

**UNHCR**United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

PROTECTION BRIEF

BULGARIA

SEPTEMBER 2024

DETENTION OF ASYLUM-SEEKERS AND REFUGEES

Operational Context

From 1 January 2024 to 31 August 2024, the State Agency for Refugees (SAR) received 8,261 applications for international protection including 1,780 from unaccompanied children (21.5 per cent of the total). 4,687 applications were terminated, with the applicants presumed to have moved onwards through the EU. Refugee status was granted to 44 persons, while 4,564 persons received subsidiary protection. Additionally, 839 individuals, including Russian applicants, were rejected in accelerated procedures as manifestly unfounded, and 650 were rejected in regular procedures.

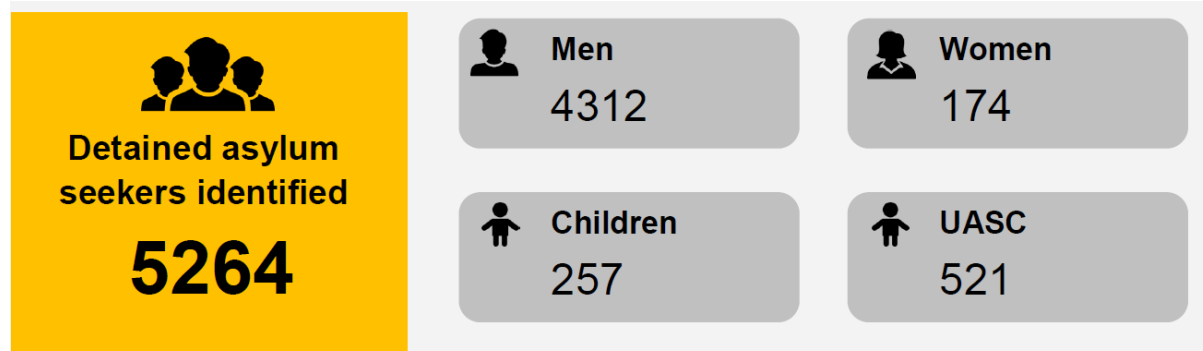
The evolving political and socio-economic landscape in Bulgaria, statistically the poorest EU member state, poses challenges for both refugees from Ukraine and asylum seekers and refugees from Syria, Afghanistan and from countries in the Middle East and North Africa. Key issues include accommodation and longer-term housing, school enrolment, language support and access to health and social services. Syrian refugees resettled or relocated from other countries, as well as refugees from Ukraine, experience these and other challenges in addition to the trauma of displacement and anxiety of uncertainties facing them.

This brief examines the current situation related to detention and restriction of movement of displaced persons in Bulgaria. It delves into an in-depth analysis of the existing legal framework governing these practices. Additionally, it offers strategic recommendations to assist Bulgaria in effectively implementing the provisions outlined in the EU Pact on Asylum and Migration. Particular emphasis is placed on the requirements of Regulation (EU) 2024/1356 of the European Parliament and of the Council, dated 14 May 2024, which introduces the screening process of third-country nationals at the external borders (SCR). The brief aims to support Bulgaria in aligning its policies with EU and international standards, ensuring that the country's approach to managing displaced persons is both compliant and protection sensitive.

The legal framework governing detention is outlined in the Law on Foreigners (LoF) and the Law on Asylum and Refugees (LAR), along with supporting regulations. The LoF applies to individuals who have not applied for international protection or whose claims have been finally rejected, while the LAR addresses the detention of asylum-seekers. Under the LAR, detention is authorized by the State Agency for Refugees (SAR) and occurs in closed-type centre under its jurisdiction. Conversely, detention under the LoF is typically ordered by the Border or National Police or the Directorate Migration and takes place in facilities it manages, specifically, the Special Centres for the Temporary Accommodation of Foreigners (SCTAF).

