



Center for Legal Aid
Voice in Bulgaria



VULNERABILITY AND PROTECTION: IDENTIFYING VULNERABLE PERSONS AMONG ASYLUM SEEKERS IN BULGARIA



FINAL REPORT

for the project "Monitoring the procedure for identification of vulnerable groups of asylum seekers in R. Bulgaria and the application of the Questionnaire for identification of people with traumatic experience, seeking asylum". (summary English version)

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IMPLEMENTING ORGANIZATION:

Center for Legal Aid – Voice in Bulgaria (CLA)
1000 Sofia, Bulgaria; 5 Б Triaditsa Str., floor 2, office 226
Tel/fax: + 359 29810779; e-mail: daskalova.diana@gmail.com
www.centerforlegalaid.com



Center for Legal Aid
Voice in Bulgaria

PARTNER ORGANIZATION:

Assistance Center for Torture Survivors – ACET
1618 Sofia, Bulgaria; Krasnoselo, 3, DechkoYordanovStr,
Floor 1, office 4; Tel: +359 2423 46 36; e-mail: office@acet-bg.org
www.acet-bg.org



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PROJECT TEAM:

Legal experts: **Valeria Ilareva, Radostina Pavlova and Diana Radoslavova**

Psychological expert: **Mimoza Dimitrova**

Interviewers: **Borislav Dimitrov, Simoneta Bozhinova, Kristina Gologanova and Anna Bazelkova**

Authors of the intermediary reports: **Valeria Ilareva and Mimoza Dimitrova**

Authors of the final report: **Mimoza Dimitrova, Radostina Pavlova and Diana Radoslavova**

Coordinator: **Radostina Pavlova**

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RECOMMENDATIONS

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PROJECT GOALS AND METHODOLOGY

The goal of the project “Monitoring the procedure for identification of vulnerable groups of asylum seekers in R. Bulgaria and the application of the Questionnaire for identification of people with traumatic experience, seeking asylum” is to monitor the identification of vulnerable asylum seekers, the application of the „PROTECT” questionnaire,¹ and the services provided or offered accordingly. It aims to promote the rights of vulnerable asylum seekers and to support the harmonization of Bulgarian legislation and practices with European standards and requirements. It also provides observations on the broader experience of asylum seekers with the process of applying for protection in Bulgaria from the moment they cross the border up until and after receiving a decision on their claim. It provides observations on detention and imprisonment, treatment by the authorities at all stages, the experience of being interviewed by the State Agency for Refugees (SAR), and the conditions at the Registration and Reception Centres (RRC) in terms of access to services to satisfy any specific needs.

The core project activity consisted of conducting interviews with asylum seekers both in the CLA and ACET offices and in the reception centres of SAR, using a specially designed questionnaire. The interim results were discussed in working groups involving all major stakeholders, including SAR representatives. Expert reports were produced every six months with this final report, published in February 2015, building on the previous reports and summarizing and analyzing the entire set of the data.

In the course of the fieldwork stage – from September 2013 to December 2014 – the project interviewers conducted 478 interviews in total, with each interview taking place in a confidential environment, whether at the implementing or partnering organizations’ offices or at an RRC (Voenna Rampa, Ovcha Kupel, Vrazhdebna and Kovatchevtsi), and lasting about 60 minutes on average. The questionnaire includes a demographic details part; questions about the access to asylum procedure, such as time elapsed from filing an application to registration; detention by border police and in closed centres for illegal migrants; attitudes of the interviewing SAR officers; and referrals and access to individuals and organizations who provide the needed services to meet the asylum seeker’s specific needs.

