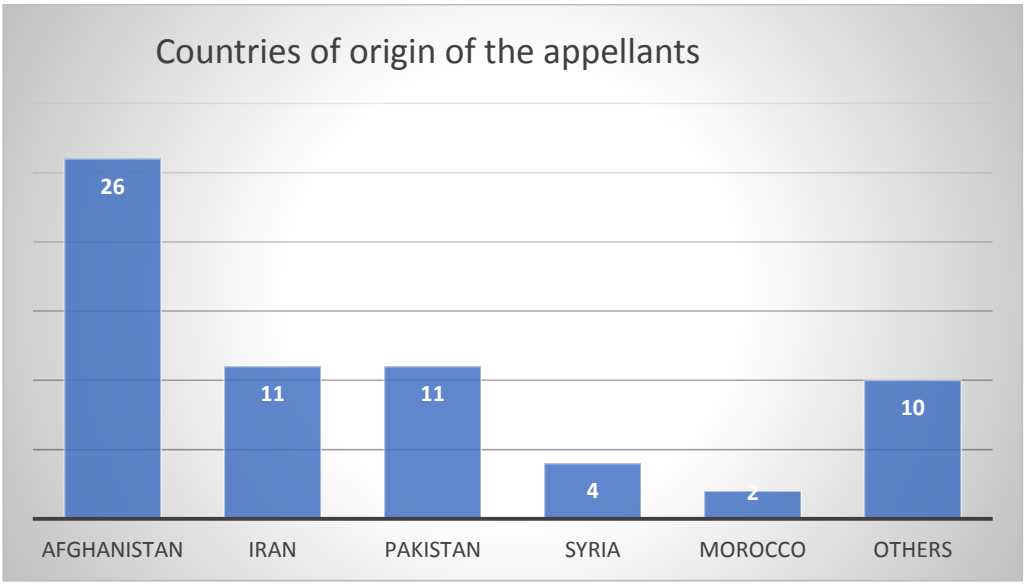
The 524 interviews conducted and the information gathered from the respondents' personal files point to the fact that over 99% of them did not have a lawyer appointed ex-officio upon detention.



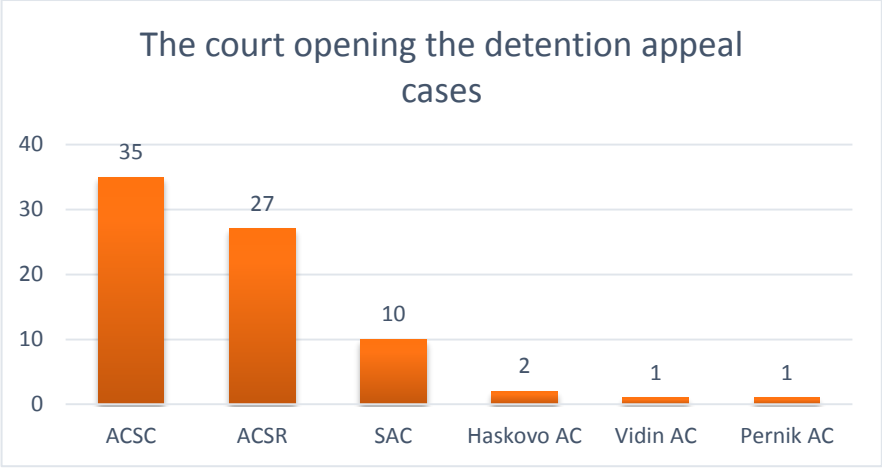
Only seventy of the respondents (13%) appealed the detention order within the 14-day term, of whom 84% did so with the help of a non-governmental organisation providing legal aid (mostly BHC), and 16% by hiring a lawyer at their expense.



It is again Afghanistan ranking first amongst the appellants' countries of origin with 41%, followed by Iran and Pakistan (17% each), Syria (6%), Morocco (3%), and the other states – 1 citizen each.

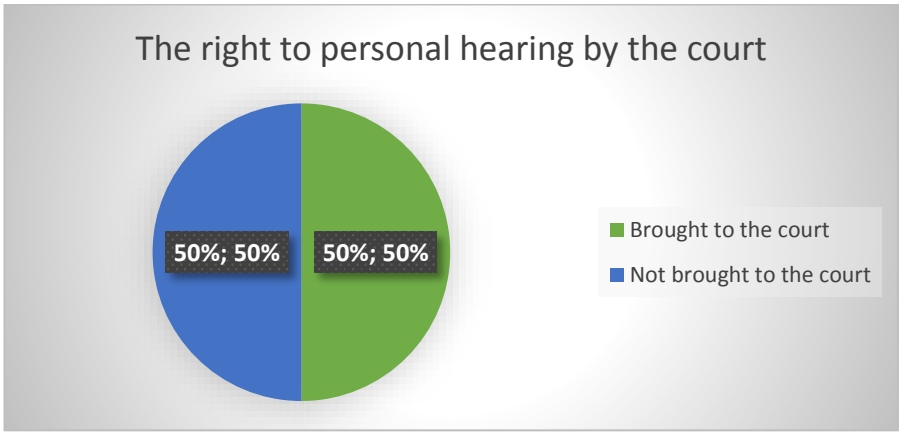


As regards the courts, the Administrative Court – City of Sofia (ACCS) ranks first (52%), followed by the Administrative Court – Region of Sofia (ACRS) (40%), the Supreme Administrative Court (SAC) (15%), and others (6%).

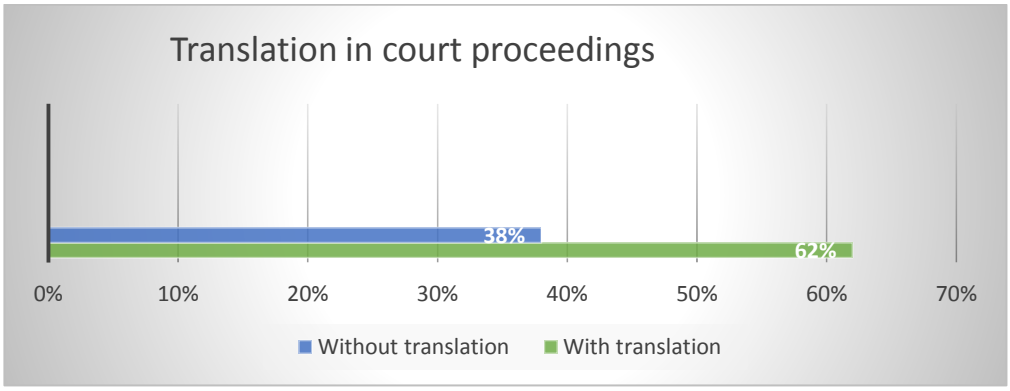


Among those making the appeal with the assistance of NGOs, 92% were exempt from the court fee, while the fee was paid by the remaining 8%.

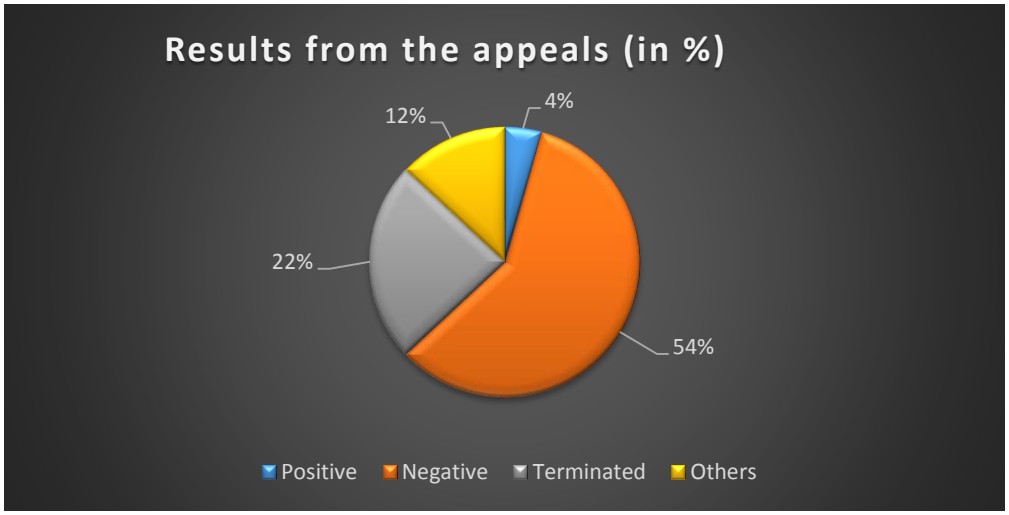
In the cases conducted by NGOs, bringing to the court was ensured for half of the persons (50%); the reason why the remaining 50% were not brought to the court is that either the relevant persons had been released from DETENTION CENTER before the court hearing or the court had not requested that they be brought to the court.



Translation was provided in 62% of the cases, the percentage exceeding 50% for those brought to the court, as the court had also secured translation for some of the cases in which the persons had been released from the detention centre right before the court hearing, but the court and the defence lawyer had not been notified thereof in due time. This is why there are several cases where the appellants were ordered to pay a deposit for the appearance of the translator in the court, regardless of the fact that the court proceedings were discontinued with a terminating ruling due to release.



According to the data processed, the appeals were dismissed in 54% of the cases.