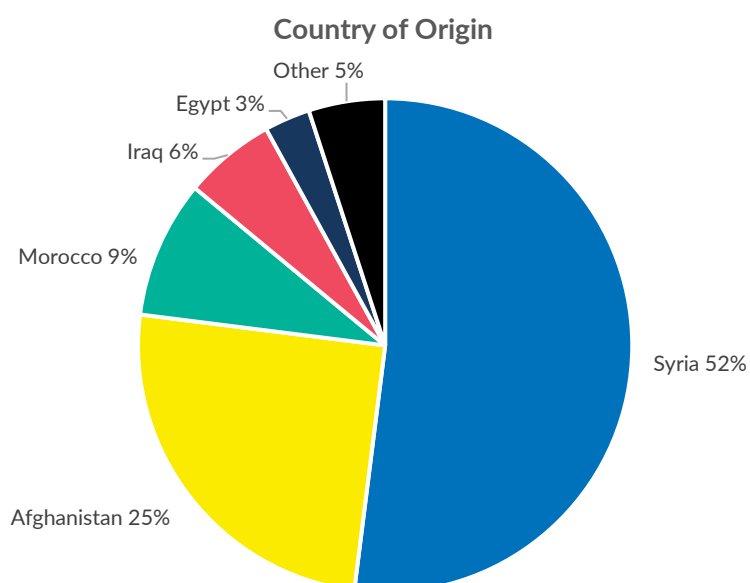
UNHCR notes with concern the limitations on the freedom of movement of persons in need of international protection as they can be detained without the application of adequate legal safeguards, in conditions that may not fully conform to international standards.

Key Figures



Bulgarian Helsinki Committee, detention monitoring, January-August 2024.

By 21 August 2024, 666 persons were detained in the two Special Centres for Temporary Accommodation of Foreigners (SCTAF), 264 persons in SCTAF Busmantsi, and 402 in Ljubimets, of which 640 male and 26 female. The children in the two centres were 104, including potentially unaccompanied children who may have not yet been identified as of this date. The vast majority of the detained were from Syria and Afghanistan.



During the period 1 January – 21 August 2024, the total number of persons who were admitted to the migration detention facilities was 5,264, where the detention orders for 2,608 were issued by the border police; 1,489 were apprehended on the territory of Bulgaria, including 1,123 in Sofia. By comparison, on 21 August 2023, a total of 2,448 persons were present in the facilities of Directorate Migration, and the total number of persons detained by 21 August 2023 was 12,156. The vast majority of people who were detained in 2023 were apprehended inland, while in 2024 the numbers are almost equal to those apprehended at entry and exit borders.

With regards to asylum detention, 18 asylum seekers were detained in SAR closed facility by 21 August 2024 - from Afghanistan, Syria, and the Russian Federation, including an - asylum seeker from Saudi Arabia who has been issued with an expulsion order from the State Agency for National Security (SANS) whose application is still pending appeal. In 2023, 32 asylum seekers were detained at the closed reception facility with a capacity of 16. By the end of 2023, there were 4 asylum seekers remaining in detention at this facility, when the average length of the asylum detention was 56 days.

OVERVIEW

Legislative Framework

Detention of asylum seekers under the Law on Asylum and Refugees

In September 2016, the SAR became responsible for managing closed centres and issuing detention orders regarding asylum-seekers pursuant to the LAR. There is currently only one closed centre managed by SAR, on the premises of SCTAF Bustmantsi. UNHCR observes that the detention decisions for asylum seekers are not individually assessed considering reasonableness, necessity, and proportionality, and that there is no consideration of alternatives to detention. There are cases for which detention orders are issued for the entire duration of the procedure for international protection, rather than for the shortest possible period as required under the LAR. There is no maximum period of detention envisaged in law.

The law stipulates that vulnerabilities of the applicants should be taken into account prior to issuing a detention order and that the situation of vulnerable persons accommodated in closed centres should be monitored, with support provided where necessary. However, there is no functioning procedure to consistently identify and monitor vulnerable applicants. Survivors of torture or gender-based violence (GBV), pregnant women, and nursing mothers may be detained. The absence of adequate medical care available 24/7 at the centres, limited access of NGOs providing services, including mental health and psychosocial support (MHPSS), further compounds the risks for vulnerable people posed by detention conditions and uncertainties relating to the length of detention and its consequences.

