

Independent Custody
Visiting in Special Centres
for Temporary Accommodation
of Foreigners Operated
by the Ministry of Interior
between January and June 2011

Consolidated Report

2012

HUMAN RIGHTS



INDEPENDENT CUSTODY
VISITING AT POLICE
DETENTION FACILITIES
PROJECT

This Report was developed under the Independent Custody Visiting in Police Detention Facilities Project, a joint initiative of the Open Society Institute Sofia and the Chief Security Police Directorate, with financial support from the Open Society Institute's Human Rights and Governance Grants Program. The project was implemented in 2010 – 2011 in 80 precinct police departments in the regions of Plovdiv, Stara Zagora, Sliven, Haskovo, Varna, Dobrich, Bourgas, Pernik, and Sofia, with the participation of 200 volunteers organized by four NGOs: Open Society Institute Sofia, World Without Borders Association (Stara Zagora), Demetra Association (Bourgas), SOS-Families at Risk Foundation (Varna), and the Municipality of Plovdiv.

In cooperation with the Mol's Migration Directorate, custody visiting was carried out at the Special Centres for Temporary Accommodation of Foreigners in Busmantsi (Sofia), and the town of Lyubimets. The project was developed in implementation of the Community Policing Strategy of the Ministry of Interior.

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The views and opinions expressed in the present paper are solely the responsibility of the author and do not necessarily reflect the standpoint or the policies of the Open Society Institute – Sofia.

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LIST OF ABBREVIATIONS

ACET	Assistance Centre for Torture Survivors
BHC	Bulgarian Helsinki Committee
CAMs	Coercive Administrative Measures
CPT	European Committee for the Prevention of Torture
EC	European Commission
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EMS	Emergency Medical Service
ERF	European Refugee Fund
EU	European Union
IHSR	Individual High Security Room
LAA	Legal Aid Act
LAR	Law on Asylum and Refugees
LFRB	Law on Foreigners in the Republic of Bulgaria
MD	Migration Directorate
MI-Mol	Medical Institute – Mol
Mol	Ministry of Interior
NGO	Non-governmental Organization
SAR	State Agency for Refugees
SCTAFs	Special Centres for Temporary Accommodation of Foreigners operated by the Mol
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
USSR	Union of Soviet Socialist Republics

INTRODUCTION

The *Independent Custody Visiting in Police Detention Facilities* Project is among the most important projects of the Open Society Institute's Law Program. It combines citizen participation and public governance transparency mechanisms with the protection of fundamental human rights. These are basic principles underlying the Institute's philosophy. Applying these principles in practice, through cooperation with volunteers, NGOs, Ministry of Interior structures and local authorities, presented a real challenge but also a first-hand experience of the difficulties which still need to be overcome on the road to guaranteeing the rule of law in Bulgaria.

The independent custody visiting method is based on the British experience. It was first introduced in Bulgaria under a project run by the Pleven Municipal Fund – Chitalishta (Community Centres) funded by the Open Society Institute in 2004. The results of that project were evaluated, and in 2005–2006 the method was adapted and implemented in nine local police departments in the City of Sofia, in partnership with the Police Directorate General, the Sofia Police Directorate and Sofia Municipality. Considering the success of the project in Sofia and Pleven, in 2007 and 2008 the Open Society Institute – Sofia extended the practice of independent custody visiting to the cities of Varna, Burgas and Plovdiv and continued the project in Sofia and Pleven. In 2010–2011 the project was implemented in 80 local police departments in the regions of Plovdiv, Pazardzhik, Stara Zagora, Sliven, Haskovo, Varna, Dobrich, Bourgas, Pernik and on the territory of Sofia City.

During the final phase of the Independent Custody Visiting in Police Detention Facilities Project in 2010–2011, for the first time custody visitors were able to visit the Special Centres for Temporary Accommodation of Foreigners operated by the MoI (SCTAFs). This Report reflects the findings and conclusions from the monitoring, an assessment of the degree of compliance with international and national standards for the protection of the rights of detained foreigners, and the main recommendations for improving the performance of the competent bodies operating in this field. We hope that the results of this custody visiting scheme will serve as the basis for discussions and the adoption of appropriate legislative and administrative changes to improve the standard of protection of fundamental human rights during the detention of foreigners at SCTAFs, and of asylum seekers in Bulgaria in general.

The Open Society Institute Sofia would like to extend its sincere thanks to the following volunteers: Annie Chalova, Anna Ganeva, Atanas Dimitrov (also project coordinator), Bistra Ivanova, Verineya Kostadinova, Galina Deliradeva, Daniela Fartunova, Dilyana Karadzhova, Elena Dyankova, Kiril Angelov, Krasimir Yankov, Maya Petkova, Ralitsa Kostadinova and Teodora Spassova who conducted, entirely on a voluntary basis, a total of 21 visits to both centres, and interviewed a total of 75 detained foreigners. We would also like to thank the staff of the MoI's Migration Directorate for their cooperation.

EXECUTIVE SUMMARY

Between January and June 2011, volunteers participating in the Independent Custody Visiting in Police Detention Facilities Project made a total of 21 unannounced visits to SCTAFs. 17 visits were made at the centre located in Busmantsi (Sofia). In March 2011, a second centre was opened in the town of Lyubimets. Four visits were made to the latter facility.

A total of 75 foreigners who were detained at SCTAFs were interviewed, of whom 16 were minors. The prevailing countries of origin for the foreigners interviewed were Afghanistan, Syria, and Iraq.

The volunteers' findings show that the average length of detention of foreigners at SCTAFs at the time of the visits was 64 days. This is a substantial decrease in the length of detention in comparison to 2009, when the Bulgarian Helsinki Committee (BHC) reported an average length of detention of 14.21 months.¹ This reduced average length of detention must be noted as a positive development. It is mainly due to the improvement of the EU acquis² in this field, its adequate application by Bulgarian authorities, and the improved administrative capacity in this field.

Overall, however, detention in SCTAFs does not yet comply, to an adequate degree, with the international protection standards in terms of detainees' rights and freedoms. Detention at the centres is still used as a measure without having exhausted all the legal alternatives to detention – for instance, regular reporting to the police. Most interviewees said they had been detained without having had other measures applied to their case.

Moreover, the two centres accommodate excessive numbers of people in rooms that do not allow any privacy at all. There are only limited opportunities for correspondence and phone calls as a result of the lack of free telephone and Internet connections. In combination with the detainees' limited social contacts and opportunities to communicate with the outside world, this increases their vulnerability, the risk of depression and stress levels.

The custody visiting has found no reports of excessive use of force by SCTAF staff members. However, custody visitors have registered complaints about unjustified placement in the "Individual High Security Room", which strongly calls for a review of the application of this procedure by the Migration Directorate.

A major unresolved issue is the detention of asylum-seekers at SCTAFs. The length of detention of this group is only 10 days shorter in comparison to that of the foreigners for whom deportation ("coercive escort to the border") had been ordered.

¹ Please see BHC report "Becoming Vulnerable in Detention": http://old.bghelsinki.org/upload/resources/DEVAS%20National%20Report_Bulgaria_SHORT%20PUBLIC%20version.pdf

² Directive 2008/115/EC on the return of illegally staying third-country nationals was adopted on 16.12.2008, and the deadline for its transposition expired on 24.12.2010.

As regards the issuance of orders imposing Coercive Administrative Measures (CAMs) by the Border Police, a practice was identified wherein unaccompanied minors/juveniles were registered in the documents of an adult detained in the same group, although the two were completely unrelated, and detained in SCTAF for a period longer than 3 months. This practice is unlawful and must be terminated.

The general awareness of detainees about the grounds for detention, their rights in detention and the subsequent procedures to be applied to their case was found to be at a very low level. This is mainly due to the lack of access to professional interpreters at SCTAFs. Budget funds should be provided and a routine procedure should be established to ensure interpreters at least to/from the languages of the detainees' major countries of origin. In this respect, there are already good practices established at the State Agency for Refugees (SAR) that could be replicated in the management of the Centres for Temporary Accommodation of Foreigners. This lack of adequate interpretation services is a major obstacle to safeguarding detainees' fundamental rights.

There is limited access to legal advice for detained foreigners who mostly rely on legal aid provided by NGOs and lawyers hired by the detainees themselves. The medical and psychological assistance provided at SCTAFs and the coordination with external hospitals and clinics do not meet detainees' needs and demand further expansion and improvement.

As regards the legal framework governing the monitored activities, it should be noted that the legal status of immigrants who cannot be deported to their countries of origin has not been explicitly regulated; at the same time, however, they should not be detained at SCTAF for a period longer than 18 months. The Mol should use the Government's legislative initiative and take appropriate steps to fill this legislative gap.