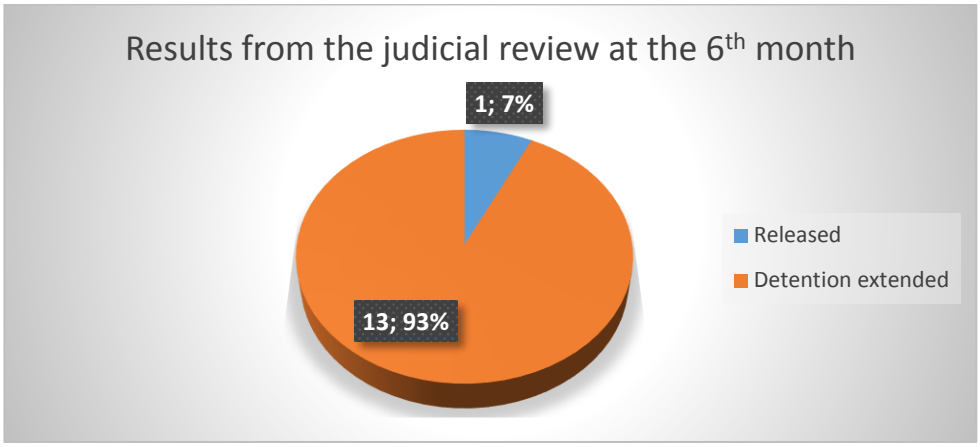
Out of the cases opened, 22% were terminated as the appellants had meanwhile been released from DETENTION CENTER on the basis of an application lodged for protection or for return. The cases with a positive court judgment were 4% of the ones opened. The cases for which hearings had not yet been scheduled were 10%, in 1 case the hearing had been postponed, and in 2 cases the appeal had been voluntarily withdrawn.

After the appeal was dismissed by the first-instance court, 10 cassation appeals were lodged with SAC, of which 9 were terminated due to release, and 1 was dismissed.

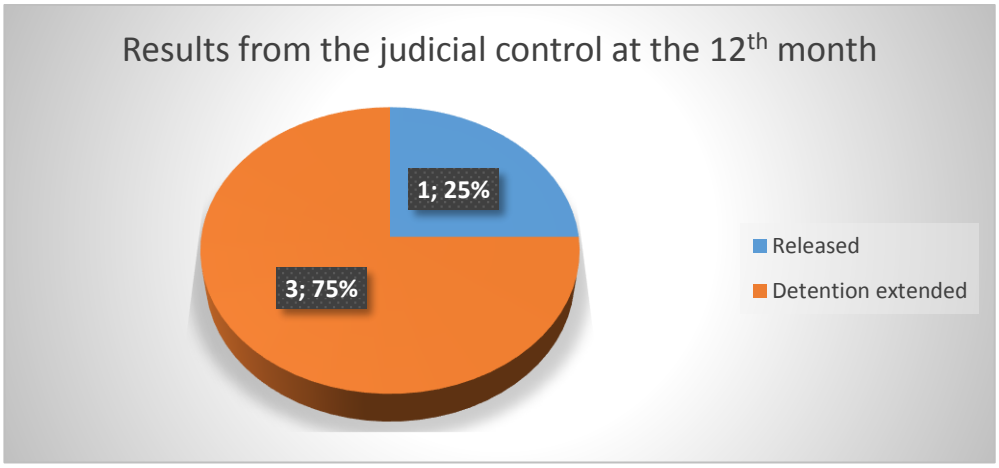
1.4.2. Ex-officio judicial review

Based on the information gathered from the detainees' personal files it has been established that ex-officio judicial review was applied in respect of only 14 persons at the 6th month, and 4 persons at the 12th month. In the case of 5 persons the judicial review at the 6th month was overdue by approx. 1 month; the remaining 9 had their judicial review on time.

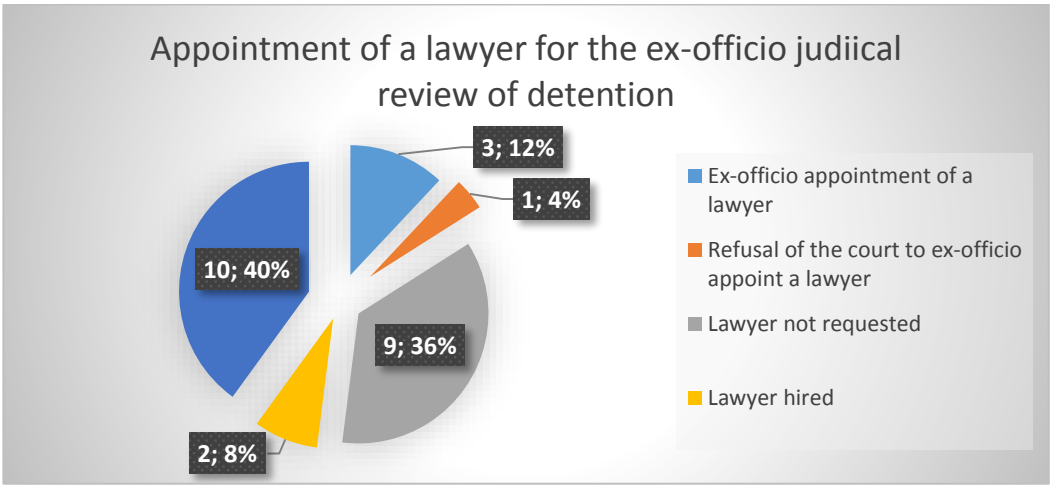
The court ruled on the unconditional termination of detention at DETENTION CENTER in one single case, and on extending the detention after the 6th month in all the other cases .



The ex-officio judicial review at the 12th month was carried out on time in the case of all four persons during the period monitored. One of them was released after the second 6-month period of detention, while in the other three cases detention was extended for 6 more months.



In 3 of the cases a lawyer was appointed ex-officio. As for the remaining 15 cases, the persons did not want to use legal aid (9), legal aid was refused by the court (1) or the person had their own legal representative (2). Eight of the persons appeared in the court room, while 10 refused being brought to the court. Six persons had translation ensured in the court room, while 12 did not want to use translation.



1.4.3. Preliminary results from the monitoring of the law case (as of 30.06.2016)

With a view to identifying the existing or new judicial standards in the application of administrative detention of third-country nationals, the research covered both the case law in relation to appeals against detention at DETENTION CENTER and the acts issued within the regular judicial review of the need to continue detention after the 6th and the 12th month.

A) Case law in relation to appeals against detention filed within the legal time limit *(category 1)*

The reasons for challenging detention can be grouped along the following lines:

- *Lack of a deadline for voluntary return*
  Pursuant to Art. 39b (1) of the Aliens in the Republic of Bulgaria Act (ARBA) the order for imposing a coercive administrative measure under Art. 39a (1), items 1 and 2 of ARBA shall set a time limit of 7 up to 30 days within which the alien must voluntarily meet the obligation for return. No time limit for the foreigner's voluntary return had been determined in any of the cases in respect of which appeals had been lodged.

- *Absence of legal prerequisites for detention*
  The legal prerequisites for detention are an order issued under Art. 39a (1), item 2 of ARBA; unestablished identity; obstruction of the execution of the order or the risk of absconding. In most cases these prerequisites are not presented in a reasoned way but are just listed in the orders appealed; the absence of an ID is considered the equivalent of unknown identity; there is no data based on which one can assume the risk of absconding; it is declaratively asserted that the foreigner might frustrate the enforcement of the deportation order, without providing any evidence; or other reasons are indicated instead of the legal ones.

- *The option of applying less coercive protective measures was not considered and an alternative to detention was not applied where possible*

The reasons provided in the prevailing majority of the orders do not explore the possibility to apply alternative measures instead of detention. Detention is a measure of last resort which is admissible only in the absence of other less coercive measures in conformity with the EU and national law.

- *Lack of conformity of the detention measure imposed with the legitimate purpose*
  The legitimate purpose is that detention is applied in order to secure the enforcement of the deportation/return order. In statistical terms return (deportation) to the country of origin is rarely executed. Return (deportation) through readmission is below 1%. Moreover, orders are often issued for the detention at DETENTION CENTER of foreigners in respect of whom it is obvious that deportation is impossible due to legal or factual (objective) obstacles.

By the time of drafting the report, 61 appeals (category 1) against unlawful detention orders had been lodged, each of them presenting the reasons described in the context of the individual case. The cases opened are with ACCS, ACRS, Vratza AC, Pernik AC, and Haskovo AC. The appeals were dismissed by the court in 35 cases, and the detention orders remained effective. The court terminated the proceedings in 30 cases, as the detention had been discontinued and the persons had been released and transferred to SAR. In 1 case the court terminated the proceedings due to the person's voluntary return. In 1 case the court terminated the proceedings due to withdrawal of the appeal by the applicant. In 4 cases the court revoked the detention order as unlawful. The remaining cases were still pending.

The judgments monitored identify the following issue: in similar or identical appeal cases different judges deliver entirely contrary judgments which, however, achieve the same result – the appeal against detention (forced accommodation at DETENTION CENTER) is dismissed. The majority of the judgments dismiss the appeals as groundless, and confirm the order for detention at DETENTION CENTER as lawful.

The reasons in the judgments whereby the **appeals are dismissed** and the orders for detention at DETENTION CENTER are confirmed as lawful can be summarised, as follows:

- The orders appealed contain the necessary legal and factual grounds for the person's detention. This is often done in a formal way by simply repeating the grounds in the detention order without making a critical analysis thereof (35 judgements, 81%).