Initial judicial review of the detention is possible upon appeal within 14 days of the person being accommodated at the SAR closed centre. According to the LAR, a review of ongoing detention must be conducted monthly by the administrative authority. If new information is available or upon request by the foreigner, decision to detain is reviewed by the administrative authority, which issues a written decision which can then be appealed. UNHCR is not aware of any cases where asylum-seekers were released following such an administrative review since the legislation entered into force in 2016.

The Law on Legal Assistance provides for legal assistance to asylum-seekers. However, in practice there is no state-funded legal assistance to challenge the detention orders in closed-type centres. Free legal assistance is provided by the Bulgarian Helsinki Committee acting on behalf of UNHCR and visits the closed centre at least once per week. Lawyers who can be appointed by the National Bureau for Legal Aid (NBLA), which provide legal assistance under the Law on Legal Aid need further training on immigration and asylum law. Currently, NBLA capacity and practice is limited to provide legal assistance at the administrative stage to unaccompanied children during the procedure for international protection.

Immigration detention under the Law on Foreigners

Pre-removal detention

Foreigners, including persons in need of international protection, are subjected to detention either by the border police upon interception at entry or when attempting to exit irregularly, or by the national police when intercepted inland. The maximum allowed police detention period is 24 hours, which is generally respected. Secondary legislation, in line with the EU law requirements, prescribes that if a person applies for international protection during this period, they should immediately be referred to the SAR. In practice, however, the majority of those who apply for protection to the border police upon apprehension, were transferred to the detention centres of the Directorate Migration, pursuant to a return decision, followed by a detention order¹. The law does not foresee individual assessment and

¹ Under LoF, following an irregular entry or stay in Bulgaria, foreigners are issued with an order for return. When the person whose return was ordered has unknown identity, hinders the execution of the order or poses a risk of absconding, the authority that has

review of the necessity, proportionality, and reasonableness of detention as well as mandatory examination of the applicability of alternatives prior to issuing a detention order in all cases. Detention may be ordered for up to 6 months, with prolongation possible up to 18 months.

All foreigners accommodated at SCTAFs are entitled to apply for asylum. There are no state-provided interpretation services to facilitate the submission of applications. In practice, lawyers contracted under UNHCR partnership help detainees with applications.

According to the LAR, any asylum claim of a person who has applied for international protection at SCTAF should be immediately referred to SAR, which shall register the application within six working days. UNHCR observes that the detention of asylum-seekers in pre-removal detention can be unnecessarily prolonged due to the absence of interpreters, the lack of adequate coordination between the institutions and, in case of increased arrivals due to lack of reception capacity of SAR. Detention of individuals who have made an application for international protection on the grounds of their migration status under the LoF, which does not apply after they have lodged an application, is contrary to European and Bulgarian national law².