The project team has been following developments in this area in recent years. It should be noted that there have been certain positive effects from the efforts of the Migration Directorate's leadership and the improved administrative capacity of SCTAF management and personnel. Members of SCTAF management show excellent knowledge of the legal framework and, within their powers, do whatever is necessary to improve the detention conditions – including through their own initiatives and charity campaigns. The management of the Centres for Temporary Accommodation of Foreigners, however, is faced with the same problems which have been repeatedly identified in Mol's facilities in general. While the Centres have been renovated with the use of EU funds, subsequent maintenance and financial support provided from the Mol budget are far from sufficient. The number of specialized staff at the Centres is inadequate (this concerns mostly interpreters), and there are no clear-cut rules established and budget funds for outsourcing such services to external providers, where this proves to be more cost effective. A particularly alarming fact is that the Migration Directorate has no funds for the purchase of clothes, shoes, personal hygiene items and sports and recreational equipment for detainees. Currently these needs are met by sporadic charity campaigns; such assistance, however, should not be the source of support.

METHODOLOGY

The Independent Custody Visiting in Police Detention Facilities Project is implemented by the Open Society Institute-Sofia in partnership with the Mol's Chief Security Police Directorate and aims to establish mutual trust between the Police and the local communities and ensure transparency of the policing institution. The independent custody visiting practice provides citizens with the opportunity to visit detention facilities run by local police departments without advance notice. The independent custody visitors are volunteers who have been selected and trained in the method of independent custody visiting and the specialized legal framework. Teams of independent custody visitors conduct visits according to a pre-agreed schedule known only to the project participants. The volunteers complete team reports based on their observations in the course of these visits.

During the period of January – June 2011, the scope of the independent custody visiting was extended, and the custody visitor teams were allowed to monitor the Mol's Special Centres for Temporary Accommodation of Foreigners (SCTAFs). The purpose of these visits was to monitor the organization and the work of the Migration Directorate staff at SCTAFs with detainees, so as to ascertain the extent of compliance with the legal standards for human rights protection and the actual conditions in detention facilities.

In view of delivering their tasks, the independent custody visitors are entitled to access the dormitories at the Centre, the medical unit, the canteen, the leisure facilities and the Individual High Security Rooms (isolation rooms). Custody visitors were allowed to talk with any detained foreigners who wished to do so, with SCTAF staff members and other persons at SCTAF whose functions are relevant to the purposes of custody visiting, such as lawyers of detained foreigners, medical staff, relatives, NGO representatives, consular/diplomatic staff and others. Teams also had access to documents and records kept by the SCTAF management which are relevant to the objectives of civil monitoring, including the personal files of detained foreigners. All custody visitors given access to SCTAF were fluent in the colloquial use of a foreign language and/or rare languages, such as Arabic, Persian or Farsi.

An Interim Report with the findings of the independent custody visiting in SCTAF between January and March 2011 was drafted and submitted to Mol's Migration Directorate.

LEGAL FRAMEWORK OF IMMIGRATION DETENTION AND SCTAF OPERATIONAL RULES

The detention of foreigners, as regulated in the Law on Foreigners in the Republic of Bulgaria (LFRB),¹ is officially referred to as “coercive accommodation”, which de facto represents an administrative measure restricting the right to liberty.² “Coercive accommodation” takes place in Special Centres for Temporary Accommodation of Foreigners operated by Mol’s Migration Directorate (Article 44 (7) of LFRB). Pursuant to the Act, such Centres are used to “accommodate” (detain) foreigners illegally staying in Bulgaria, and for whom a deportation order has been issued (under LFRB the term is “coercive escort to the border of the Republic of Bulgaria”), or an expulsion order.

1. “Deportation” is applied to foreigners who are unable to certify that they entered the country legally; when they fail to leave the country before the expiration of their permits of stay or time period for voluntary return, or when it is established that the foreigner has entered and is residing in the country on a false or forged travel document (Article 41 of the LFRB).
2. “Expulsion” is applied to foreigners when their presence in Bulgaria poses a serious threat to national security or public order (Article 42 of LFRB).

Up until 22 November 2011, when amendments to the Ordinance on the Responsibilities and Coordination of Government Authorities came into force,³ Border Police authorities were allowed to accommodate the asylum seekers applying at the border at SCTAFs. Thus, asylum seekers were kept in detention for the period

¹ In force since 23.12.1998.

² That is why very often in this report the measure is referred to as “detention”.

³ Ordinance on the responsibility and coordination of government authorities competent in applying Regulation (EC) No 343/2003 of 18 February 2003 on establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of “Eurodac” for the comparison of fingerprints for the effective application of the Dublin Convention and Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Regulation (EC) No 2725/2000 concerning the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of the Dublin Convention, adopted by CoM Decree No 332 of 28.12.2007 and promulgated in the Official Gazette on 11 January 2008, amend. OG No 81 of 18 November 2011.

between filing the asylum application at the border and their release by the State Agency for Refugees, as regulated by the Law on Asylum and Refugees (Article 58 (4) and Art. 67a (2)-1) (LAR). At present, following the entry into force of the above amendment, Border Police staff have no right or legal grounds to accommodate at SCTAFs the foreigners who have filed their asylum application with the Border Police pursuant to Article 58 (4) of LAR.

Once accommodated at SCTAFs, some of the detained foreigners declare their wish to apply for international protection. In such cases, the Migration Directorate staff are obliged to immediately notify and forward all the documents to the competent authority – the State Agency for Refugees (Art. 10 of the Ordinance on the Responsibility and Coordination of Government Authorities). Even so, asylum seekers continue to be detained at SCTAF pending their release by the State Agency for Refugees, as regulated by the Law on Asylum and Refugees (Art. 58 (4) and Art. 67a (2) -1), and their subsequent placement at the Reception and Registration Centres run by SAR. LAR does not stipulate any time-limit for the registration of asylum seekers' applications.

Under LFRB, the "coercive accommodation" measure should only be imposed in cases where a foreigner for whom a deportation/expulsion order has been issued has an uncertain identity, obstructs the execution of the order, or there is a risk of absconding (Art. 44 (6)). An alternative to detention is regular reporting to the police (signed promise of appearance). Under Art. 44 (5) of LFRB, when obstacles exist for the foreigner to leave the country immediately or to enter another country, the foreigner is obligated to appear daily at Mol's territorial unit in the area of his/her residence by order of the authority issuing the coercive administrative measure, in the manner specified in the Implementing Regulations of the Act, until such obstacles have been removed.

Pursuant to LFRB, foreigners cannot be detained at SCTAFs for more than 6 months. By way of an exception, however, this period may be extended by a further 12 months if the person refuses to cooperate with the competent authorities, if there has been a delay in obtaining the necessary documents for the deportation or expulsion, or the person poses a threat to national security or public order (Art. 44 (8)).

While the order for detention (coercive accommodation) at SCTAF may be appealed within 7 days of the actual physical placement, such an appeal does not suspend the execution of the order. If this deadline is missed, the next opportunity for judicial review is at the end of the 6-month detention period at SCTAF. Every six months, the head of SCTAF draws up a list of foreigners who have been detained there for more than six months because of obstacles impeding their removal from the country. The list is submitted to the Administrative Court under whose jurisdiction the Special Centre falls. In a camera session the court, either ex officio or on application from the foreigner concerned, issues a ruling for the extension, termination or substitution of detention with another measure (Article 46a). The detainee is released from SCTAF where:

- the obstacles to the execution of the removal or expulsion order have ceased to exist,
- the asylum application filed by the foreigner under LAR has been admitted for consideration under the general procedure,
- a court judgment/ruling has been issued on the challenged order (as per Art. 41, 42, 42a or Art. 44 Para. 8 LFRB),
- a court act of appeal has been issued (under Art. 46a. LFRB),
- the authority which issued the order for detention at SCTAF repeals it and issues an order for daily reporting by the foreigner at the local police department in the area of his/her residence,
- or the competent MoI body which issued the CAM (under Art. 41 or 42 LFRB) revokes it on legal grounds.

The Legal Aid Act in its current wording does not provide for free-of-charge legal aid to foreigners in relation to their detention at SCTAF, unless court action is initiated to appeal the order. Legal aid to persons detained at SCTAFs is currently provided by the Bulgarian Helsinki Committee (BHC) through a funding agreement with the UN High Commissioner for Refugees, an official partner of BHC since 1994. In 2008, 2009, and 2011–2012 BHC also provided legal aid to asylum seekers under LAR in proceedings at the State Agency for Refugees, under contracts awarded or grant schemes funded by the European Refugee Fund (ERF). The current contract covers the period between 29.09.2011 and 30.06.2012. For the same period and under the same ERF grant scheme, a contract was also signed with the National Centre for Refugees Association.

Detained foreigners in respect of whom criminal proceedings have been instituted for illegal crossing of the border or using forged documents, have a defence lawyer appointed by the court under the Legal Aid Act (LAA), where the foreigners are unable to pay the fees due. The legal aid delivered by court-appointed lawyers, however, does not relate to the detention at SCTAF itself but only to the court case at hand.