  In the reasoning of the judgements within this group, the judges either do not at all examine the argument for the unlawfulness of detention indicated in the appeal – the absence of a time limit set for voluntary return (e.g., admin. case No 93/2016 of ACCS) – or accept the argument as groundless, as the time limit should have been set in the deportation order which is not the subject of the appeal (e.g., admin. case No 12276/2015 of ACCS). The courts consider the absence of IDs as the equivalent of the ground "unestablished personality" (e.g., admin. case

No 132/2016 of ACRS). Another recurring conclusion in the judgements is that there is a risk of absconding, as the administrative body has not indicated factual circumstances justifying this legal conclusion in the order appealed (e.g., admin. case No 98/2016 of ACRS

- The circumstance that the administrative authority has not considered the possibility of applying less coercive protective measures, and, instead, has directly applied the measure of last resort “detention at DETENTION CENTER” does not constitute a violation of the law (35 judgements, 81%).

  In terms of the argument about the failure to explore the possibility of imposing less coercive protective measures and applying alternatives to detention in the judgements of the various panels of judges, the reasoning is, as follows:

  - The only alternative to detention laid down in ARBA is not applicable to the foreigner, and the failure to explore the possibility of applying other alternatives laid down in Directive 2008/115/EC does not make the detention order unlawful;

  - The court examines, instead of the administrative authority, the possibilities to apply less coercive alternatives to detention, and, by replacing the will of the administrative authority, establishes that, in view of the case data, such alternatives are not applicable;

  - The court holds that the requirement of Directive 2008/115/EC about applying detention only where lighter protective measures are inapplicable is not transposed in ARBA;

  Some panels of judges hold that the administrative authority has violated the law by applying the measure of last resort “detention at DETENTION CENTER” without considering the option of applying less coercive alternative measures. The same panels, however, hold that the only less coercive protective measure laid down in ARBA is not applicable, and that the less coercive alternative measures set forth in Directive 2008/115/EC cannot be applied, as they have not been transposed in ARBA even though the transposition deadline has expired. Therefore, the court confirms the lawfulness of the order for detention at DETENTION CENTER (7 judgements, 16%).

  It has been established that some of the judgements have entirely identical texts in this particular part, even in cases with different factual circumstances. For example, in an appeal case where arguments are presented in relation to the availability of IDs, the reasoning in judgement No 57/29.01.2016 in admin. case No 1209/2015 ACRS, panel 04 is, as follows:

  “It is also true that, in addition to the purpose and the two prerequisites, the European norm provides for the requirement to have established that other sufficient, but less coercive measures cannot be efficiently applied in the specific case. The national norms – Art. 44 (6) of

ARBA, unlike Art. 15, §1 of Directive 2008/115/EC, does not explicitly lay down this requirement.”

By way of comparison, the reasoning in judgement 183/01.03.2016 in admin. case 128/2016 of ACRS, panel 06:

“It is also true that, in addition to the purpose and the two prerequisites, the European norm provides for the requirement to have established that other sufficient, but less coercive measures cannot be efficiently applied in the specific case. The national norms – Art. 44 (6) of ARBA, unlike Art. 15, §1 of Directive 2008/115/EC, does not explicitly lay down this requirement.”

- The failure to set a deadline for the person’s voluntary return does not make the order for detention at DETENTION CENTER unlawful (8 judgments, 18%);

- The legitimate purpose is that detention serves as a protective measure for the enforcement of the deportation order.

  As regards this group of judgements, the court always holds that the detention order is in conformity with the legitimate purpose due to the fact that there is a deportation order (e.g., admin. case No 12159/2015 of ACCS). The enforceability of the deportation order is not examined – for example, when the foreigner has lodged an application for protection which suspends the enforcement of deportation under Art. 67 (1) of the Law on Asylum and Refugees (LAR) or when the foreigner is to be deported into Syria, which is impossible in both objective and legal terms due to the armed conflict and the lack of legal and safe access.

  In other judgements the court does not at all examine some of the arguments in the appeal, in particular the ones regarding the lack of conformity of the order appealed with the legitimate purpose – securing the execution of the deportation (return) procedure. Indicative in this respect is the judgement in admin. case No 444/2016 of ACCS, panel 43, related to continuing the detention after the expiry of the foreigner’s six-month detention at DETENTION CENTER: the court has ruled that the detention will be extended by another six months, even though the person concerned is a citizen of S. and the return to the country of origin is impossible due to the ongoing internal and interstate armed conflict. The court ruling for the extension of detention does not take into consideration that the person has an established identity, has regular Bulgarian documents and a permanent residence permit, has a residence address, accommodation, and a financial guarantor providing his maintenance. The court act was appealed before the Supreme Administrative Court which confirmed the first-instance act with some reasons that do not seem to be relevant to the facts in the case.

The reasons in the judgements (4 judgements, 9%) which **grant the appeals** and revoke the orders for detention at DETENTION CENTER can be summarized, as follows:

- The administrative body has not indicated, as required by the law, the legal and factual grounds for the person's detention or, if it has done so, there is no evidence of the factual grounds (e.g., admin. case No 1684/2016 of ACCS). The legal prerequisites for the foreigner's detention are absent in their cumulative form (e.g., admin. case No 1684/2016 of ACCS);

- The administrative body has not considered the application of a less coercive and efficient protective measure, and has directly imposed the measure of last resort "detention at DETENTION CENTER" (e.g. admin. case No 1919/2016 of ACCS);

- The administrative body has incorrectly considered the ground "unestablished identity" as the equivalent of the lack of identity documents (e.g., admin. case No 1684/2016 of ACCS);

- There is no evidence adduced as to how the foreigner frustrated the enforcement of the deportation order (e.g., admin. case No 1920/2016 of ACCS);

- The assertion that there is a risk of the foreigner absconding is erroneous. The administrative body, in spite of the requirement set out in ARBA, does not indicate factual data based on which one can draw a reasoned conclusion about the risk of absconding and, thus, frustrating the enforcement of the order (e.g., admin. case No 1920/2016 of ACCS);

- The principle of proportionality laid down in Art. 15, § 1, paragraph 2 of Directive 2008/115/EC is violated (e.g., admin. case No 1919/2016 of ACCS).

B) Case law in relation to appeals filed after the time limit with the argument that the grounds have ceased to exist *(category 2)*

The review of this case law covers appeals against detention filed after the expiry of the 14-day time limit for appealing. The arguments for the admissibility of the appeals are developed by making reference to Art. 15, § 4 of Directive 2008/115 and Art. 44 (8) of ARBA – detention shall be applied within the time limit prescribed therefor or till the circumstances under Art. 44 (6) of ARBA cease to exist – or to a situation where, based on the specific circumstances of the case, it is established that there is no longer a reasonable prospect for the foreigner's removal due to legal or technical reasons. The arguments essentially relate to the emergence of new circumstances as a result of which the initial grounds for detention have ceased to exist – unestablished identity and risk of absconding, and to the fact that there is no longer a reasonable prospect for the foreigner's removal due to legal or technical reasons.

Two appeals within this category 2 have been lodged; each of them contains the arguments described above, individualized and specified depending on the case. The cases were opened by ACCS and Pernik AC. In both cases (100%) the court rules, by means of terminating rulings, that the appeals are inadmissible, on the grounds that the lawfulness of detention cannot be reviewed before the expiry of the six-month time limit in the order, and refuses to examine the case. An appeal against the ruling of ACCS was lodged before the Supreme Administrative Court; however, before the cassation instance examined the appeal, the applicant had been released on the grounds of an application for protection lodged and had been transferred to the State Agency for Refugees. As for the second case before Pernik AC, the foreigner did not wish to appeal the ruling before the cassation instance.

C) Case law in relation to the extension of the detention time limit (category 3)

Four cases related to the extension of the detention time limit for which procedural representation was provided have been identified in this category (admin. case No 4408/2016 of ACCS, panel 43, admin. case No 4736/2016 of ACCS, panel 44, admin. case No 444/2016 of ACCS, panel 43, and admin. case No 4735/2016 of ACCS, panel 9). The arguments against the extension of detention presented to the court are: the request for the extension of detention after the expiry of the six-month detention time limit is inadmissible, as it was lodged after the 6-month time limit of detention had been reached; the legal grounds for extension are not present – frustrating the enforcement of the deportation order or the foreigner's failure to cooperate; the foreigner's link to Bulgaria has not been initially taken into consideration – a family established, a permanent address, permanent residence, and revenues; the administrative body has not considered the application of less coercive protective measures.

In three of the four cases (75%) the detention time limit was extended, the fourth one was still pending. Two of the three rulings for the extension of detention have entirely identical texts which hold that it is the detainee that bears the burden of proving the negative fact, i.e. that the detention is unjustified, instead of holding that the administrative body is obliged to prove that detention continues to be justified. The same effect has been achieved by simply using words to turn the negative prerequisite into a positive one and vice versa. Here are the reasons of Ruling No 3067/31.05.2016 in admin. case No 4408/2016 of ACCS, panel 43, and Ruling No 3029/17.05.2016 in admin. case No 4736/2016 of ACCS, panel 44:

> "As of today, the foreigner has been detained at DETENTION CENTER for six months, and the maximum time limit for the extension of the foreigner's detention at DETENTION CENTER is up to 18 months. In view of this, this judicial instance considers that the assumption of Art. 46a of ARBA applies, the latter being considered in conjunction with Art. 15, paragraph 6 of Directive 2008/114/EC, to the extension of detention, i.e. delay in obtaining the necessary documents for the foreigner's deportation.

As of the time of completion of the hearings in the case, the foreigner does not prove that the detention has ceased to be justified in order for him to be immediately released or that due to legal or other reasons there is no longer a reasonable prospect for removal.”