Protection Risks

Detention of vulnerable persons

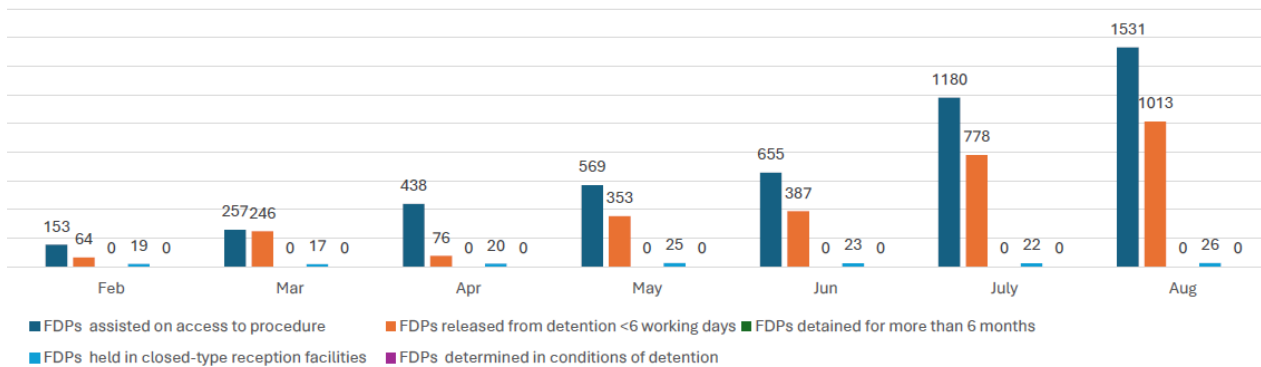
National law (LoF) does not explicitly envisage an assessment of applicant's vulnerability prior to issuing the detention order, thereby permitting the detention of applicants who are survivors of torture or gender-based violence, individuals undergoing other trauma or those with serious health condition or mental health needs, pregnant and nursing women, person with disabilities, or LGBTIQ+ individuals, and putting them at risk³. Although medical personnel and psychologists are available at SCTAF, there is no procedure to identify vulnerable applicants. Lack of interpreters further impedes communication and access to assistance. Foreigners accommodated at SCTAF are not covered by the national health insurance system.

UNHCR and NGOs acting on its behalf, primarily the Bulgarian Helsinki Committee (BHC) and the Bulgarian Red Cross (BRC) have unhindered access to the detention facilities operated by the Ministry of Interior - SCTAF in Busmantsi, with a capacity of 400 places and one in the town of Lyubimets with a total capacity of 660 places and additional 1,232 places in the multifunctional infrastructure sites in the form of containers. In previous years, detention centers often became overcrowded because of a surge in asylum applications and delays in releasing detained asylum seekers to SAR for registration. In mid-2023, the facilities operated over their cumulative maximum capacity. This further exacerbated hardship due to lack of privacy, serious health concerns and social tensions.

issued the order may issue an order for compulsory accommodation of the person in a closed centre (SCTAF) for the purpose of organizing their return (LoF, Art. 44 (6)). Unaccompanied children cannot be coercively accommodated (detained) at SCTAF and must be referred to the Directorate for Social Assistance (national child protection case management agency) to take appropriate measures for their placement in accordance with the Law on Child Protection (LoF, Art. 44 (9)). However, accompanied children can be detained, in "exceptional circumstances" that are not defined in the law for up to three months. Adults can also be placed in detention for an initial period of up to six months which can be extended up by further 12 months under certain circumstances (LoF, Art. 44 (8)). Since 2016, the LoF allows the detention of foreigners whose identity has not been established, for up to 30 days, for the purpose of establishing identity and nationality and deciding on further administrative measures. Short-term detention orders were issued until the summer of 2022, when the Ministry of Interior issued instructions stipulating that only long-term detention orders shall be issued instead of short-term detention as the latter were found to be inconsistent with EU law in particular Directive 2008/115/EC which does not provide for the possibility to detain a foreigner for the purpose of establishing identity.

² Note that under Bulgarian law, the detention of asylum-seekers is regulated by the Law on Asylum and Refugees, (LAR), Section V, the provisions of which reflect the permissible grounds for detention enumerated in the Reception Conditions Directive. (Continued) detention under the LoF of a person after they have applied for asylum would be unlawful.

³ Safeguards exist only in relation to unaccompanied children whose detention should be a matter of last resort and subject to a best interest assessment – see below.



BHC legal assistance in detention facilities on behalf of UNHCR, January-August 2024.