SCTAFs do not have interpreters on the pay-roll, and neither does the budget of MoI's Migration Directorate allocate state funds to contract a translation agency for interpretation services to/from rare languages. Professional interpretation to/from rare languages was only provided between 1 April and 31 May, 2011, under the 2009 Annual Work Programme of the European Return Fund. Interpretation services was awarded through public contracts for Action 2 (contract DETS-28/29.11.2010) which only covered vulnerable groups. Unlike SCTAF, the SAR budget provides funds for interpretation services to/from rare languages. Interpreters are recruited via a public procurement procedure for services and are employed under service contracts with SAR; they are paid according to the hours of interpretation and number of pages translated.

The conditions for the accommodation, healthcare, social services, food and daily activities routine, disciplinary measures etc. at detention centres are governed by Ordinance No 13-1201 of June 1, 2010 on the procedure for temporary accommodation of foreigners, the organization and activities of the Special Centres for Temporary Accommodation of Foreigners,⁴ and the Internal Rules at the Special Centre for Temporary Accommodation of Foreigners – Sofia and Lyubimets – SCTAF Department at Mol's Migration Directorate.

Foreigners of the opposite sex, families and unaccompanied minors are accommodated in separate rooms. LFRB regulates, by way of exception, the placement of accompanied and unaccompanied minors for up to three months at SCTAF (Article 44 (9)).

SCTAF runs a medical unit employing a doctor, nurse, and two paramedics. SCTAF also ensures the opportunity for psychological counselling by a psychologist employed by the Mol Institute of Psychology.

Foreigners accommodated at the centres are provided with three meals a day. At SCTAF in Lyubimets food is prepared on-site, and the facilities include an equipped kitchen. Due to the lack of proper facilities at SCTAF Busmantsi, food is delivered by a catering company on the basis of a contract awarded through a public procurement procedure by the Ministry of Interior.

All social activities – outdoor walks, prayer times, watching TV and sports and leisure activities – are carried out under a schedule approved by the Head of SCTAF-Sofia.

A foreigner found to be in flagrant violation of the internal rules at the Centre may be moved, as a disciplinary measure, to an Individual High Security Room (IHSR) for a period of no longer than 15 days. A milder disciplinary measure is a verbal warning.

According to the Internal Rules of SCTAF, violations include: serious insults or threats to other persons placed at the centre, to SCTAF-Sofia staff members, or other officials, where the insults or threats are of such nature as to undermine their authority; entering premises or places where detainees are not entitled to unauthorized access either without permission or outside the time limits permitted, which results in disturbing the order, security or smooth functioning of SCTAF-Sofia; the possession and use of prohibited articles and substances; failure to obey the orders of SCTAF-Sofia staff members, unless they are clearly illegal, etc.

⁴ Issued by the Ministry of Interior, promulgated Official Gazette, issue 45 of 15 June 2010.

RESULTS OF THE INDEPENDENT CUSTODY VISITS TO THE SCTAF

1. Statistics of the Custody Visits Made in the Period January – June 2011

During the reporting period, a total of **21 visits were carried out at SCTAFs:** 17 at the Busmantsi Centre in Sofia, and 4 at the Centre in Lyubimets which first opened in mid-March 2011. Twelve visits were made during working hours, and 9 after working hours.

A total of **75 detainees** at SCTAFs were interviewed; they were selected to be as diverse as possible in terms of countries of origin, length of detention, gender, and legal status. Interviewees included **45 men, 14 women, and 16 minors**. The group of people interviewed also included **6 families**.

Interviewees were from the following countries of origin: Afghanistan (15), Syria (14), Iraq (12), Lebanon (3), Palestine (8), Nigeria (3), Somalia (3), Georgia (2), Pakistan (2), Russia (2), 2 stateless persons, Iran (1), Morocco (1), and Bangladesh (1) etc.

In the first three months of the reporting period (January to March 2011), the total number of detainees at SCTAF-Busmantsi as of the time of visits exceeded 200 people. The prevailing number of detainees came Iraq and Afghanistan. Most of the persons detained at the centre were male; women accounted for about 10% or less of the total number of residents. In February, at the time of custody visits, the number of minors accommodated at the centre was 18. In March at SCTAF-Lyubimets the total number of residents at the time of the monitoring visit was 7, all of them male: 1 from Nigeria, 3 from Iraq, 2 from Georgia, 1 from Palestine/Syria.

During the second half of the reporting period (April-June 2011) the total number of residents at SCTAF-Busmantsi at the time of visits varied between 115 and 180 persons, and by June 2011 the number of persons at SCTAF-Lyubimets had reached 74. The prevailing number of detainees came from Syria and Afghanistan. Male residents were again significantly higher represented than females. A total of 8 children were interviewed at both SCTAFs.

The average length of detention at the time of the visits was 64 days. **This means a significant reduction in the length of detention compared to 2009, when the Bulgarian Helsinki Committee (BHC) reported an average duration of 14.21 months.¹ However, the length of detention for asylum seekers² remains a cause for concern, since it is 59.5 days, and is shorter by only 10 days**

¹ Please see BHC report "Becoming Vulnerable in Detention": http://old.bghelsinki.org/upload/resources/DEVAS%20National%20Report_Bulgaria_SHORT%20PUBLIC%20version.pdf

² These are mostly people who have filed asylum application for the first time.

compared with that of foreigners against whom a deportation order has been issued (69 days).

It should be noted that SCTAFs are also used to accommodate foreigners for a period longer than two and a half months (please see 2.11). These persons are mainly foreigners who cannot be deported to their countries of origin and have lived in Bulgaria for many years; they have, however, been detained without the alternatives to detention being exhausted.

2. Main Findings of the Independent Custody Visitors

2.1. SCTAF Detainees' Awareness of Their Rights and Subsequent Procedures

More than half of the interviewed foreigners (51 people) responded that they **were familiar with the grounds for coercive accommodation at SCTAF**. In most cases they received this information:

- at the time of detention at the border with the assistance of an interpreter or through a lawyer,
- while they were being transferred from one institution to another (prison, investigation office, State Agency for Refugees) with the assistance of an interpreter,
- due to their ability to understand and speak Bulgarian or
- due to the fact that they had illegally resided in Bulgaria and had voluntarily requested to be deported.

According to a foreigner interviewed by the independent custody visitors, *despite his continuous requests in the course of a month and a half, no one had informed him about the grounds for his detention. He had managed to get hold of information via his "own channels", but claimed that by the time of the visit no one had officially informed him.* The SCTAF staff interviewed claimed that this was not possible, as a foreigner is usually informed by Mol authorities at the time of detention, and yet again at the time of coercive accommodation at the centre by a non-professional interpreter (usually another detained foreigner) or a staff member who speaks English.

Another interviewee was detained at the airport when trying to leave the country. *At the time of detention no interpreter was present. The person was not informed of the grounds for detention before he was visited by representatives of the Iraqi Embassy, after having been accommodated at SCTAF.* In an interview, another foreigner at SCTAF claimed *he did not know the grounds for his detention; he had lived in Bulgaria for 6-7 years and had for 3 years been married to a Bulgarian woman with whom he had a child.*

Only the accommodated foreigners who speak or understand the Bulgarian language, those detained for a second time at an SCTAF and those who managed to secure a lawyer at the time of detention **were informed of their rights in a language they could understand. They account for less than half of the interviewees, or a total of 36 people.** According to one of the interviewed detainees who claimed he “had been informed,” his rights include “*to eat, sleep, and wait.*”

In the remaining cases, the detained foreigners were not informed of the rights they have at SCTAFs in a way that made the information comprehensible to them. This is mainly due to the lack of interpretation in a language understandable for the person at the time of coercive accommodation at SCTAF. Detained foreigners rely mostly on the information received sporadically through unofficial channels, such as SCTAF staff members, other foreigners who speak Bulgarian or the information brochure about the internal rules³ posted on the walls at the centre in several languages.

As a result of the findings during the first 3 months of project implementation, the SCTAF management in cooperation with BHC and Open Society Institute Sofia developed leaflets with information about the rights of the detained foreigners at SCTAF in 8 foreign languages, including Arabic, Farsi, Urdu, Kurdish, Turkish, English and others. Such information materials, however, cannot compensate for the lack of professional interpreters at SCTAF, and the level of awareness among residents continues to be worryingly low. For instance, only about one-third of the interviewees (23 persons) responded that they were aware of their right to appeal the detention order, while three of the interviewees said they had actually appealed the order through their legal counsel. A total of 40 people shared that they were aware of the opportunity to consult a psychologist.

The detainees’ awareness regarding their case and the subsequent procedures to be applied with respect to them is also very low. An interviewed family said that *three weeks after their detention at SCTAF none of the staff had yet spoken with them. On the fourth week, a man approached them and talked to them through an interpreter, and that was the only time when they had been provided with an interpreter.*

Even the persons waiting to be deported shared that they had no current information on their case and why they had been detained at SCTAF for so long. Three persons who wished to be returned to Greece (under the Dublin procedure) said that *they had no information about what was happening with their cases.*

Asylum seekers reported that they were not provided with information on developments regarding their application with SAR. Persons interviewed in April shared *they had fled the appalling conditions in their countries of origin in order to find protection in Bulgaria and could not understand why they were held in this “prison”. They were unable to communicate with anyone: neither they could understand what they*

³ The brochure was published in 2010 by the UN High Commissioner for Refugees and contains brief information about the internal rules at the centre in 5 languages: English, Arabic, Hindi, Farsi, and Armenian.

were being told, nor the local staff could understand what they wanted. Even though they had declared they wanted lawyer and protection, they were not aware how these requests are processed.