D) Case law in relation to cases where the initial time limit of detention has been reached *(category 4)*

Two applications in this category have been made to the court with the request for terminating the detention of a foreigner in respect of whom the detention time limit in the order had expired but had not been extended in due time by a court act. The cases were initiated at ACCS (admin. case No 4598/2016, panel 20, and admin. case No 4813/2016, panel 38).

The factual peculiarity of this category of cases is that no request asking for the extension of detention prior to the expiry of the time limit thereof was submitted to the court by MOI Migration Directorate; instead, in these cases the Head of MOI Migration Directorate extended the detention by six more months – an assumption which is neither laid down in the law, nor allowed by it.

In addition to discontinuing the factual actions of detention due to the expiry of the initially determined detention time limit, the arguments presented to the court request that the court declare the annulment of the new order of the Head of MOI Migration Directorate for the extension of detention by six more months.

Both requests have been rejected (100%) as unfounded in the rulings delivered by the court. The court holds that there is a subsequent order for the extension of the detention time limit issued by the Head of MOI Migration Directorate, but refuses to assess the lawfulness of the order in the same proceedings.

The court holds that it is not competent to examine the grounds for the extension of detention, as these grounds are the subject of review in a separate procedure instituted under Art. 46a (3) of ARBA. In addition, the court panels hold that the above actions of detention do not constitute factual but legal actions, as the order is based on the provisions of ARBA.

One of the court panels, after deciding on the request for termination of the factual actions of detention which it rejects by an order, refers to the president of ACCS the appeal against the subsequent order of the Head of MOI Migration Directorate for the extension of detention with a view to instituting a new procedure on the request to declare the annulment thereof, and opening another separate procedure to assess the potential unlawfulness of that order.

PART TWO

FEASIBILITY STUDY

2.1. PARAMETERS OF THE FEASIBILITY STUDY

The feasibility study aims to review the obligations of the states in terms of applying alternatives to migration detention set out in the universal, regional (European), and national legal instruments, as well as their practical application in the EU Member States.

The information and the conclusions in this part of the report contain some basic principles and best practices that can be used by those working in the field of migration, law-makers, and policy-makers with the aim to develop and implement effective models of alternatives to detention in Bulgaria.

The feasibility study covers mainly the European and universal norms in this area, and the European and national practices in terms of applying alternatives to detention for the purpose of migration control.

The categories of third-country nationals falling within the scope of the study are limited to the individuals in respect of whom there are legal grounds for immigration detention. These can be divided into two main groups depending on the reasons for detention and the legal status:

- Third-country nationals who are on the territory of an EU Member State and do not meet or have ceased to meet the conditions for staying and residing on that territory, and in respect of whom a coercive administrative measure has been imposed. This group also includes third-country nationals who have received a final refusal on their applications for international protection.

- Third-country nationals who have lodged an application for international protection.

The reasons for immigration detention can also be categorized into several groups depending on the legal grounds which are laid down in details in the law:
a) Immigration detention for the purpose of executing a coercive administrative measure for deportation in the following cases:
  - when there is a risk of absconding;
  - when the third-country national concerned avoids or frustrates the preparation of return or the process of deportation;

b) Immigration detention of third-country nationals in respect of whom an order has been issued whereby they are recognized as a threat to national security or public order.

c) Detention of persons who have lodged an application for international protection.

The grounds for detention most often used in the 25 Member States in the context of return relate to the risk of absconding. Other grounds applied with respect to all categories of third-country nationals are the threat to national security and public order; failure to abide by the conditions of the alternatives to detention; identifying oneself with fake documents; good reasons to believe that the individual will commit an offence

With regard to these persons the recast Directive 2013/33/EU sets out a comprehensive list of the reasons for detention and requirements for the detention time limit – moreover, only where an alternative to detention cannot be applied.

An applicant may be detained only:

- in order to determine or verify his or her identity or nationality;
- in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;
- in order to decide, in the context of a procedure, on the applicant's right to enter the territory;
- when there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision;
- when protection of national security or public order so requires;
- in conformity with Art. 28 of Regulation (EO) 604/2013 (Dublin Regulation).

Almost all Member States (with the exception of Finland, Sweden, the UK, and Norway) have regulated the detention of asylum-seekers in a separate legal act, other than the one regulating the detention of other categories of third-country nationals.[4]

In Bulgaria the detention of asylum-seekers is regulated in the Law on Asylum and Refugees, while immigration detention is regulated in the Aliens in the Republic of Bulgaria Act. The feasibility study

[4] The use of detention and alternatives to detention in the context of immigration policies. Synthesis report for the EMN Focused Study 2014, p.6

focuses only on the alternatives to detention of migrants who are in a return procedure, including foreigners who have received a final refusal on their applications for international protection.

2.2. LEGAL FRAMEWORK OF TCN DETENTION

The concept of alternatives to detention is based on the need to ensure the protection of fundamental human rights that are also enshrined in international legal instruments, namely the right to freedom, security, and protection against arbitrary detention. Immigration detention, in conformity with the international law and standards, shall be applied as a measure of last resort in exceptional cases where any other options have been assessed as exhausted as a result of an individual assessment of the relevant case.

In conformity with international law, there exists the presumption of the liberty of the individual. Restrictions of personal liberty are admissible only in exceptional cases, and they must not be arbitrary, i.e. they must be based on legal grounds. The concept “arbitrary” does not relate only to the restriction or deprivation of liberty in conformity with the law, but also to the principles of necessity and proportionality.

Nevertheless, in the context of their migration policies the states have the sovereign right to control migration[5], including by means of detention of illegally residing migrants, but such detention must be in conformity with the effective legislation and the principles of necessity and proportionality. It is these principles that are at the basis of applying alternatives to detention, as an assessment is made of the extent to which detention is a necessary and proportionate measure in each individual case.

UNIVERSAL LEGAL INSTRUMENTS	PROVISIONS
Universal Declaration of Human Rights	Art. 3 – The right to life, liberty and security of person. Art. 9 – Prohibition of arbitrary arrest, detention or exile.
International Covenant on Civil and Political Rights	Art. 9 – The right to life, liberty, security; Prohibition of arbitrary arrest. It is explicitly stipulated that detention or arrest shall be on the grounds, as established by law, and any person deprived of his/her liberty shall be entitled to take proceedings before a court.

[5] Mubilanzila Mayeka and Kaniki Mitunga v Belgium App no 13178/03 (ECtHR, 12 October 2006), para 83. “The States shall have the right to control the entry, residence, and deportation/expulsion of aliens.”

Convention on the Rights of the Child	Art. 37(b) – Prohibition of illegal or arbitrary detention of children.

The European law regulates a more detailed legal framework of detention for the purpose of immigration control, and the obligations of the Member States to provide for alternatives. It sets forth special restrictions in terms of the detention of asylum-seekers and third-country nationals awaiting the execution of a return procedure.

Deprivation of liberty shall be applied as a measure of last resort, and the detention decision shall be made in conformity with the principle of proportionality[6], following an individual assessment, in each individual case, of the possibility to apply less restrictive measures for achieving the aim of immigration control.

REGIONAL AND EUROPEAN UNION LEGAL INSTRUMENTS	**PROVISIONS**
European Convention for the Protection of Human Rights and Fundamental Freedoms	Art. 5 The right to liberty and security.
Charter of the Fundamental Rights of the European Union	Art. 6 The right to liberty and security.
Return Directive 115/2008/EC	Art.15 (1). Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process, in particular when: a) there is a risk of absconding or; b) the third-country national concerned avoids or hampers the preparation of return or the removal process. Any detention shall be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence. Art. 17 Detention of minors and families paragraph 1. Unaccompanied minors and families with minors shall only be detained as a measure of last resort and for the shortest appropriate period of time.

[6] The principle is set forth in the Preambule (16) of Directive 2008/115/EC and says that the use of detention for the purpose of removal should be limited and subject to the principle of proportionality with regard to the means used and objectives pursued.

EU Return Handbook	Obligation to provide alternatives to detention: Art. 15 (1) must be interpreted as requiring each Member State to provide in its national legislation for alternatives to detention. Art. 15 (4-6) Termination of detention: Detention must be ended and the person concerned must be released in a number of different situations, such as in particular if : – there is no more reasonable prospect of removal for legal or other considerations; – removal arrangements are not properly followed up by the authorities; – the maximum time limits for detention have been reached. *Furthermore an end should be given to detention on a case by case basis if alternatives to detention become an appropriate option.* Art. 15 (1) The possibility of maintaining or extending detention for public order reasons is not covered by the text of the Directive and Member States are not allowed to use immigration detention for the purposes of removal as a form of "light imprisonment". The past behaviour/conduct of a person posing a risk to public order and safety (e.g. non-compliance with administrative law in other fields than migration law or infringements of criminal law) may, however, be taken into account when assessing whether there is a risk of absconding.
20 Guidelines on Forced Return (Council of Europe, CM/2005/40)	The Guidelines are non-binding, but they constitute a political agreement. Chapter III, Guideline 6, paragraph 1 A person may only be deprived of his/her liberty, with a view to ensuring that a removal order will be executed, if this is in accordance with a procedure prescribed by law and if, after a careful examination of the necessity of deprivation of liberty in each individual case, the authorities of the host state have concluded that compliance with the removal order cannot be ensured as effectively by resorting to non-custodial