About 30% of the interviewees are female, and 70% – male, reflecting the gender proportions of the overall population of asylum seekers in Bulgaria in the last couple of years. Over half of the interviewed subjects are Syrian citizens, also to account for

1. The Questionnaire for people seeking asylum who have experienced trauma was developed by the Assistance Center for Torture Survivors – ACET in partnership with several other European rehabilitation centres for victims of torture or other inhuman or degrading treatment. It was developed within the project PROTECT (Process of Recognition and Orientation of Torture Victims in European Countries to Facilitate Care and Treatment), financed by the European Union’s Refugee Fund.

the general pattern of the nationalities of asylum seekers in Bulgaria since the spring and summer of 2013. Other represented countries, 18 in total, include (in order of greatest number of interviewees) Afghanistan, Iran, stateless, Iraq, Somalia, Congo, Côte d'Ivoire, Mali, Cameroon, Ghana, Algeria, Nigeria, Rwanda, and others. It is worth noting that in the initial stage of the project interviewees were predominantly from African countries, along with Afghanistan and Iran, while in the later stages the majority were Syrian nationals. For this reason, as long as nationality has an impact on the experiences, perceptions and procedural outcomes of the interviewees, the analysis of the observed trends takes into account this change in time of the demographic characteristics of the interviewees.

HIGHLIGHTS FROM THE PROJECT FINDINGS AND ANALYSIS

- Out of the 478 asylum seekers, who were interviewed, 189 (39.5%) self-identified as belonging to one or more of the vulnerable groups, defined in Directive 2013/33/EU.² A large share (88%) of the group interviewed in the first stage of the project (Sept. 2013 – Jan. 2015) self-identify as members of a vulnerable group, which, given their demographic characteristics, may indicate that asylum seekers from African countries, Iran and Afghanistan are particularly vulnerable. (Another possible explanation is that since Syrian nationals, in comparison to other asylum seekers in Bulgaria, are much more likely to be granted refugee or humanitarian status,³ are assessed through a quick and streamlined procedure, are able to travel and are more likely to continue on to Western Europe, may be less interested in the quality of the procedure and in sharing information on their vulnerability.)
- Most common stated vulnerabilities are persons with serious illnesses (31); victims of physical violence (28); victims of torture (24); victims of psychological violence (22) and persons with mental disorders (21). It is likely that the number of persons with psychological problems and conditions is understated, as there is a tendency to point out such problems only when they are severe or the

2. The non-exclusive list included in Directive 2013/33/EU is as follows: “minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation [...]”

3. Research conducted by the CLA outside of this project shows that, in the period 2009 – 2013, Bulgaria’s overall rate of granting refugee or humanitarian status was 48.6% including Syrians; it was 27.3% for nationals of other countries and 84.9% for Syrian nationals only. Nationals of some countries, such as Cameroon, Côte d'Ivoire, Rwanda and Tanzania had 0% “success rate” for that time period. These findings suggest that decisions on asylum claims are made based on policy and political considerations, and possibly bias on the part of SAR officials, rather than through an individualized assessment, as required by European and national law.

result of torture or trauma. Since psychiatric help or psychotherapy is not covered by the national health insurance (even though, by law, asylum seekers have the right to psychological help during the procedure for granting asylum), non-governmental organizations play a key role in providing such services.

- In total, 67 of the interviewed asylum seekers were minors (under 18 years of age), of whom 50 were unaccompanied minors. Minors were treated in the same manner as adults during the procedure, including when it comes to detention, where in several cases the minors were detained for particularly long periods of time (over 7 months).

- Only 7.1% of the subjects report that during their asylum procedure they were specifically interviewed in order to identify vulnerability; 2.9% have both self-identified as vulnerable and have been administered an identification questionnaire. A larger share (56.7%) state that the interviewers have asked them questions related to having survived trauma or been subjected to violence, without this representing a formal identification procedure. This cannot, however, be accepted as an adequate vulnerability identification practice, first, because it happens at a relatively late stage in the asylum process, and, second, questions of this nature as part of the asylum interviews are aimed at determining the veracity of the refugee story, rather than identifying vulnerability and meeting the specific needs of the asylum seeker. Only 6% of the subjects report that they were referred by a SAR official to organizations, providing medical or psychological help.