Several persons shared that while other institutions (courts, investigation office, local police departments) had informed them that they would be released, they could not understand why they were still held at the Centre. A foreigner interviewed in May protested against the length of his stay in this “prison” and the lack of information on how his case was developing. He said that when he had been in court he had been informed that he would be released after 6 months.

Where an interpreter is appointed, the fact that certain rare languages have different dialects is not taken into consideration, which again results in a failure to inform the detained foreigners in an understandable language. For example one of the interviewed foreigners said *he had refused legal aid because he had not understood what was being said to him. The interpreter had simply spoken a different dialect.*

According to SCTAF Department officials, one of the main reasons for the poor level of information is the existing language barrier. This stems from the fact that the Migration Directorate has no budget funds for interpreters to/from rare languages. However, they are trying to solve the issue by providing professional interpreters to/from rare languages with funds from the European Return Fund, personal contacts and communication with the universities where rare languages are taught.

According to staff members, other factors relevant to the information deficit among the detainees are the uncertainty as to the time limit within which foreigners are released from detention by SAR and are provided with access to the asylum procedure, and the lack of accurate information about the time-frame of deportation, where this is the cases.

All of these findings are in violation of Art. 5 Para. 2 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) and Article 12, Para. 2 of Directive 2008/115/EC on the Return of Illegally Staying Third-country Nationals. These violations have been repeatedly underlined in the reports of the Bulgarian Helsinki Committee⁴ and the European Committee for the Prevention of Torture⁵ (CPT).

It is imperative that the Ministry of Interior ensures the necessary funds, and the Migration Directorate takes urgent steps to employ in-house interpreters or concludes long-term contracts with a translation company, as the existing language barrier is one of the reasons for the generally poor level of awareness among detainees. The information deficit has been repeatedly pointed out in SCTAF monitoring reports as a cause for mental distress, the feeling of insecurity, and vulnerability amongst detainees, which cannot be overcome even with the help of psychological counselling.

⁴ See latest 2010 report here: <http://humanrightsbulgaria.wordpress.com/%D1%83%D0%B1%D0%B5%D0%B6%D0%B8%D1%89%D0%B5>

⁵ <http://www.cpt.coe.int/documents/bgr/2010-29-inf-eng.pdf>

2.2. Access to Lawyer

In most cases, interviewees rely on a retained lawyer (16 respondents). Only seven of the detainees interviewed report to have used the services of a lawyer assigned under the Legal Aid Act⁶. Four of them made use of legal aid provided by lawyers from the Bulgarian Helsinki Committee⁷. As a whole, the rest of the interviewees claim, with very few exceptions, that they have been informed of their right to a lawyer but do not wish to receive such assistance.

Two cases have been registered in which detained foreigners requested a lawyer, but as of the time of the custody visit no lawyer had yet met with them. One of the cases was registered 14 days after the coercive accommodation took place and the interviewee explained that *he could not afford to pay for a lawyer and believed that this was the reason why a lawyer was not visiting him*. In the other case, the detained foreigner claimed he had requested an appointment with a lawyer and every time he asked the police officers, they would tell him *"Tomorrow, tomorrow ..."*

The findings of custody visitors outline the following main problem areas:

- **Limited access to legal aid and lack of free-of-charge legal aid provided by the State to foreigners detained at SCTAF.** This is caused, on the one hand, by the exclusion of this category from the provisions of the Legal Aid Act (LAA) in the pre-trial stage. On the other hand, the review of the detainees' records reveals that in some cases the court did not assign a lawyer in the court proceedings, although this had been requested, as the case was not of any factual or legal complexity.
- **An additional problem that stands out is the quality of the legal aid provided by assigned lawyers under the Legal Aid Act in this type of cases.** An interviewed foreigner in May said he had requested legal counsel, had met with the lawyer only "for five minutes in court", and ever since had not been informed about the development on his case. Another foreigner faced a similar situation – he had been appointed a lawyer with whom he had met only once. The lawyer failed to appear for the scheduled hearing, and therefore the hearing was postponed. The interviewee also shared that they had not actually talked; he had been requested to only sign some papers, without even knowing what they were about. In yet another case the interviewee said that he could not afford to retain a lawyer but did not want to use the services of an assigned one because he "did not trust them".
- **Lack of professional interpretation services during meetings with lawyers.** One of the interviewees complained that *he could neither always un-*

⁶ These are mostly foreigners against whom criminal proceedings have been initiated for illegally crossing the border or using forged documents. These lawyers do not provide legal aid regarding the coercive accommodation at SCTAF because there is no such legal provision.

⁷ It should be noted that sometimes due to the language barrier the foreigners at SCTAF refer to BHC lawyers as "assigned" or "EU lawyers" because they provide free legal aid. In this regard, the number of BHC lawyers who provided legal aid may be greater.

derstand his lawyer nor make himself understood because no interpreters were available as SCTAF. The interviewed foreigner spoke and understood very little Bulgarian. In his words, when a more sympathetic guard was on duty, he would allow for another Bulgarian speaking detainee to be present at the meeting with the lawyer and act as an interpret for them. In all other cases, he claimed he could not communicate with the lawyer in a language comprehensible to both parties. Another detained foreigner shared he was using a retained lawyer because he knew that appointed one was not available at the time. An interviewed family claimed that they were not aware of their entitlement to a lawyer and even if a lawyer turned up at the Centre, they would not be aware of that due to the lack of interpreters. The custody visitors also registered a case, in which the interviewee claimed that when a friend of his requested a meeting with a lawyer, he was asked to pay for an interpreter. This was why he decided not to exercise his entitlement as he could not afford it.

- The problems caused by the existing language barrier between the lawyer and the client are also revealed in an interview with an asylum seeker whose application had been rejected by SAR: He said that *there were lawyers who made foreigners at the Centre to sign two types of documents without explaining/interpreting their contents: by means of the first the person declared his/her consent to voluntarily return to his/her country (which he/she had fled in most cases), and by means of the second one the person waived his/her right to legal counsel.*

The limited access to effective and free-of-charge legal aid due to the lack of explicit regulation in LAA, combined with the lack of professional interpretation and automatic judicial review, constitutes a serious violation of international standards for the protection of detainees' rights and security (Art. 5.4 of ECHR).⁸ Moreover, the fact that only three of the interviewees responded they had managed to appeal their detention orders within the very short 7-day period stipulated in LFRB is quite revealing in this respect. In immigration detention cases, this period starts from the time of the actual coercive accommodation at the centre rather than from the service of the order, which is subject to appeal and is a serious exception to the general rules under the Administrative Procedure Code, regulating that the period for appeal starts with the service of the order.

The LFRB, unlike the regulation in most EU Member States, do not provide for an automatic judicial review in cases of immigration detention. This type of control helps to establish whether the measure complies with the legal grounds, and whether detention is needed or the less severe alternative measure of reporting to the police may be applied. This approach is regulated in article 15, paragraph 2 (a)

⁸ See also: UNHCR Revised Guidelines on Detention, op. cit., fn. 589, Guideline 5(ii): "Where possible, they should receive free legal assistance; [...]"; Body of Principles for the Protection of all persons deprived of their liberty, Principle 18. Also: Migration and International Human Rights Law, Practitioners Guide No. 6, p. 180.

of Directive 2008/115, and ensures the application of the internationally recognized legal standards protecting the right of every individual to liberty, as stipulated in article 5, paragraph 3 of ECHR. According to the BHC report “Becoming Vulnerable in Detention”,⁹ the police officer imposing the coercive accommodation measure should initiate the judicial review. Currently, this legal safeguard is in place for all persons accused of crimes regardless of their nationality and origin, but not for immigrants with enforced coercive accommodation at SCTAF.

At the beginning of this year, a working group with the National Bureau for Legal Aid drafted a proposal for amendments to LAA. During the consultation process on the draft law with the Ministry of Justice, it is absolutely necessary for Mol’s Migration Directorate to submit a proposal for the extension of the range of persons entitled to legal aid by including foreigners and asylum seekers in detention. In addition to the provision of information materials, the translation of the key legal provisions governing immigration detention and application procedures for international protection is also recommended.

2.3. Access to Healthcare and Health Status of Persons Detained at SCTAF

Medical assistance

Out of the total of 58 interviewees at the detention centre who have used medical services at SCTAF, 34 clearly indicated that they were not satisfied with its quality and only one explicitly noted that he was satisfied.