	measures such as supervision systems, the requirement to report regularly to the authorities, bail or other guarantee systems.
Resolution No 2020 of 03.10.2014 of the Council of Europe on Alternatives to Immigration Detention of Children	9. The Assembly calls on the Member States to: [...] 9.7. adopt alternatives to detention that meet the best interests of the child and allow children to remain with their family members and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved; 9.8. provide necessary resources in order to develop alternatives to the detention of migrant children; 9.9. seek to develop and implement non-custodial, community-based alternatives to detention programmes for children and their families, using the “Child-sensitive Community Assessment and Placement (CCAP) Model”; (developed by the International Detention Coalition) 9.10. raise the awareness of all public officials, including the police, prosecutors and judges dealing with migration matters, of international human rights standards, by emphasising the rights of children and the alternatives to detention; 9.11. share best practices on the alternatives to the detention of migrant children in all member States; 9.12. encourage collaboration between governments of member States, the Council of Europe, United Nations agencies, intergovernmental organisations and civil society organisations to end child immigration detention and implement non-custodial, community-based alternatives to detention for children and their families.
NATIONAL LEGAL INSTRUMENTS	**PROVISIONS**
Aliens in the Republic of Bulgaria Act	**Art. 44** […] (5) When obstacles exist for the foreigner to leave the country immediately or to enter another country the foreigner shall be obliged, by an order of the body which has issued the order for imposing the coercive administrative measure, to appear daily at the territorial unit of the Ministry of Interior with jurisdiction over his/her residence district. (6) In cases where the foreigner who has a coercive administrative measure imposed under Art. 39a (1), items 2 and 3, and whose identity is unestablished frustrates the execution of the order or there is a risk

	of his/her absconding, the body issuing the order or the Director of Migration Directorate may issue an order for the detention of that foreigner in a home for temporary accommodation of foreigners for the purpose of forced removal to the border or expulsion. (8) Monthly official review shall be carried out by the Director of Migration Directorate for the purpose of checking the existence of the grounds for detention. Detention shall continue till the circumstances under paragraph 6 cease to exist. (9) Detention shall not be applied with respect to unaccompanied minor and underage persons. **Art. 44a – Expulsion** (3) The foreigner shall be obliged to appear on a weekly basis at the territorial unit of the Ministry of Interior with jurisdiction over his/her residence district.
Regulation for the Application of the Aliens in the Republic of Bulgaria Act	Art. 72. The order under **Art. 44 (5)** of ARBA shall indicate the existing reasons why the foreigner cannot immediately leave the country, the settlement, the foreigner's residence address and the time at which he/she must appear at the unit on duty of the territorial structure of the Ministry of Interior. Paragraph 5. A person providing a foreigner with an imposed coercive administrative measure with a residence address shall fill in a sample declaration and shall adduce evidence proving sufficient subsistence means of the illegally residing person in an amount not lower than the minimum social pension benefit in the country.

2.3. ALTERNATIVES TO DETENTION

Immigration detention is an administrative measure imposed by the state with the aim to restrict the freedom of movement in order to secure the enforcement of another measure which is most often deportation or expulsion.

Immigration detention is not an act of punishment, neither does it serve the purpose of isolating the foreigner from the society, and in most Member States the order for such detention is issued by an administrative body[7], not by the court.

Some Member States (Slovenia, Lithuania, Sweden) have implemented the good practice of not considering the risk of absconding as an independent reason for applying detention, but as an element of the individual assessment of the appropriate measure in the relevant case. Nevertheless, alternatives to detention measures are not considered at the initial detention for screening purposes (gathering basic information such as identification, nationality, legal status, health status, “security indicators”, vulnerability).

The assessment of the possibility to apply an alternative to detention takes into account the screening data, and the existence of relations within the community. The Member States differ in terms of the screening period which can range between 2 and 20 days, and it is afterwards that a decision is made about extending the detention or applying less restrictive measures outside the places of administrative detention. The UK has the longest time limit for initial detention (20 days), followed by Slovenia (48 hours).

When assessing the possibility to apply alternatives to detention the states consider mainly **three groups of factors**:

- *Risk of absconding:* the probability for the foreigner to abide by the conditions of the alternative to detention is related to the risk of absconding. Most Member States do not provide the foreigner with the option of an alternative to detention if the risk of absconding is high enough.

- *Vulnerability:* the assessment of vulnerability takes into consideration circumstances such as health status, existence of children, special needs.

- *Practical circumstances:* an appropriate measure tailored to the individual case depending on whether the foreigner has family and professional relations, friends in the community.

Ten Member States conduct an individual interview with third-country nationals before making the decision to impose a specific administrative measure for the purpose of control; most countries use a standard questionnaire for that purpose. In some states such as Slovakia, the Czech Republic, Finland the foreigner is allowed to comment the facts gathered through the interview before the decision is made.

[7] With the exception of Lithuania and Sweden where the administrative body proposes detention or an alternative, and the court grants the measure.

In most states the authorities issuing the decision on applying an alternative to detention are the same as those responsible for the execution of the measure.

The alternatives to detention are also coercive measures which, however, are executed outside administrative detention places and allow a lower level of restriction on movement under the obligation of observing certain conditions set in advance. The European law requires and encourages the Member States to apply detention as a measure of last resort and to provide for alternatives to detention in their national legislation. The possibility to apply alternatives should be examined both before issuing the administrative detention order and during the detention itself when it becomes clear that deportation cannot be enforced within a reasonable time limit.

The national legislation does not explicitly regulate the issues of alternatives to detention, which explains the absence of arrangements for applying the alternatives to detention.

Alternatives to detention are different from release from detention – for example, by virtue of a court decision or due to the fact that the maximum time limit of detention has been reached. The release from detention is unconditional, while the alternatives are subject to conditions which the foreigner must respect – for example, residing at an approved address or in a certain settlement, regular reporting to the administrative body, etc. The failure to observe these conditions may trigger the application of a more restrictive measure, namely detention.

In terms of the duration of the alternatives to detention, the Member States have introduced two approaches: 1) the alternative is applied for the maximum period allowed for detention (e.g., Belgium, Lithuania, Slovenia) ; 2) the alternative may be applied for a longer period (Sweden) or indefinitely (Austria).

European law does not provide an exhaustive list of potential alternatives to detention. The states have the discretion to apply various alternatives, as well as a combination of two or more alternatives, as long as these alternative are in conformity with Art. 52 (1) of the Charter of Fundamental Rights of the European Union.

The alternatives to detention most often used in the EU Member States:

a) Temporary document confiscation (identity document forfeiture)

The obligation to surrender the passport or another travel document is provided for in the legislation of 13 Member States and can be imposed on its own or in combination with other alternatives, for example the obligation to stay at a designated place, regular reporting to the authorities. The idea behind this measure is ensuring that the documents will not be lost or destroyed

in the course of preparing the return. While some states (Slovakia) have not set out this measure as an alternative in the national legislation, temporary confiscation of travel documents is a measure applied whenever a procedure for the foreigner's return is executed.

This measure does not require special financial resources, as migration officers carry out temporary confiscation of the passport as part of their official duties.

While Bulgaria applies this measure in all return procedures, it does so under the condition of applying it in a cumulative manner with all the other coercive measures, not as an alternative on its own. Indeed, applying temporary confiscation of travel documents on its own as an alternative to detention is inappropriate; it should be applied in combination with other measures such as the obligation for regular reporting to the authorities, staying at a designated address or in a special centre for the preparation of return.

In practical terms, however, this measure is unfeasible, as the absence of a passport or another travel document is amongst the main reasons for deportation.

b) Residing at a designated place (open regime)

This measure is usually combined with the obligation for regular reporting to the authorities. The residence facilities can be open centres run by state institutions or NGOs, as well as hotels and private lodgings.

A total of 17 Member States have implemented the obligation to stay at a designated place as an alternative to detention. Few Member States apply accommodation of third-country nationals awaiting return in open facilities as an alternative to detention. The existing centres have been set up in particular for the accommodation of families with children and vulnerable persons in order to avoid their detention.

Austria is the only state that has an open facility for the accommodation of foreigners awaiting return which is run by a non-governmental organisation. The inmates are obliged to report on a daily basis to the police officer present on the territory of the centre.

In Belgium families with children awaiting return are accommodated in lodgings rented by the state. They have the right to move freely, however an adult member of the family must be present in the lodging at any time. An employee of the migration service is designated for providing complex services to the family – legal, logistic, preparation of return, options for legalizing their residence in the country. As of 2013, a total of 23 families benefited from this alternative, with a team of 11 employees directly involved in the execution of the measure.

The Netherlands has a centre for preparation for return, with a regime of restricted movement. The movement is limited to the settlement where the centre is located, and daily reporting to a representative of the authorities at the centre is also required. It is usually foreigners whose return is due within 12 weeks – hence, the risk of absconding is assessed as low – that are accommodated in this centre. Families with children are accommodated at special family facilities, and they themselves take care of their return. While accommodation at such a centre is not time limited, families can benefit from it till the youngest child comes of age[8]. In some states (France) the obligation to stay at a designated address is controlled and monitored by the local authorities, not by the immigration authorities.