- The vast majority of asylum seekers interviewed for the project describe the behavior of SAR interviewers in positive terms, such as “careful”, “benevolent”, and “thorough”. In total, in 73 cases the impressions from the interviewer were negative (“hostile”, “accusatory”, “strict”). Many of the instances of poor treatment on the part of the SAR interviewer are reported by asylum seekers of African origin, who describe racist attitudes and slurs, such as being called “monkey” and “liars”. This type of treatment is not conducive to the identification on vulnerability, and may lead to re-traumatization and worsening of existing psychological problems. A second reason for dissatisfaction with the SAR interviewer’s behavior is a lack of interest in hearing the claimant’s explanations, rushing through the interview and asking for “Yes” or “No” answers. Some interviewees shared hostile attitudes on the part of the interpreter or poor quality of the interpretation.

- Detention:⁴ Bulgarian law does not allow the detention of asylum seekers as such. However, due to gaps in the legislation regarding the maximum time between an asylum claim is made and the moment the SAR registers the claim, registration is often

4. The project did not aim specifically to monitor the detention of asylum seekers and its methodology was not designed accordingly. Detention is discussed here primarily as a factor affecting the experience of vulnerable asylum seekers and for its impact on the carrying out an effective vulnerability identification procedure.

delayed. Since there is an unwritten practice⁵ to consider somebody an asylum seeker only from the moment of registration, asylum seekers are detained in closed facilities for the period of time after crossing the border and before being registered by the SAR, as they are considered illegal migrants. They are also typically detained for short periods of time by the Border police and are charged with the offence of illegal border crossing, while many remain unaware of the criminal proceedings against them and do not receive legal advice.

● The number of interviewees, who declare that the Border police detained them, is 335 (70%). The length of detention was most often between 3 and 6 days, though there were several cases of prolonged detention: between 1 and 2.5 months. In many cases the conditions were very poor, with insufficient food provided and harsh treatment by the Border police authorities. The data also indicates a phenomenon that took place in the fall of 2014, where many people managed to cross the border unnoticed (and were thus not detained by Border police) and appeared at a SAR reception centre to file an asylum claim. Some of them were registered and accepted at the SAR reception centre right away, others, towards the end of the year, when the SAR appears to have changed its practice of how to deal with this group, were sent to a closed centre for illegal migrants run by the Migration Directorate of the Ministry of the Interior. Some report having been interviewed by the State agency for national security (SANS), which could expose vulnerable persons, victims of psychological violence, to the risk of re-traumatization.

● Due to the above-mentioned delay in registration, asylum seekers become subject to the Law for the Foreigners in R. Bulgaria, and can be detained in closed centres with a restrictive regime (typically in the centres in Busmantsi or Lyubimets), formally as a pre-deportation measure. Registration was delayed and detention was imposed for 41.8% of the subjects interviewed between Sept. 2013 and Sept. 2014. The first group of people interviewed, in the period Sept. 2013 – Jan. 2014, was most likely to be detained (63%) where the average length of detention was 106 days, or 3.5 months, reaching 7 or 8 months in several cases. The data reveal a change in the patterns of registration delay and detention, discernable in the late period of the project. Of those interviewed from Sept./Oct. 2014 to Dec. 2014, many report being registered by the SAR within 3-4 days after entering Bulgaria and not being detained in a Migration Directorate closed centre. Only 14-15% of those interviewed from mid-September to mid-November 2014 were detained in such centres. Since detention was not the main focus of the study, it is difficult to explain with precision the reasons for this change, but possible factors include increased capacity and efficiency of the SAR in the carrying out the registration, and the fact that more Syrian nationals were interviewed in the later stages of the project, whose asylum claims are considered *prima facie* acceptable, and whose asylum procedures are relatively quick and streamlined.

5. In a 2014 case, litigated by the Center for Legal Aid – Voice in Bulgaria, the Administrative Court – Sofia city declared that this practice contradicts European law and that asylum seeker status starts with the filing of the claim and the ensuing rights, such as the right to be on the territory of Bulgaria and thus not being an illegal migrant, must be conferred at that moment (see Decision №5941 from 10.10.2014 on case №6486/2014 of the Administrative Court – Sofia city).