Custody visitors’ findings show that the medical assistance at SCTAF is characterized by:

- **Perfunctory medical examinations at both SCTAF.** During the reporting period, numerous cases have been documented where detainees’ complaints are disregarded by the medical staff – ranging from skin to heart disorders. One of the interviewees shared that *“unless there is a senior management representative present or a visitor from BHC or Open Society, the medical staff pays no attention to us at all.”* Another person said that *“they do not record the precise health condition in medical records because afterwards they will have to treat them.”* Another revealing statement: *“I don’t think his opinion (the doctor’s) is objective because every time I visit him, he tells me that there is nothing wrong with me, while I do have several diseases.”*
- **Shortage of medicines.** According to interviewed foreigners, at SCTAF-Lyubimets every ailment is treated with aspirin, respectively paracetamol. One of them said: *“I suffer from an allergy which first appeared here. I had 2 or 3 appointments with the doctor. But I have not been given any medication.”*

⁹ Please see BHC report “Becoming Vulnerable in Detention”: http://old.bghelsinki.org/upload/resources/DEVAS%20National%20Report_Bulgaria_SHORT%20PUBLIC%20version.pdf, p. 26.

An interviewed woman complained that *she had had a stroke and was not feeling well. She also said that the last time the medical unit staff had given her ¼ of the medicine intake that she needed. When the woman approached the SCTAF medical unit staff for pills for her heart condition, she was told none were available.* There was a similar case involving a family with small children who were sick. *The doctor at SCTAF gave them medications only once and afterwards they had to buy them by themselves.* Problems were also reported with supplying an inhaler for a woman suffering from asthma; epilepsy drugs, and thyroid medication (Eltroxin).

- **Language barrier.** Another negative consequence of the lack of professional interpretation services at SCTAF is the existing language barrier between the medical unit staff and the detainees who do not speak Bulgarian. Many of them say they had not been properly understood by the medical staff. *“He has a headache and the doctor gave him pills to treat his leg”*, shared one of the detainees in Arabic. While examining files in the archive, custody visitors came across a detainee’s medical record where the “complaints” column read “language barrier”.
- **Inefficient coordination with external clinics.** Two cases are particularly indicative in this regard:
 - A month and a half after being accommodated at SCTAF, one of the detainees got ill. At the time of the interview with him, he had already twice been referred to the MoI Medical Institute for tests and examinations to exclude a potential TB diagnosis. While being there, he was diagnosed with sinusitis. The SCTAF doctor gave him antibiotics several times, but there was no change in the detainee’s condition. While during the interview the custody visitors witnessed that he was still coughing and not feeling well, he was not receiving any further medical care.
 - A coercively accommodated woman was pregnant in the fourth month and by the time of the custody visit, the SCTAF staff had not organized an appointment with a specialist yet.

According to SCTAF Department officials, all these problems were due to the absence of a regular pay-roll doctor and nurse at the SCTAF medical unit who had been temporarily substituted by different specialists for a short period of time coinciding with time-frame of the custody visits.

- **Irregular access to psychological counselling.** Out of a total of 75 foreigners interviewed, only 11 said they had consulted a psychologist. Half of the interviewees shared that they were not aware of this opportunity, probably because at the beginning of the year at SCTAF-Busmantsi there was only one in-house psychologist, who was clearly unable to effectively consult all accommodated foreigners. At the end of the project, two psychologists were appointed at both SCTAFs. In the absence of professional interpreta-

tion, however, effective sessions with detainees are very difficult, extremely time-consuming and, thus, cannot cover all the persons in need. In one case, a foreigner interviewed said: *“there are people who need a psychologist but the police said no such help was available.”*

The interviews with the accommodated foreigners and staff at the SCTAF–Busmantsi point to the fact that **detainees rely primarily on Emergency Medical Service (EMS)** even in cases which are not urgent. The SCTAF full-time doctor is available only until 5 p.m. However, interviewed foreigners shared that the police officers were helpful and, when needed, they would call the EMS. The interviews with the detained foreigners and SCTAF staff conducted in the second half of the project reveal that the complaints related to the provision of medical assistance at the Centre are directed mainly to an elderly nurse who refuses to make examinations and give medications, as, according to her, the accommodated “malinger”. This is another reason for the police officers to call EMS.

For instance, an EMS team was called for two children who had the flu. During a custody visit, EMS was called to take care of one of the detained women. The doctor who responded to the emergency call at the Centre also examined one of the detainees complaining of earache who had an appointment with a specialist on the following day. SCTAF staff members shared that in recent times they had not had problems with EMS whose teams had started to respond very quickly, which serves as yet another proof that these services are used on a regular basis.

Health status of detained foreigners

23 of the interviewed detainees reported a deteriorating health status at the time of the interviews. While some of them said they were suffering from chronic ailments, civil observers established a direct connection between the detainees’ poor health status and the length of immigration detention at SCTAF, which has been repeatedly underlined in other monitoring reports¹⁰, too.

Six of the detainees complained that they had started losing weight after their detention at SCTAF. Custody visitors emphasize that this can be observed when comparing the photographs in the foreigners’ files taken at the time of detention and their current appearance. A detained foreigner said he had lost 15 kilograms since he had been coercively accommodated in the Centre.

Seven interviewees indicated that they suffered from psychological (nervous system) problems associated with the stress caused by the detention. The husband of one of the detained women said: *“she is crying and screaming in her sleep.”* Another detained foreigner said *he knew about the opportunities for social activities, but felt “depressed” and did not want to do anything.* An interviewed foreigner said *his son*

¹⁰ See for example BHC report “Detained Instead of Protected”: <http://www.bghelsinki.org/upload/resources/DEVAS-BG%20National%20Report%20Bulgaria%20SHQRT%20PUBLIC%20version.pdf>

suffered from a mental illness, but SCTAF staff refused to take him to the doctor and give him drugs other than aspirin.

Five foreigners reported dental problems. One of the detained women said in an interview with custody visitors that she needed dentures, but was not allowed to have them made, even if she was prepared to pay for it herself. In another case, a foreigner interviewed complained of toothache. He had been to the medical unit and was told he could not get help there; he had been directed to visit an external specialist and have the tooth extracted; for this procedure, however, he was to pay out of his pocket. It is obvious that emergency care is only provided for children in detention – a little girl detained at the centre with her parents had been transported to hospital and had had her tooth pulled out free of charge; the child was already feeling better.

The State fails to meet its international obligations¹¹ in this area, either; this a problem repeatedly underlined by the CPT and Bulgarian NGOs. Inadequate medical services and limited access to essential medicines can lead to a violation of detainees' right to be free from torture, cruel, inhuman, or degrading treatment. It is imperative that the Health Act include explicit provisions concerning foreigners in immigration detention, thus ensuring state funding to cover for their health insurance. Pending such amendments, the quality of health services provided at SCTAF needs to be improved without unnecessarily burdening the EMS system.

More resources need to be allocated from the budget of the Ministry of Interior for medicines, in particular for chronically ill persons. It is also imperative to improve the access to psychological counselling for detainees, especially torture survivors, asylum seekers, and people with mental disabilities. Two full-time psychologists on SCTAF's pay-roll in charge of the mental health of an average of 150-200 detainees is an extremely insufficient strategy for the delivery of an effective therapy. A model for good practice in providing mental health services is the example set by the Assistance Centre for Torture Survivors (ACET). Mol's Migration Directorate has contracted ACET, which uses its own resources to provide counselling and assistance to detainees with psychological problems. In order to adequately meet the mental health needs of a larger number of detainees, it is recommended to extend the range of NGOs licensed to provide such specialized care to asylum seekers, with financial support from governmental or EU funds.

¹¹ In addition to CPT standards, please see also: UNHCR Revised Guidelines on detention of asylum seekers, Standard Minimum Rules for the Treatment of Prisoners (rules 22-25), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principle 22 -26), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Section H), the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders.

2.4. Attitude of SCTAF's Staff towards Detained Foreigners

Ten of the interviewed foreigners reported that they were being treated poorly. When volunteers asked interviewees to clarify the issue, it became clear that the major factor behind their perceived mistreatment was again the **information deficit and the poor level of communication due to the lack of interpretation services.**

Four of the interviewees said that ill-treatment had to do with the **use of the punishment "solitary confinement" (individual high security room, IHSR).** *"If somebody refuses to eat, he/she is placed in the isolation room for four days, where conditions do not differ, but the punishment is deprivation of social interaction"* said a group of detainees gathered around the custody visitors. Another foreigner was punished to spend three days in the solitary confinement cell because he had been caught smoking cigarettes in the toilet. In a third case a detainee claimed that *"they would put you in isolation because you spoke loudly, for example."* According to the personal file of one detainee, he was placed in the solitary confinement cell for the first time because he caused a brawl in the canteen, and the second time, because together with other detainees he refused to leave the sports ground when asked to and got into an argument with police officers. In the interview, however, he said that *7 of them went to talk with the police officers and demanded to speak to a lawyer, but the police officers handcuffed them and had them confined for 3 days.*

Two of the interviewees expressed concern that they might have problems because of the conversation with the custody visitors.

During the second half of the project, one of the foreigners interviewed said that detainees placed in the IHSR were subjected to violence exerted by police officers. According to him, there was no video surveillance in these rooms; however, this fact was not confirmed by SCTAF staff members. A particular case was cited involving a detainee who was beaten while in the IHSR and, as a result, suffered sharp chest pains.