The Bulgarian legislation provides for this measure under the form of accommodation in private lodgings at the expense of the foreigner or his/her guarantor, in combination with regular reporting to the authorities. The established practice is that before granting permission the relevant addresses are checked in order to make sure that they exist and have accommodation conditions. This measure is applicable in many cases when the third-country national has some relations in the community – family, professional, personal – and has resided in the country for some time. It cannot be easily applied with respect to newly arrived foreigners, as they have not yet managed to establish contacts with the community and are unable to indicate an address where they can reside while awaiting their return. Accommodation at a special centre for the preparation of return is a good alternative for foreigners who are unable to indicate a residence address or a guarantor or cannot afford renting accommodation, but meet the conditions for the application of an alternative to detention. Such a centre allows more in-depth activities with the foreigner in preparing his/her return, including through non-governmental organisations that are specialised in voluntary return, legal consultations, social work. On the other hand, building, equipping and managing such a centre requires substantial financial and human resources, which makes this alternative the most costly one. Belgium has solved the issues by using ERF funds for the equipment of the centre, but the operational costs are secured by the state budget.

c) Deposit of a financial pledge (cash guarantee)

Under this alternative third-country nationals may deposit a financial guarantee to the state, which is subject to forfeiture in the event of absconding.

The deposit of a cash guarantee is set forth as an option in the legislation of 12 Member States, but in practice is not applied in all of them. The guarantee may be paid either by the foreigner concerned or by a third party – most often a public organisation or a private guarantor.

[8]The use of detention and alternatives to detention in the context of immigration policies in the Netherlands http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/20_netherlands_national_report_detention_study_en.pdf

The guarantor can be a national of the host country, a legally residing third-country national, an international organisation. The guarantor is a person who pledges to ensure that the third-country national reports regularly to the authorities and respects the conditions of the alternative to detention.

In the United Kingdom the guarantor must provide good reasons in order to be approved as eligible – for example, sufficient financial resources for the payment of the guarantee, age above 18, legal residence, a clear criminal record, personal relations with the third-country national. In addition, the guarantor must prove his/her capacity to pay some or all of the amount of the guarantee in case the foreigner absconds or fails to fully respect the conditions of the alternative. In the UK the guarantor is not obliged to provide accommodation for the foreigner on whose behalf he/she acts as a guarantor.

In Lithuania and Slovenia the guarantor is not bound by a specific amount, and the legislation does not provide for a financial or another sanction against him/her in case the foreigner fails to observe the conditions of the alternative. The guarantee conditions in these countries are similar to the ones laid down in the Bulgarian legislation. The guarantor must provide the third-country national with accommodation, subsistence, healthcare expenses. The guarantor is obliged to submit an ownership or rental document, a bank statement, a notary declaration certifying the provision of accommodation and subsistence.

In Slovakia the financial guarantee is combined with regular reporting to the authorities and residing at a designated address. The amount of the financial guarantee is calculated on an individual basis and is linked to the monthly subsistence amount of an adult in the country.

Each individual case is assessed depending on the personal circumstances – the amount of the financial deposit could be 500 euro (Hungary, the Netherlands), 5,000 euro (Hungary), and between 50 and 5,000 pounds, an average of 800 (the UK). In Germany the financial guarantee is calculated on the basis of the amount needed to pay the return costs and cannot be less than the minimum salary. The Belgian legislation provides for calculating the amount of the guarantee on the basis of the detention costs per day, but not more than 30 days. The alternative has not yet been applied in the country.
The Bulgarian legislation does not provide for a financial guarantee as an alternative to detention. While this is an appropriate measure to be applied in Bulgaria, it should not be the only option, as it would preclude the possibility for foreigners with limited financial resources to benefit from this alternative even if they are eligible. On the other hand, it would allow foreigners who do not have established relations in the community to also benefit from alternatives to detention.

As regards the method of calculating the amount of the financial guarantee, the practice of the Member States highlights the differentiated approach as appropriate, but also the need to define a minimum amount. Two approaches are possible – on the one hand, adopting the practice of Germany which has chosen the minimum salary as the minimum guarantee amount by taking into account the return costs; on the other hand, the calculation might not take into account the return costs, and, instead, use only a constant value such as the minimum salary and its multiples.

The practice of the Member States in terms of the guarantee amount is that the calculation is made mainly on the basis of the return costs, which implies a differentiated approach depending on the country of origin and the country to which the foreigner is to be returned.

d) Regular reporting to the authorities (signed promise of appearance)

This measure obliges foreigners to regularly report to the police or immigration authorities and is the most frequently used one in the national legislations and practices of the Member states. It is often combined with others such as temporary confiscation of the travel documents or staying at a designated address.

The interval of reporting to the authorities could be every day up to every other week or longer. The good practice in applying this measure is for the reporting intervals to become longer when the administrative body assesses the foreigner as being compliant with the conditions of the alternative. Moreover, in quite a few states (17) the frequency of reporting to the authorities is determined on an individual basis, and it can vary depending on the particular case.

In the UK unaccompanied children can also be subject to this measure; the immigration officer ensures the reporting through the social worker attached to the relevant child. In the UK, as well as in Sweden and the Netherlands the authorities can be flexible in terms of imposing sanctions for failure to report when the foreigner presents sufficient reasons therefor, for example deteriorated health status. In Sweden and the Netherlands the failure to meet the conditions of the alternative does not automatically result in detention; a new assessment is made of the need to change the measure.

The Bulgarian legislation provides for the application of this measure as an alternative to detention, and as a form of migration control where detention has been ended by a court decision or due to the expired maximum time limit. The measure is combined with a designated residence address. ARBA explicitly stipulates that the foreigner must report to the authorities once a week.

In view of the individual approach in choosing alternatives to detention and the practice of the Member States, the measure could be made more flexible in terms of execution – for example, ordering the regularity of reporting in the course of time or at the very point of choosing the measure as an alternative to detention when the risk of absconding is assessed as low.

In view of the above, the measure might prove inappropriate for persons with special needs who have difficulties moving due to their physical state. Specific forms should be put in place for such individuals – for example, reporting through telephone communication with voice recognition. This form of conducting the check exists in the UK which has practice in applying it. While the costs related to voice recognition are higher compared to the physical appearance before the authorities, it allows foreigners with special needs to benefit from the most widespread alternative to detention in the Member States.

e) Electronic surveillance (e-tagging)

Electronic surveillance is applied mostly in the context of criminal justice and has been adapted from it. Some Member States have introduced this type of alternative to detention but do not use it often in practice. On the one hand, this alternative has higher costs and requires outsourcing to private companies which maintain the electronic devices and carry out the surveillance; on the other hand, surveillance runs contrary to the right to private life and dignity. Furthermore, the persons with e-tagging could be associated with criminals.

This measure is made use of only in four Member States, and in isolated cases. France applies it in respect of the parents of minor children for whom staying at a designated address is assessed as an insufficient measure in view of the risk of absconding. In the UK electronic surveillance is applied in respect of third-country nationals who are subject to restrictions as to the place of residence. The measure is not applied with children, pregnant women, senior persons, and persons with mental disorders.

The Bulgarian legislation does not provide for such a measure as an alternative to the detention of foreigners who are in a return procedure. The application of the measure is associated with higher costs because of the technical equipment and its maintenance, and is disputable in terms of the fundamental human rights (an element of the principle of proportionality), in particular when applied in an immigration, not a criminal context.

By way of comparison with the other types of alternatives to detention, this measure allows lowering the risk of absconding, but does not impact the efficiency of the return procedure, as the latter is mostly dependent on other factors, such as identification, existence of a travel document, the foreigner’s consent to cooperate in the return procedure.

2.4. CONCLUSIONS REGARDING THE ALTERNATIVES APPLIED IN THE EU

The Member States do not gather systematic, centralized statistical data, by using uniform parameters, in relation to the effect achieved by the various types of alternatives to detention on the return procedure and absconding. Nevertheless, the existing information prompts the conclusion about a higher level of absconding in transit states than in the states of final destination for migration. In the UK (for 2012) the percentage of absconding amongst third-country nationals benefiting from an alternative to detention is below 10%, in Belgium and Sweden 23%, while in Slovenia it is 85%, and in Lithuania 60% for the same period. No analyses have been made of either the factors influencing the percentage of absconding or the types of alternatives to which they are relevant. Such factors could be the geographic location and the profile of the state as a transit one, as well as the presence of a migrant community, the application of specific types of alternatives, the profile of the third-country nationals.

European law does not provide a comprehensive list of potential alternatives to detention. However, it obliges the Member States to ensure alternatives to the detention of third-country nationals awaiting return, the alternatives being considered with priority over detention. This is why, the majority of the Member States have set forth the obligation to consider an alternative to detention with priority over detention itself in their legislation, including the Bulgarian law[9].

Alternatives to detention can be applied only with respect to third-country nationals for whom a return procedure has been initiated, as it is only this procedure that constitutes legal grounds for detention. The same rule is set out in the Bulgaria law[10] and is applied in practice. The detention of third-country nationals awaiting return is a measure of last resort in any Member State. In the national practice of Bulgaria, however, detention is applied as the first measure; the reason for this is that the only alternative laid down in the law – reporting to the authorities at the police department once a week is inapplicable in respect of newly arrived immigrants, as they are unable to provide a local guarantor who can secure their accommodation and subsistence.

Alternatives to detention are not applied in case the third-country national has been released from detention by virtue of a court judgement or when the maximum time limit is reached. Under these circumstances other forms of migration control are possible, which, while being similar to alternatives to detention, are not alternatives in their essence, as release is unconditional and the failure to abide by the measures cannot trigger repeated detention.

In most Member States it is the migration control authorities that are competent to decide on applying either detention or an alternative to detention. The alternatives to detention may be applied on their own or in combination, depending on the individual case. The decision on applying a specific measure in respect of a third-country national is made on the basis of an individual assessment.