Lack of interpretation impedes communication and access to rights and essential services. While recognizing efforts made towards certain improvements of living conditions since 2018, UNHCR is concerned about ongoing issues with the maintenance of hygiene, provision of food in particular to persons with special dietary needs and the limited access to outdoor exercise. We welcome the plans for refurbishment in SCTAF in Busmantsi under AMIF by 2025. In addition to the presence of four lawyers providing services on its behalf and visiting each center at least once per week, UNHCR conducted five monitoring missions in detention centres as of end of August 2024. In addition to private lawyers who have access to the SCTAF and provide legal services, the Foundation to Access Rights (FAR) and the Centre for Legal Aid – Voice in Bulgaria also visit detained persons and provide pro bono legal aid.

While there are psychologists serving in detention places, the lack of interpreters limits effective access to mental health and psycho-social support (MHPSS). UNHCR partner Bulgarian Red Cross provides humanitarian assistance and limited MHPSS services, however, MHPSS needs to be scaled up. UNHCR will launch individual and group MHPSS services in November 2024, however, more resources are required, including for identification of persons survivors of torture or violence, including gender-based violence, or undergoing trauma.

Detention of children

UNHCR reiterates its long-established position that children should not be detained on account of their residence or migration status or that of their parents, and that detention is not in their best interests.⁴ UNHCR welcomes the prohibition of detention of unaccompanied children pending removal, who are to be referred instead to the relevant Social Assistance Directorate which shall immediately take protection measures under the Child Protection Act. It is essential to ensure unaccompanied children are identified as such at first contact so as to be able to benefit from this safeguard and are not incorrectly classified as accompanied or adult. Children separated from their parents are also at risk and should be treated the same as unaccompanied children.

In practice, due to the short period (24 hours) of the initial police detention or custody, lack of interpreters and inadequate capacity of the local Child Protection Departments (CPD) with the Social Assistance Directorates (SAD) to timely respond and ensure accommodation for unaccompanied children, the first contact officials often fail to identify unaccompanied and separated children in mixed groups. This results in the practice of unaccompanied and separated children, especially the ones in the age group of 16-17, being either registered as adults or randomly attached to unrelated adults. The registration of the child as accompanied is done without any assessment of the relationship between the

⁴ UNHCR's position regarding the detention of refugee and migrant children in the migration context, January 2017, available at: <http://www.refworld.org/docid/5885c2434.html>. See also: Options Paper 2: Options for governments on open reception and alternatives to detention, 2015, available at: <http://www.refworld.org/docid/5523e9024.html>

child and the accompanying adult, or an assessment of the child's best interest or vulnerabilities. Once detained, there is no procedure at SCTAF to identify whether the child is indeed accompanied or at risk, unless the lawyers acting on behalf of UNHCR can identify them. In the period 1 January– 31 August 2024 BHC identified 521 unaccompanied children at SCTAF.

LoF envisages the appointment of social workers from the department of Child Protection as representatives of unaccompanied children in the proceedings. UNHCR recalls that the participation of employees of Directorate Social Assistance is a legal requirement under the Law on Child Protection, and does not obviate the need for legal assistance to which all children are entitled under the Law on Child Protection. In practice, when unaccompanied children are identified at SCTAF, they are assisted to apply for international protection in order to secure their quick release. However, unaccompanied children may be wrongly considered as being under the care of an adult relative or not identified due to lack of interpreters to support the SCTAF staff, which does not allow them to interview children. Child protection or residential care capacity are not available to allow that unaccompanied and separated children are identified and released to such services.

UNHCR is concerned about the lack of safe and appropriate accommodation for migrant, asylum-seeking and refugee children under the state child protection system. Despite some recent progress in expanding access to accommodation within the national child protection system including establishment of dedicated crisis center and residential care facilities, the limited number of facilities which could accommodate and provide alternative care for migrant, asylum-seeking and refugee children is an urgent issue that needs to be rectified by Bulgaria.

UNHCR is particularly concerned that the LoF allows the detention of children detained together with their parents, pending removal, as a matter of exception, for up to 3 months -. The law does not provide for a best interest assessment prior to issuing a detention order in these cases. The authorities have no obligation or instructions to examine the availability of alternatives to detention.