According to SCTAF officers abuse in the IHSR is not possible since each case involving placement in IHSR is reviewed by the SCTAF management.

Among the factors influencing the detainees' negative opinions, the ones that stand out are **the lack of concern and interest in detainees on the part of the staff and the inadequate opportunities for social contact with the outside world.** One interviewee stated: *"When we have visitors they are not always allowed to enter. They are told to leave any parcels they have brought and go away. Sometimes they are not even allowed to leave all the things they brought here. They are told it's too much."*

Two of the foreigners interviewed said they had requested a meeting with the head of the SCTAF-Busmantsi but they could not understand each other, as

they were confronted with the language barrier and the meeting was too short (10 minutes).

Six respondents from both centres said that they were being treated like animals, and one of them shared, with tears in his eyes: *“Busmantsi is a place where we are going to die a slow death!”* In a conversation with the independent custody visitors a foreigner interviewed stated that very few of the staff treat the detainees with sympathy and humanity. The remaining staff, in his words, speak to them as rudely as one would speak to a stray dog. He also claims there is excessive discrimination against them by police officers who would swear at them and insult them. A detainee at SCTAF-Lyubimets explained: *“We are treated like animals here, we are locked in and we are losing our minds, we want to move freely. We are not criminals and do not want to run away from here, we want to stay. That is why I think each of us would opt for snipers to be hired, so that if any of us attempts to escape, they could shoot him/her on the spot. Everybody will sign their name under such a request.”*

Opportunity to file a complaint with the head of SCTAF

Only 15 of the interviewees had been informed how to file a complaint to the head of the Centre, and a total of 4 of them had actually used this option. The general opinion among detainees is that a formal complaint would not change their situation in any way. One of the detainees claimed that *he had filed complaints on all sorts of matters but nothing had been done to rectify the situation. Officials would come, collect signatures, everyone seemed to be doing what was expected of them, but in fact nothing changed.* Another detainee claimed that his phone had been stolen. He said he knew who had done it, but did not want to create tension in the group. According to the independent custody visitors, for fear of being placed in the solitary confinement cell.

Due to the information deficit and the lack of professional interpretation services, placement in the IHSR as a disciplinary measure should be used as a last resort and only after a verbal warning in a language understandable to the foreigner; otherwise, the detainee may suffer a serious psychological trauma. The SCTAF management needs to consider developing clear rules and criteria for imposing disciplinary measures, a recommendation which is also made by the CPT. This procedure should include the offender’s right to be informed why he/she is punished, the opportunity for hearing the person concerned and witnesses, as well as legal safeguards to appeal the measure imposed.

SCTAF’s employees should be delivered specialized training in communicating with detainees from diverse cultures and traditions; furthermore, in the future the individual employed should preferably speak at least one foreign language.

2.5. Access to Consular Authorities

A total of three complaints have been filed by detained foreigners. These complaints are mainly related to the excessive delay in establishing contact with the consular authorities. An interviewed woman claimed that the consular authorities had been contacted after a four-month delay because a SCTAF staff member had not taken action on her application. At the time of this custody visit another detainee had been waiting for a consular appointment for three weeks. Another case concerns a detainee who claimed that *“she wanted to file an application 5 times, but the Director of the Migration Department did not allow it”*.

Within the time-frame of the project, any refusals on the part of asylum seekers to meet with diplomatic representatives were respected.

2.6. Opportunity for Correspondence and Phone Calls

Most interviewed detainees had been informed of the opportunity to send and receive correspondence and make telephone calls. These rights are, however, quite limited in practice, as in most cases detainees cannot buy SIM cards, stamps, envelopes etc., being unable to either afford them or exchange currency (sometimes they have dollars or euro, but not Bulgarian leva). SCTAF staff shared that sometimes they lend their own phones to detained foreigners or pay to buy them phone cards in order to enable them call their relatives.

A person interviewed at SCTAF-Lyubimets said: *“Even if there are no results from what you have written, I am a little happier and better today because I spoke to someone. There is no one to talk with here. One can go crazy.”*

The limited opportunities to keep in touch with the outside world due to the lack of an option for free phone calls can be compensated by providing several PCs with an Internet connection (Skype), extended time limits for visits, more books, magazines, newspapers. Another option worth considering is granting access for more social NGOs and volunteers to work at SCTAFs, so that detainees can have more frequent contacts and communication with people from the outside world and thus not feel isolated and vulnerable.

2.7. Detention Documents and Court Summons

All interviewed foreigners had their detention-related documents with them. However, these documents are in Bulgarian and the detainees often did not know what they read, which is yet another feature of the information deficit they suffer in SCTAF. A detainee shared that *as he was not able to read the documents he had asked the SCTAF Director to translate and explain them to him*. He added that in his opinion all documents should be translated into a language detainees can understand.

As regards the preparation of detention-related documents, an extremely dangerous practice was established at SCTAF by both detained foreigners and interviewers,¹²: unaccompanied minors detained at the border were registered by Border Police officials on the detention documents of an adult detained within the same group, in spite of the lack of any family relationship between the two parties individuals. As a result of this practice, unaccompanied minors ended up being coercively accommodated at SCTAF for a period exceeding 3 months. For example, *two interviewed boys who claimed they were 17 years old, were placed in the men's unit, in the same rooms as their "accompanying" adults, who were not their relatives. These "accompanying" adults were simply part of a group of foreigners including the two boys, who had arrived from Greece.* In addition to being in violation of all international legal standards for child protection, this practice creates risks and problems for children detained at SCTAF. One of the boys interviewed said that *he had had 250 euros in a safe box used jointly by him and "guardian."* At some point when the boy had decided to use some of the money, he had found that *"the guardian" had taken the money without letting him know. Hence, at the time of the custody visit, the boy was left without any money. The boy also shared that he did not want to have that person as his "guardian" but these were the rules.*

Another boy claimed he was born in 1994 (17 years old), while the year of his birth on the card issued by SCTAF, was 1992. While he had reported the incorrect date, no correction had been made. This "error" automatically changed the detained boy's status and resulted in the violation of his rights.

The independent custody visitors uncovered another problem related to the **preparation of detention-related documents at SCTAF**. On their interview cards, interviewers record only the date on which the foreigner was accommodated at the centre, but not on which the interview was held. Therefore, there is no way to trace whether a detainee was interviewed upon his/her arrival or at a later stage. Similarly, when detainees have a problem or make a request, this is not recorded in their personal files. There is no written record of actions taken in regards to detainees' requests, no record of whether the requests have been met, whether a second interview has been held to see if the problem has been resolved.

The few detainees who had received **documents** from the court said that staff had told them to sign the documents, without being able to understand the documents or the court judgment. Thus, one of the interviewees said that *he had initially been told by an officer that he would be taken to court, but later on he had received a court judgment reading that he had refused to attend the hearing.*

In addition to emphasizing once again the need for professional interpretation services, the findings of custody visitors reveal that there is a startling lack of compliance with the legal standards for the detention of accompanied or un-

¹² Interviewers are SCTAF employees who are in charge of activities related to the deportation/expulsion of detained foreigners.

accompanied children. The principle of the “best interests of the child”¹³ should be of paramount importance in any actions taken by government officials; furthermore, measures should be taken to ensure that minors are treated first and foremost as children, regardless of their immigration status, nationality, or past record. The detention of minors is only justified in exceptional circumstances, for the shortest time possible, and only as a last resort.

In this respect, unaccompanied minors should be separated from adults in order to be protected and to avoid (secondary) victimization by traffickers or smugglers, instead of being recorded on the detention orders of adults with whom they do not have a family relationship, and subsequently accommodated with them. Unaccompanied children seeking protection should be immediately accommodated in the reception centres of the State Agency for Refugees.

2.8. Applying for International Protection

Out of a total of 75 interviewees, more than half (42) detainees had filed applications for international protection. Ten of the interviewees had applied two or more times. Interviewees said they had faced no obstacles when filing an application to SAR at SCTAF. One of the foreigners explained that he had not received a registration number from SCTAF’s staff to prove that his application to SAR had been accepted.

Half of the foreigners had applied immediately after their detention in SCTAF. It is worth noting that most of them had not yet received a response from SAR, although an average of 2 months had passed since their application had been filed.

Five interviewees said that SAR had requested an address of a guarantor due to the lack of accommodation capacity at its centres. Three of them had indicated the addresses of their acquaintances, but at the time of the custody visit they had not yet received a definitive reply (one of them had provided this information 5 months prior to the interview date). The fourth interviewed detainee had received a refusal, and the fifth one had not been able to provide an address.

The detention of asylum seekers should be avoided and limited only to exceptional circumstances¹⁴ after careful consideration of each individual case and in the shortest possible time. This needs to be observed in order to avoid the repeated victimization of asylum seekers who have suffered damages and trauma in the very flight from prosecution. Detention (coercive accommodation) at SCTAF is a measure to be applied only in cases of deportation/expulsion. This measure is, therefore, unlawful when applied to asylum seekers, as it does

¹³ Article 24 of the Charter of Fundamental Rights and Article 3 of the Convention on the Rights of the Child.