The good practices of individual assessment include an individual interview with the third-country national awaiting return before taking the decision on a specific measure for administrative control. The interview is conducted by using a standard questionnaire. The individual assessment is based on three factors:

- *Risk of absconding:* the probability for the foreigner to abide by the conditions of the alternative to detention is related to the risk of absconding ; it is only when the risk of absconding is assessed as high that detention is applied instead of an alternative.

- *Vulnerability:* the assessment of vulnerability takes into consideration circumstances such as health status, existence of children, special needs.

[9] Art.44 (6) of ARBA.
[10] Art.44 (8) of ARBA.

- *Practical circumstances:* an appropriate measure tailored to the individual case depending on whether the foreigner has family and professional relations, friends in the community.

Finally, it should be noted that the prevailing majority of the Member States have set forth a prohibition on the detention of unaccompanied children.

2.5. RECOMMENDATIONS REGARDING POTENTIAL NEW ALTERNATIVES IN BULGARIA

It is recommended that the national legal framework (ARBA and Regulation for the Application of ARBA) should be amended and supplemented in order to set forth alternatives to the detention of third-country nationals who are in a return procedure, by including the following elements:

2.5.1. The obligation to consider the possibility to apply alternatives to detention before issuing the detention order;

2.5.2. Individual approach and assessment in each individual case;

2.5.3. An explicit legal provision regulating the possibility to apply various combinations of measures already set out in the law (temporary confiscation of travel documents, external address, daily reporting), which are not applicable at present due to the mandatory application thereof in a cumulative manner;

2.5.4. The order should contain the conditions of the alternative and the reasons for choosing it, as well as the possibility for judicial review;

2.5.5. The possibility to also apply an alternative during detention already imposed – within the monthly ex-officio review by the Migration Directorate, and at the request of the third-country national detained;

2.5.6. Introducing the possibility to impose sanctions (forfeiture of the financial guarantee, increasing the amount of the financial guarantee) on the third-country national in the event of failure to respect the conditions of the alternative, the most serious sanction being detention;

2.5.7. Introducing the possibility to impose sanctions on guarantors providing accommodation and subsistence in relation to the measure of weekly reporting to the authorities at the police department with jurisdiction over the residence of the third-country national (signed promise of appearance);

2.5.8. Developing guidelines/a mechanism for risk assessment, and laying them/it down in a legal act (regulation, ordinance, instruction);

2.5.9. Introducing a financial pledge (cash guarantee) as an additional alternative measure to detention with options for: a) linking the amount of the cash to the costs of the execution of the return; b) the possibility to update the amount in the event of emerging changes in the costs of the return to

specific countries of origin; c) the possibility for the financial guarantee to be paid in favour of a third-country national by a private guarantor or by means of a deposit by a non-governmental organization.

PART THREE

CONCLUSIONS

3.1. NATIONAL PRACTICE

3.1.1. Administrative practice (police authorities)

While the prevailing majority of migrants enter the country from the territory of the Republic of Turkey, most of them are apprehended by the police authorities not at the entry (12%) but inland (54%) or in their attempts to exit (34%). Both migrants and asylum-seekers consider Bulgaria a transit country, hence they do not wish to remain on its territory or lodge an application for international protection (99.6% of the newly arrived ones).

All return orders (100%) are issued on the grounds of “illegal entry or residence on the territory of the Republic of Bulgaria”. Such grounds for detention imply the readmission of the persons detained within a short time from the Republic of Bulgaria into the neighbouring countries from which they entered, unless they lodge an application for protection. The number of those apprehended at the exit, however, by far exceeds the number of those apprehended at the entry, which makes the execution of readmission inapplicable in both legal and factual terms, as the foreigners were detained on the territory of the country in attempting to illegally exit it, and not in attempting to illegally enter it from a neighbouring country.

In almost all cases (99.9%) the police body issuing the order does not consider an alternative to detention; over the six-month period only 1 (one) foreigner had a time limit determined for voluntary return. Over 99% of the cases are not provided with legal aid upon detention, which points to the absence of safeguards for access to the court for the purpose of automatic and immediate judicial review of detention.

A negligible percentage of the detainees apply for the substitution of the detention measure with the one single less coercive alternative measure available at present – weekly reporting to the authorities at the police department with jurisdiction over the foreigner’s residence address which is determined on the basis of a declaration filed by a local guarantor. The reason is that the above mentioned conditions make the measure unfeasible for newly arrived migrants. This is why after detention, only 0.1% of the persons concerned requested that it be changed into reporting to the police authorities (signed promise of appearance). One person had the request granted, the others had their applications rejected or were released on other grounds.

The detention of vulnerable persons is considered as highly undesirable by the immigration authorities themselves due to the impossibility to provide them with adequate care at the detention centres – this explains both the low percentage of detention of persons from this group (20%) and the usually short duration of their detention (an average of up to two weeks). A regular practice of the police authorities is “attaching” adults from the group as persons accompanying unaccompanied minors without their parents, as their guardians or custodians with the aim to circumvent the legal prohibition to detain unaccompanied minors. The main reason indicated for this practice is the fact that, in most cases, the social services for child protection fail to assist in providing appropriate accommodation for children.

The majority of the detainees do not have any IDs with themselves and do not wish to voluntarily return to their country of origin, as the number of those having communication with their embassy after detention is extremely low – only 5% of the detainees during the first six months of detention, and below 1% till the 12th month. The majority of those detained up to 6 months (73%) expressly refuse to communicate with their embassy.

The average duration of detention is within the time limit of the initial 6-month period – in most cases it is less than 1 month (97%). Out of all detainees 1% remain detained till the 12th month, and 2% till the 18th month.

The most frequent ground for release is not the execution of return, as 90% of the irregular foreigners detained are released on the grounds of lodging an application for international protection. Bulgaria being considered a transit country, the application for protection is lodged with the aim to ensure their release from the detention centres (DETENTION CENTER), given the absence of any other legal alternative for release. The return procedure has been executed with respect to only 4% of the detainees, the majority of them having filed a declaration for voluntary return; nevertheless, these individuals have spent an average of 3 months at DETENTION CENTER before being taken out of the national territory.

3.1.2. Case law (appeals and ex-officio judicial review)

An insignificant number of foreigners (13%) have succeeded in lodging an appeal against the detention order within the time limit; most of them (84%) did so with the help of a non-governmental organisation, and only few of them hired a lawyer at their expense (16%).

In half of the appeal cases (50%) it was secured that the applicant appears before the court and is heard by it; in the other half of the cases the applicant was not brought to the court either because he/she had been released meanwhile or because the court had not required so.

In more than half of the cases (54%) the appeal has been dismissed. In terms of the cases related to the ex-officio judicial review of the need to extend the detention, the court ordered the extension of detention in all the cases of review at the 6th month (100%), and in the majority of the

cases of review at the 12th month (75%). A substantial part of the ex-officio judicial review at the 6th month was overdue by more than one month (36%). In relation to either type of review, in most of the cases, the court did not check the presence of the prerequisites for detention upon issuing the order (initial lawfulness), neither did it assess, as required by the law, the need to extend the detention and the relevant time limit of the extension (subsequent lawfulness).

None of the foreigners detained – both those who appealed and those who did not appeal (100%) – have been provided with access to the national legal aid system (National Legal Aid Bureau). While the predominant practice is that the court does not appoint legal aid for the purpose of ex-officio judicial review (83%), in most cases legal aid either was not requested by the foreigners detained (44%) or the foreigners refused being brought to the court (55%) or were represented by their own lawyer (1%).

To SUM-UP, the application of detention (forced accommodation) in the national practice is not in conformity with the legitimate purpose of it serving as a protective measure for the enforcement of return, as in reality the return procedure has been executed in respect of only 3% of the irregular migrants detained – 2.5% have been returned to their countries of origin, and 0.9% have been readmitted into third countries.

3.2. EUROPEAN STANDARDS

The European legal framework sets forth some basic principles which serve as a good basis for applying detention as a measure of last resort and for putting in place alternatives.

Almost all Member States have laid down alternatives to detention in their national legislations, but no research has been conducted so far on the effect of these alternatives on the efficiency of the return procedure and the risk of absconding.

It is the risk of absconding that is considered to be the biggest drawback of the alternatives to detention in relation to migration control. The available statistical data shows that the risk of absconding is entirely eliminated only by means of effective detention.

On the other hand, however, detention cannot last forever. According to the findings of a recent study[11] the probability for the foreigner to be returned is at its highest during the first three months of detention (up to 80%); if foreigners do not express their wish to return and do not cooperate with the immigration authorities to this end, they do not change their mind at a later stage. Cooperation by the foreigners is a substantial prerequisite for either the success or the failure of the

[11] Advisory Council on Migration, the Netherlands, The use of detention and alternative of detention in the context of the immigration policies of the Netherlands 28, EMN 2014, for details, see: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/20_netherlands_national_report_detention_study_en.pdf

return procedure. Moreover, it is established that unless the immigration authorities manage to gather the relevant documents and make all the formal arrangements during this initial period, the probability of this happening at a later stage of detention is rather low. Thus detention cannot achieve its aim and becomes entirely pointless, not to speak of the considerable financial costs for its practical execution.

The alternatives to detention, in addition to being a more humane measure, are also a pragmatic tool for illegal migration control, as the application of all its types is more advantageous in financial terms for the particular state. The successful application of detention requires an individual approach and choosing the appropriate measure for each case. Risk assessment in each individual case based not on formal criteria but on a real examination of the case – by means of an interview and evaluation of the data gathered – is crucial to the successful application in practice of the alternatives to detention.