Moreover, adults can be detained for up to 6 months pending return (to be prolonged to maximum 18 months) and there is no provision regarding detention and applicability of alternatives to families. UNHCR has identified cases of family separation of persons whose claims have been finally refused where the mother and the children were released, without any assistance, upon expiry of the 3 months, while the father remained in detention. The national law has no provision for granting tolerated stay to persons whose applications for international protection have been refused but cannot be returned to their countries of origin, thereby leading to serious risks, including prolonged detention and homelessness.

Detention of children who have applied for international protection is also allowed as a last resort, to ensure family unity or their security, for the shortest possible period.⁵ However, there is no explicit reference to conducting best interest assessment prior to issuing the detention order.

Obstacles to implementing alternatives to detention

The national Migration Strategy 2021-2025, adopted by the Bulgarian government in 2021, neither mentions nor anticipates any further development or implementation of alternative measures. Amendments to the LoF adopted in 2017 introduced additional alternatives to pre-removal detention, in addition to the previously existing one of weekly police reporting at the police department of the applicant's place of residence. Such additional alternatives include depositing of travel documents and providing a cash guarantee through bank deposit. However, alternatives to detention are not taken into consideration prior to imposing detention.

There are significant practical obstacles in accessing legal alternatives to detention: difficulty of securing legitimate housing (and a registered address) and means of subsistence. The administrative practice and

⁵ According to Art. 45f (1) LAR, detention is only allowed as a last resort, in order to maintain family unity or to ensure their protection and safety, for the shortest possible period, while efforts should be made to accommodate children in places suitable for them.

legislation require- that a Bulgarian citizen or legal resident provide guarantees for third country nationals to allow them access to alternatives to detention – registered residence address and evidence of stable, regular, predictable and sufficient resources for ensuring the subsistence of the foreigner in an amount not less than the national minimum wage. To obtain an address guarantee, foreigners often end up paying a substantial amount to brokers in the informal market for addresses to secure an address they can declare as proof of residence in Bulgaria as well as evidence for subsistence from a guarantor, enabling their release from detention.

A number of practical difficulties associated with the other alternative measure – deposit of a financial guarantee - hinder its implementation particularly in view of irregularly staying foreigners not having access to means of subsistence, documentation and bank accounts, which may also raise concerns regarding potential exploitation.

A detention order can be appealed within 14 days of detention at SCTAF. The Court must hear the appeal within 3 days of its submission and issue a decision - within 7 days of opening the case. The decision of the administrative court may be appealed before the Supreme Administrative Court which should issue a decision within 14 days of the submission of the appeal. The applicant is not released prior to the final decision. The LoF requires that a review of the applicability of the grounds for detention should be conducted monthly by the national Director of Migration. Amendments introduced in 2017 allow an administrative order for the prolongation of detention for up to additional 12 months upon the expiry of the initial 6 months, as opposed to the previous provision which required prolongation of detention beyond 6 months to be decided upon by the court, thereby ensuring automatic judicial review of all detention beyond 6 months. Detention beyond 6 months usually applies to finally refused applicants, those who never applied for asylum, as well as those with expulsion orders. The administrative decision prolonging the detention may be appealed by the applicant before the administrative court at first instance as well as before the Supreme Administrative court.

In addition, the foreigner could lodge a claim before the administrative court at any time under the provision of the Administrative Code of Procedure prohibiting any action for which there is no legal basis.⁶ This normally concerns the applicants for international protection who have not been released to SAR within 6 working days. In most cases the applicant is released once the appeal is submitted so the case is closed by the court, which was the case with regards to one application represented by BHC in 2024.

⁶ Art. 250, Administrative Code of Procedure

CALLS TO ACTION

Detention of people in need of international protection should be justified as reasonable, necessary, and proportionate to a legitimate purpose in each individual case and may be imposed only if other less coercive alternative measures cannot be applied effectively while also considering special reception needs.