¹⁴ Legal obligation under Article 15 of Directive 2008/115/EC. See also: Recommendation Rec (2003) 5 of the Committee of Ministers of the Council of Europe on measures of detention of asylum seekers, which defines inter alia the situations in which the detention of asylum seekers may be resorted to.

not serve the purpose as prescribed by law:¹⁵ where an asylum claim has been lodged, any deportation/expulsion measures are automatically suspended in accordance with Art. 67, Para. 1 of the Asylum and Refugee Act. Where asylum seekers are detained by way of an exception (in the case of imposed expulsion on the grounds of threat to national security), they should be accommodated separately from the other coercively accommodated illegal immigrants – a practice which is also recommended by the CPT. With regard to asylum seekers filing applications at the border before Border Police officers, it should be noted that the amendments to the Ordinance on the responsibility and coordination of government authorities became effective on 22nd of November 2011;¹⁶ hence, the provision authorising (Article 16, Para. 3) Border Police officers to detain asylum seekers applying at the border and refer them for accommodation in SCTAF was repealed (amend. SG No 81 of 18 November 2011).

2.9. Food Provision Arrangements

Most interviewees said that they **were not satisfied with the quality of the food** at SCTAF – *“Food is terrible”, “Even a stray dog would not eat it.”* The detained foreigners felt that **food is not prepared well** – *“it is tasteless, like plastic,”* **that portions are very small and not sufficient to feed male detainees** who are losing weight as a result. According to interviewed women, *canteen food is not suitable for children – it is not rich enough in vitamins and sometimes cooked with spoilt products, from which the children get diarrhea.*

Two of the interviewees said that they had found a spider and a cockroach in their food, which means that there is low or no quality control on the food cooked. Three of the Muslims interviewed complained that they were being served pork which is against their religion, and they refused to eat it. Another complaint is that food is not diverse enough – over the last two years, for instance, no fish has ever been served. Interviewees also said they had officially complained about the quality of food, but without avail.

¹⁵ Art. 44, Para. 6 of the LFRB (OG No 153/1998).

¹⁶ Ordinance on the responsibility and coordination of government authorities competent in applying Regulation (EC) No 343/2003 of 18 February 2003 on establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of “Eurodac” for the comparison of fingerprints for the effective application of the Dublin Convention and Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Regulation (EC) No 2725/2000 concerning the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of the Dublin Convention, adopted by CoM Decree No 332 of 28.12.2007 and promulgated in the Official Gazette on 11 January 2008.

Complaints were also reported on the long period of time from dinner to breakfast on the next morning – at 18.00 and 09:00, respectively. Detained men shared their feelings of hunger and; during the custody visits they did not have any opportunities to provide extra food.

During the first month of the operation of SCTAF-Lyubimets independent custody visitors received reports from detainees that the menus offered there were rich and balanced; the meat cooked was veal and chicken meat, pork being avoided in line with religious practices. Three months later, all of the above problems regarding the quality and quantity of food were also valid for SCTAF-Lyubimets. Some detainees also complained about the quality of tap water they drank.

According to SCTAF management, the food provided is regularly monitored and the recommendations of detainees about the menu are taken into consideration. Special food is provided for children under the age of three.

However, according to custody visitors' findings, the food served at both SCTAFs is of unacceptable quality. Further efforts are needed to ensure a diverse diet appropriate for the detainees' cultural and nutrition needs. If the catering company providing the food at SCTAF has no experience in accommodating the needs of such target groups, the detainees may be given a real opportunity to recommend a menu. This will provide them with another social activity. Given that there are children and pregnant women detained at SCTAF, it is crucial that they are provided with nutritious food that is rich in the essential minerals and vitamins.

2.10. Living Conditions at SCTAF and Opportunities for Social Activities

Dormitory sector

Both SCTAF-Busmantsi and SCTAF-Lyubimets have two separate sectors. One sector is used to accommodate men, while the other provides separate accommodation for women, families and unaccompanied minors.

According to interviewees detained at SCTAF-Busmantsi, male premises accommodate between 6 and 22 people on bunk beds, which sometimes results in tension between detainees. The findings of custody visitors showed that throughout the reporting period the hallways, bedrooms and bathrooms/toilets in the male sector were not adequately maintained and there was a heavy unpleasant smell in them. Rubbish bins were overflowing and there were liquids spilt on the floor. This situation comes as a result of the insufficient number of cleaning staff at SCTAF; detainees have to wash the floor themselves. Women interviewees reported that they cleaned their dormitories, toilets and bathrooms by themselves, using detergents provided by SCTAF.

Another problem that stands out is the fact that all families are accommodated in one big room, which does not provide them with any private space. At the time

of the independent custody visit 53 people were accommodated in these family premises. As of 26 April 2011, the number housed was 38. In order to ensure privacy, the detainees had hung blankets or bed sheets around their bunk beds. In some cases there were not enough beds; thus, only three beds had been provided for a family of four and the children had to share a bed. A family with a pregnant woman was accommodated together with 35 other foreigners (visit dated 30 March 2011 at SCTAF- Busmantsi). A child from one of the interviewed families told custody visitors: *"I will break the window with a rock and we will escape."*

Custody visitors noticed inconsistent practices in respect of the accommodation of families at SCTAF. In some cases family members were separated. An example in this respect is a family whose son was placed in the male sector as he was considered an adult (aged 23). The other members of his family had few chances to see him and were not allowed to live together as a family.

The fact that SCTAF-Busmantsi provides no separate sectors or sufficient capacity for families, women and unaccompanied minors, is a source of great discomfort for detained foreigners. For example, at the end of February, when a large number of families from Afghanistan were simultaneously placed at the centre, the children's playground on the second floor had to be transformed into a family room. Custody visitors also found that the minors' lodging was used to accommodate males who were visibly adult but claimed they were aged under 18.

An identical issue was registered at SCTAF-Lyubimets in May. As at the time of the custody visit there were too many families accommodated at the centre, some of them were transferred to the female sector. A separate room was provided for minor/under aged boys, and minor/under aged girls were accommodated with the women.

Custody visitors reported that the ceiling in the family lodgings at SCTAF-Busmantsi was leaking (visit dated 22 February 2011). Sanitary facilities were in a poor condition although they were cleaned frequently.

The premises accommodating women, families and minors at SCTAF-Busmantsi were relatively cleaner than the male sector, unlike the hallways in this sector.

During winter months, the temperature in all premises is suitable and detainees have access to natural daylight.

During custody visits at the end of June, the premises at SCTAF Lyubimets were still new and clean. Due to the small number of detainees, the premises at that centre were occupied by few people who did not have any complaints.

Sleeping conditions

In the interview with the custody visitors, detainees at both SCTAFs shared that the beds were extremely uncomfortable and, at SCTAF-Busmantsi, they were often broken. However, most interviewees said they had no trouble sleeping. One of the woman complained that the metal grill door was not soundproofed and she could

hear other people going to the toilet. She also complained about the smell coming from the toilet. A family of detainees expressed their concern that their children got up very early and started running along the hallways, thus bothering other detainees who were still sleeping. Other complaints concerned dirty mattresses and blankets which, according to detainees, were not cleaned after being used by another person.

Access to sanitary premises

All the women interviewed shared they had no problems with the access to the toilet in the time interval between midnight and 7 a.m. when the bedrooms are locked. When necessary, SCTAF staff members opened the bedroom doors and provided access to the toilet. Problems were not reported by detained families, either, because the door to their premise remained unlocked and they had free access to the sanitary facilities.

The male detainees interviewed, however, raised a serious concern – **the access to the toilet during the night depended on the police officer on duty**. Some interviewees reported that they either had to use an empty bottle or endured without going to the toilet until the morning, as none of the staff on duty would respond to the bell/alarm button. Staff members commented that there was indeed a temporary problem with the bell, but a technician had been called and had fixed it. Custody visitors, however, continued to register complaints concerning this issue throughout the reporting period (up until June).

The problem at SCTAF-Lyubimets was identical, with the exception that it also concerned the women detained at the centre. Bedrooms were locked at night and if someone wanted to use the toilet, they had to ring the bell. An interviewee said that the whole facility was guarded and it made no sense for them to be locked in as this was not a prison but an accommodation centre (at the time of the visit in March seven persons were accommodated there). After the opening of SCTAF-Lyubimets **detainees complained that staff members did not allow them to take showers at any time. At the end of the reporting period no further complaints were registered in this respect.**

According to CPT standards, detainees must be provided with at least 4 square meters of room, and ECtHR case law¹⁷ shows that private space of less than 3 square meters per person is a very strong indicator of detention conditions in breach of Art. 3 of the ECHR. Steps should be taken to avoid overcrowding of premises at SCTAF and apply, as much as possible, alternatives to detention, use the opportunities available with the new SCTAF, and improve coordination with SAR.