In CONCLUSION, detention should be applied only when: i) the person has attempted to frustrate the immigration control or there is sufficient data suggesting imminent absconding or transit into another state; or ii) the person's removal is due very soon by means of either readmission into a third country or return to the country of origin. In any other case an alternative to detention should be applied as a more humane and more cost effective coercive measure of immigration control over illegally entering or residing third-country nationals.

PART FOUR

RECOMMENDATIONS

4A. Short-term measures

4.1. Short-term detention: introducing under the Aliens in the Republic of Bulgaria Act an initial, short-term and limited to the maximum period of detention after the expiry of the 24-hour police detention under the MOI Act, which will be imposed by an order issued by the police authorities arresting the foreigner for illegal entry or residence in the country.

4.2. Procedure for taking a decision on return: within the short-term detention, in the event of absence of valid documents, the specialized authorities for security and administrative control of foreigners should gather data with the aim to establish the identity (identification) and assess if the foreigner is an illegally residing third-country national (profiling), based on which a reasoned assessment will be made of the legal and factual possibility to execute the return, which will justify the issuing of the individual administrative act.

4.3. Imposing a coercive protective measure: the decision on return issued, whereby the return procedure is initiated, should contain a separate and reasoned assessment of the risk of absconding in view of the individual specifics of the case in order to decide on the applicability of an alternative to detention and what the alternative should be in view of the specific circumstances; detention as a protective measure of last resort should be applied only where it is not possible to apply any alternative.

4.4. Prerequisites for detention: setting forth, in an explicit and cumulative manner, the prerequisites for ordering detention which should take into account whether: a) the person has attempted to frustrate the immigration control or there is enough data suggesting a risk of absconding or transit to another state; b) the person’s removal from the territory by means of readmission into a third country or return to his/her country of origin is immediate or imminent.

4.5. Initial time limit of detention: introducing as a mandatory element of the detention order an indication of the initial time limit of detention determined within the first six months.

4.6. Initial judicial review: changing the now effective ex-officio judicial review of the lawfulness of detention by prescribing that it is conducted as soon as possible after detention, instead of at the 6th month, with an explicit provision laying down the right to a personal hearing before the court (habeas corpus) and legal aid in the court proceedings.

4.8. Alternativeness of the alternatives: the current alternatives (identity document as a guarantee forfeiture, open regime of an external residence address, local guarantor, and signed promise of appearance) should be amended in such a way as to become applicable under the conditions of alternativeness, instead of the now applicable cumulativeness, with the aim to also cover newly arrived foreigners.

4.7. Financial pledge (cash guarantee): introducing a new alternative measure. The amount of the guarantee should be determined depending on the guarantor. If the guarantee is lodged by the foreigner detained, its amount should be calculated by taking into account the return costs, while if the guarantee is lodged by a third person-guarantor, it should be calculated by taking into account the amount of the sanctions for administrative violation of the residence regime. In either case the law should provide for the possibility to appeal before the court the amount of the financial guarantee and the possibility to request a fixed-percentage reduction of its amount upon the submission of an identity document as a pledge.

4.8. Accommodation of unaccompanied minors: setting up a specialized facility with an open regime (a crisis centre) for the accommodation of unaccompanied minors where adequate care will be taken of them and an assessment will be made with the aim to determine the measures to be taken in view of their best interest – for example, return to the country of origin, reunification with a family member in a third country, allowing residence and inclusion in the system of social services for children deprived of parental care.

4B. Long-term measures

4.10. Access to legal employment: regulating the possibility for foreigners, who have an alternative measure to detention imposed and for whom the return procedure is either delayed beyond a certain time limit or is impossible in legal or factual terms, to acquire the right to temporary access to the labour market in order to ensure that they provide for their subsistence, raise funds for voluntary return, and prevent criminality.

4.11. Regularization: introducing a legal option to legalize the residence of foreigners with an alternative measure to detention imposed in respect of whom the return procedure has not been executed or is impossible in legal or factual terms and who provide for their subsistence based on the work permission granted, are staying in Bulgaria for a long time and have not committed another infringement of the law or an offence within the meaning of the law.

ATTACHMENT No 1 TO 2.2.1 – NATIONALITIES

State	*Sofia DETENTION CENTER*	*Lyubimetz DETENTION CENTER*	*TOTAL*

1. Azerbaijan	1	1	2
2. Albania	7	0	7
3. Algeria	**13**	**2**	**15**
4. Angola	0	1	1
5. Afghanistan	**1,363**	**598**	**1,961**
6. Bangladesh	2	0	2
7. Stateless	3	0	3
6a. Palestine	3	0	3
8. Bosna and Herzegovina	1	0	1
9. Vanuatu	1	0	1
10. Vietnam	**7**	6	**13**
11. Ghana	1	0	1
12. Guinea	1	0	1
13. Georgia	0	1	1
14. Dominican Republic	0	1	1
15. Egypt	2	0	2
16. Israel	1	0	1
17. India	6	0	6
18. Iraq	**341**	**404**	**745**
19. Iran	**40**	**5**	**45**
20. Jordan	1	0	1
21. Cameroon	1	1	1
22. Congo	0	1	1
23. Cote d’Ivoire	1	0	1
24. Cuba	1	1	2
25. Libya	4	2	6
26. Lebanon	3	2	5
27. Macedonia	4	0	1
28. Malaysia	0	2	2
29. Mali	2	0	2
30. Morocco	**13**	**8**	**21**
31. Myanmar	1	0	1
32. Moldova	1	0	1
33. Unestablished nationality	1	0	1
34. Pakistan	**103**	**25**	**128**
35. Russia	2	0	2
36. USA	1	0	1
37. Syria	**324**	**99**	**423**
38. Somalia	2	0	2
39. Serbia	3	0	3
40. Tunisia	**6**	2	**8**
41. Turkmenistan	**0**	1	1
42. Turkey	**11**	**24**	**35**
43. Uganda	1	0	1
44. Ukraine	1	0	1

45. Chechnya	1	0	1
46. Shri Lanka	1	0	1

ATTACHMENT No 2 TO 2.2.1 – BODIES IMPOSING THE COERCIVE MEASURES

Body	***Sofia DETENTION CENTER***	***Lyubimetz DETENTION CENTER***	***TOTAL***
A) Chief Directorate Border Police			
1. Belogradchik BPD	6	0	6
2. Bregovo BPD	112	1	113
3. Bourgas BPD	0	2	2
4. Vidin BPD	5	7	12
5. Elhovo BPD	3	6	9
6. Kalotina BPD	615	169	784
7. Kozoloduy BPD	1	0	1
8. Lesovo BPD	3	0	3
9. Malko Tarnovo BPD	0	65	65
10. Novo Selo BPD	0	14	14
11. Oltomantzi BPD	10	0	10
12. Petrich BPD	11	0	11
13. Russe BPD	0	4	4
14. Svilengrad BPD	2	81	83
15. Silistra BPD	0	1	1
16. Sredetz BPD	0	17	17
17. Tran BPD	60	1	61
18. Chiprovtzi BPD	1	0	1
19. Airports RDBP	13	0	13
20. Dragoman RDBP	151	12	163
B) SDMOI and RDMOI			
1. Varna RDMOI	4	0	4
2. Vidin RDMOI	11	0	11
3. Vratza RDMOI	9	0	9
4. Montana RDMOI	2	0	2
5. Pazardjik RDMOI	37	137	174
6. Pernik RDMOI	32	0	32
7. Pleven RDMOI	1	0	1
8. Plovdiv RDMOI	1	18	19
9. Sofia RDMOI	90	22	112
10. Targovishte RDMOI	1	0	1

11. Haskovo RDMOI	3	163	166
12. SDMOI	984	186	1,170
13. Bourgas RDMOI	0	145	145
14. Sliven RDMOI	0	15	15
15. Stara Zagora RDMOI	0	13	13
C) Migration Directorate	62	3	65
D) State Agency for National Security	15	1	16
Elhovo Distribution Centre	2	0	2
Lyubimetz DETENTION CENTER	32	0	32

ATTACHMENT No 3 TO 2.1 – PROFILE BY GENDER

Categories	*Sofia DETENTION CENTER*	*Lyubimetz DETENTION CENTER*	***TOTAL***
1. Men	1,993	948	**2,941**
2. Women	285	239	**524**
TOTAL	2,278	1,187	**3,465**

ATTACHMENT No 4 TO 2.1. – PROFILE BY AGE

Categories	*Sofia DETENTION CENTER*	*Lyubimetz DETENTION CENTER*	***TOTAL***
1. up to 17	213	29	**242**
2. 14-17	576	165	**741**
3. 18-64	1,695	862	**2,557**
4. above 65	7	0	**7**

5. Out of them unaccompanied minors	269	391	**660**

ATTACHMENT No 5 TO 2.1. – PROFILE BY APPLICATIONS FOR PROTECTION IN BULGARIA

	Sofia DETENTION CENTER	*Lyubimetz DETENTION CENTER*	***TOTAL***
Yes	2,182	1,142	**3,324**
No	96	45	**141**

ATTACHMENT No 6 TO 2.2.1. – PROFILE BY GROUNDS FOR RELEASE

Centre	SAR	Deportation	Readmission	Max time limit	Release ordered by the court	Signed promise of appearance	*Sofia/Lyubimetz DETENTION CENTER*	Present as of 30.04.2016
Sofia DETENTION CENTER	1,944	82	12	8	6	2	8	215
Lyubimetz DETENTION CENTER	1,043	5	21	0	4	0	30	85
TOTAL	**2,987**	**87**	**33**	**8**	**10**	**2**	**38**	**300**