UNHCR recommends the Government of the Republic of Bulgaria to ensure:

- 1. Reviewing of the Legal Framework Regulating Detention**, including the Law on Foreigners (LoF) and the Law on Asylum and Refugees (LAR) to ensure that detention is used as a last resort and for the shortest possible period, and only after conducting an individual assessment of its reasonableness, necessity, and proportionality as well as examining the applicability of alternatives to detention. UNHCR will continue to support the process by developing the capacity and providing technical assistance, - working closely with the Directorate of Migration and the State Agency for Refugees.
- 2. Improvement of conditions in detention facilities** to ensure they meet international and European standards, in particular the standards set by the European Committee for the Prevention of Torture. This includes addressing overcrowding, improving hygiene, providing adequate food, and ensuring access to outdoor exercise. The closed centres managed by SAR should conform to international and European standards regarding NGO access and provision of services, and effective access to healthcare and MHPSS.
- 3. Strengthening legal safeguards for detainees and provision of legal assistance and representation** by the National Bureau for Legal Aid, including the right to appeal detention orders and access to free legal assistance. UNHCR will continue to collaborate with NBLA in its efforts to strengthen its capacity to provide legal assistance under the Law of Legal Aid.
- 4. Implementing a policy prohibiting the detention of children on account of their residence/migration status or that of their parents.** This includes ensuring that unaccompanied and separated children are identified as such at first contact and are not incorrectly classified as accompanied or adult and introducing mandatory alternatives to detention. UNHCR encourages Bulgaria to urgently improve the child protection system's capacity to provide safe and appropriate accommodation for unaccompanied and separated children and ensure that children who are accompanied by family members or other adults are not detained. A procedure should be established for conducting best interest assessments prior to taking any decision for children. UNHCR collaborates with the relevant authorities to support the establishment of an Emergency Response Mechanism for UASC in to ensure early and continuous identification, tracing, and referral as well as appropriate alternative care in line with the best interest of the child, which requires substantial resources.
- 5. Implementing alternatives to detention**, including weekly police reporting, depositing of documents, and providing a cash guarantee. Incorporate engagement-based Alternatives to Detention (ATD) into the National Strategy on Migration, Asylum, and Integration, ensuring that a dedicated budget is allocated. Subject to available resources, UNHCR will strive to support the implementation of accommodation-based alternatives to detention for the most vulnerable, in particular children, women at risk, people undergoing trauma, people with serious medical conditions and mental health needs, older people, people with disabilities and LGBTIQ+ persons to mitigate harms and risks that they face in detention. Bulgaria should explore the feasibility of cash support for accommodation benefiting from the past experiences, taking stock and considering their sustainability.
- 6. Preliminary Health Checks and early identification of Vulnerabilities.** The Screening Regulation (SCR), which Bulgaria should implement by June 2026, presents an opportunity to set up early



identification of specific protection risks. UNHCR urges Bulgaria to initiate such early identification immediately, while SCR provides for the need for specialised and trained resources with expertise in the identification of persons with specific needs and hidden vulnerabilities (such as survivors of torture, trafficked persons, persons who have experienced gender-based violence and other forms of violence, mental health issues, trauma, etc). Bulgaria should implement a functioning procedure to consistently identify and monitor vulnerable applicants. UNHCR is ready to provide technical assistance and guidance on establishing such procedure.

7. **Access to International Protection Procedures** where all foreigners accommodated at SCTAF or any other centers established under the SCR, are able to apply for international protection on a timely basis. This includes providing state-funded interpretation services to facilitate communication between the personnel and submission of applications. Regular and sustainable interpretation should be provided from the moment persons are apprehended at border or inland, without which Bulgaria would not be able to comply with its international and European obligations with respect to the rights of detainees, in particular forcibly displaced and stateless people. This is also required to mitigate a wide of range risks vulnerable people among the detained third country nationals, including children, those undergoing trauma or those at risk of trafficking in human beings can face in the absence of meaningful communication with the state authorities.

UNHCR Bulgaria, September 2024