RECOMMENDATIONS

1. Regulating in law the procedure for early identification and the assessment of vulnerability throughout the asylum procedure

European law construes the identification of vulnerability as a well-defined component of the procedure for assessing asylum claims. Directive 2013/33/EU requires the identification to be conducted continuously and systematically, with the participation of the vulnerable asylum seekers themselves. In order to achieve the legislative intent and to have actual impact, the procedure for identification must be specifically prescribed in Bulgarian law, and situated at the earliest stage, as well as along the entire length of the process for granting international protection. This can be achieved through complete transposition of Directive 2013/33/EU and Directive 2013/32/EU into national law, as well as through concerted effort to effect other legislative changes, and changes in the mindsets and the practices of the administration, including increased cooperation with the non-governmental sector.

2. Expanding the application the PROTECT Questionnaire

We recognize that the endorsement of the PROTECT Questionnaire as an identification tool on the part of the State agency for the refugees (SAR) in 2012 was a positive step. However, based on the findings of the study, we can conclude that more needs to be done on improving the frequency and the span of its application, in order to firmly entrench the Questionnaire as an essential element of an early vulnerability identification procedure. A greater share of asylum seekers must have access to the identification procedure, and it should be applied across a broader range of the asylum-granting procedures and other dealings with asylum seekers.

3. Creating a mechanism for referral to the required services

It is necessary to put in place a mechanism through which persons with identified specific needs are referred to specialists providing the needed services. In this respect, it is also recommended to update the database of organizations and institutions providing services to refugees and to the vulnerable persons among them. There need to be streamlined channels for asylum seekers to access this information in a language they understand.

4. Identifying vulnerability in the detention centres; ensuring access to procedure

Given Bulgaria's current practice to detain asylum seekers, it is necessary to put in place a system to monitor the centres where foreigners are detained in order to identify vulnerability and assess the impact of detention on victims of trauma. Since vulnerability identification is most effective when conducted at an early stage, and for many asylum seekers detention centres are the places of first reception, identification procedures must

be conducted there. Providing training on vulnerability identification and referral techniques to the employees at the detention centres, who are in direct contact with asylum seekers, is also of key importance. The issue of obstructed or delayed access to procedure, which leads to detention and limitation of the rights of vulnerable asylum seekers, needs to be addressed through change in both legislation and administrative practices.

5. Conducting regular trainings of a broad range of specialists

The education of a broader range of experts from the government, the judiciary, and the non-governmental sector, such as interviewers, social workers, nurses and doctors, lawyers and judges, on the techniques for identifying, referring or serving vulnerable asylum seekers, is a necessary pre-condition for the ability to meet their needs.

6. Working with administrative and judicial bodies

Awareness must be raised among administrative and judicial bodies regarding the importance of expert opinions, so they develop the willingness and the mechanisms to appoint and use expert psychological, medical and psychiatric opinions in the course of administrative and court procedures.

7. Ensuring an individualized and quality procedure for assessing refugee claims

The decision-making process of the SAR must conform to the principle of individualized assessment of asylum claims; discrimination based on citizenship or nationality must not be allowed, and the objectivity in the assessment of vulnerability among asylum seekers must not be clouded by bias. To this end, trainings should be conducted to both educate SAR interviewers on non-discrimination practices and approaches, and familiarize them in depth with the conditions in the countries of origins of asylum seekers and the changing and newly arising grounds for granting refugee or humanitarian status.

8. Regularizing the stay of vulnerable individuals without legal status on the territory of Bulgaria

In the longer term, it will become imperative to consider possibilities for temporarily legalizing/regularizing the stay of foreign citizens whose asylum claims have been turned down. Many of them remain on Bulgaria's territory, regardless of the lack of legal grounds for doing so; among them are vulnerable persons who have or should have been identified as such during the asylum procedure. As a consequence of the refusal of asylum, they are subject to detention; they have limited or no access to medical and social supports, and their rights are restricted on the whole. Legal measures temporarily regularizing their stay on Bulgarian territory would allow for their specific needs to be met; the contrary leads to rights violation and social exclusion, which are not only harmful to this group of individuals, but may pose threats to public order and national security.