The findings of custody visitors provide yet another argument that unaccompanied minors should not be detained or at least should be effectively sep-

¹⁷ Kantyrev v. Russia, ECtHR, Application No. 37213/02, Judgment of 21 June 2007, paras. 50-51; Labzov v. Russia, ECtHR, Application No. 62208/00, Judgment of 16 June 2005, para. 44; Orchowski v. Poland, ECtHR, Application No. 17885/04, Judgment of 22 October 2009, para 122.

arated from other detainees in rooms which meet their needs and age. Family members should not be separated, as this is in violation of Art. 8 of the ECHR. The detention of pregnant women requires special care, such as providing a separate room, regular access to an obstetrician, better sanitation conditions etc. This category of vulnerable persons should also be provided with alternatives to detention.

It is imperative that detained foreigners are provided with access to sanitary facilities at all times; the procedure for calling staff members to open doors at night should be explained to detained foreigners in a language understandable to them.

Additional funds are needed to ensure the upkeep of premises and equipment, the replacement of broken beds, and better sanitary conditions at SCTAF.

Providing opportunities for social activities

Prayer rooms

SCTAF-Busmantsi provides two prayer rooms: one for Christians, and one for Muslims. During the reporting period, however, detainees repeatedly shared that these rooms were generally kept locked and were only opened for visits by NGOs. During some of the custody visits, the rooms were locked again. The accompanying officer unlocked them and explained that when the detainees are under a free regime, these premises are kept open and can be used for prayers. At the time of the custody visit the detained foreigners on the 4th floor were under a free regime; nevertheless, the rooms were locked.

The hours for opening the prayer rooms and their location in the centre prove inconvenient for the detained foreigners; an informal "prayer area" had been created in the female sector. The children's area was used for this purpose, where at the time of one of the visits, prayers was performed on bed sheets instead of prayer mats. Detainees reported that they needed proper mats and that the prayer room in the other sector was not convenient for praying 5 times a day, as required. Because of the limited access to the prayer room for Muslims, detained men were forced to use their own rooms for this purpose.

Foreigners at SCTAF-Lyubimets complained about the same problem, if they were at all aware of the existence of the prayer room (two responded they did not know). Prayer rooms are located in the administrative building and not in the dormitory section where foreigners are accommodated. Access to the prayer room is limited and staff members do not let Muslims go to the other building at prayer times. Therefore Muslims pray in their rooms on the floor. According to interviewed detainees, there are also no facilities to perform the ritual washing before each prayer.

Cultural and leisure sector

The facilities in the cultural and leisure sector at the SCTAF in Busmantsi are in an extremely poor condition. In the TV rooms, there are sagging chairs with torn fabric. There are several pieces of gym equipment, supplied through donations. Other sports equipment has also been provided through donations. During the first three months of the custody visits, the premises designated for a coffee shop (kiosk) and the billiards room were not properly maintained; their walls were dirty and peeling. One of the women interviewed said that *the kiosk was never open and that she had to source products through the informal trade that was growing among the centre residents*. A positive development registered at the end of the project was that repairs had been started in the coffee shop. At the time of the custody visit, however, none of the staff members knew who will manage this trade and what sort of goods were supplied.

The reading materials available at the library are insufficient and highly obsolete. The shelves labelled "Turkish", "Arabic", and "Farsi" were empty. One of the interviewees shared that *in order to take a book from there, the access to the library had to be authorized by the police officer needed*: a very large part of the interviewees were not aware of the existence of the library.

Both SCTAFs provide outdoor facilities including volleyball, basketball and football fields. Detainees are entitled to outdoor activities in the yard twice a day for one hour or an hour and a half. **Several people at SCTAF-Lyubimets complained that they were not always allowed to go outside.**

One of the detained foreigners shared with custody visitors that *he wanted to meet a friend of his from the other sector, who was the only one he could talk with, as the other men in his room did not speak Arabic. It was difficult to meet him but at last he succeeded. While he would like to see his friend more often, he said that the procedure was very complicated.*

Detained foreigners complained about *having nothing to do during the day. They shared that they would like to take up a hobby such as knitting or handiwork; to have more opportunities to spend time outdoors; to be able to keep up their correspondence by being provided with writing paper and envelopes; to be able to watch TV late in the evening.* Another concern raised was the lack of cable TV, which would provide children with the opportunity to watch kid-appropriate programs and would also keep detained foreigners updated about the situation in their countries of origin in a language understandable to them. **In an attempt to find a solution to this situation, in June several Syrian nationals at SCTAF-Busmantsi raised funds and ensured digital television at the centre. The custody visitors registered a good practice: at the request of the detainees, CDs with music from their countries was played over the loudspeaker system.**

Accommodation of children at SCTAF

Children are still accommodated at SCTAFs, as currently, the Bulgarian legislation does not provide for any other alternative, and the separation from their parents can have even more negative effects than detention itself. Interviewed parents who were seeking asylum said *they were concerned with the fact that their two boys had dropped out of school and under the present conditions were unable to continue their education*. Another interviewee explained that *conditions in the women's and children's rooms were very poor. The person shared his experience, having spent time in open-access camps in Germany, and said that children there attended kindergarten and were better cared for*.

The detention of children at SCTAF must be stopped. It is imperative for the National Council on Migration Policy with the Minister of Interior to focus its efforts on developing a strategy to introduce open-access centres, as is the practice in Belgium (whose model Bulgaria has been following). These centers could be used to accommodate families with children, unaccompanied minors, and other vulnerable groups.

Given the poor level of communication between staff and detainees and the lack of proper conditions for regular contacts with the outside world, foreigners should be provided with more opportunities for social contact and activities at SCTAFs. Better access to prayer rooms should be facilitated because, as managed at present, they are not of much use to the foreigners. A possible solution would be to move prayer spaces closer to the people who use them. It may also be discussed with the detainees whether they need special premises or if the provision of mats and other necessary items would be enough.

Another option for additional activities for foreigners at SCTAF would be the opportunity to work at the renovated coffee shop (kiosk). It could be run in shifts by detainees, who could engage in making coffee / tea, serving, cleaning and selling sweets and other everyday necessities.

Contacts among foreigners at SCTAF should be facilitated by removing the barriers thereto, i.e. the cumbersome specialized procedures and the limited opportunities for outdoor activities and sports.

Provision of clothing and personal hygiene items

All detainees complained of insufficient personal hygiene supplies. Toilet paper is provided only once every two weeks, there is no soap, towels are scarce. No budget funds are allocated for toothpaste, toothbrushes, or shampoo. One of the residents said he had been waiting for 8 days already for a toothbrush and soap. Most interviewees replied that they bought personal care items or borrowed them from other detainees.

Clothing and shoes for residents are mostly provided from donations handed out by non-governmental organizations, which is highly insufficient. Foreigners

complained about the shortage of shoes. Women said there were no suitable shoe sizes for children – there was a child wearing size 39 slippers.

A detainee at SCTAF-Lyubimets said he knew about the sports ground, but as he had only one pair of shoes, he had to save it. This is why he could not afford to play sports outdoors, he added. Another foreigner said he had asked for clothes, especially shoes (his were worn beyond repair), but was not given any. So he had given staff members 70 leva out of his own money to buy shoes for him. At the time of the custody visits he still had not received the shoes.

Staff member at SCTAF-Lyubimets shared that they used their own cars and fuel to buy essential goods for detained foreigners and offered them cigarettes from their own stock. They told custody visitors that there is much need for games, books, pre-paid SIM cards, clothes etc.

Mol should start allocating funds for the purchase of clothing and shoes for detainees, personal care items, recreational and sports items. In the long term, the centre cannot rely solely on donations from NGOs, as these are not regular.

2.11. Alternatives to Immigration Detention and Opportunities for Granting Temporary Status

Within the framework of the project an interview was conducted with a detained foreigner whose right of movement had been limited for several years, the detention having been interrupted between the two coercive accommodations at SCTAF. According to SCTAF staff, the reason for the prolonged detention was his refusal to cooperate with authorities and their inability to deport him. In an interview with custody visitors he claimed that *he was stateless and was being held illegally because since 2009 he had received a decision for release. He said that nobody had explained anything to him, that nobody was willing to hear his case and that he did not know why he was being detained at SCTAF. The only thing he knew was that he was waiting to be deported, which was obstructed due to the need for "600 euros to be paid for the deportation, as the fund from which he could receive financial support was not operational". He also said he did not know when he would be able to get in touch with an embassy.*

According to the centre staff interviewed, as a result of the prolonged detention at SCTAF, the foreigner had developed mental problems: he was suspicious to any outsider and was unwilling to cooperate with the deportation authorities. The length of his detention exceeded the statutory maximum period of 18 months in conformity with LFRB and Directive 2008/115/EC on returning illegally staying third country nationals, which is in violation of both national and European standards for human rights protection. There are two such cases at SCTAF at present, which are indicative of the existing legal vacuum in the Bulgarian legislation concerning foreign nationals who cannot be removed from the country. This group includes people who cannot

be returned to their country of origin because it either does not exist (e.g. the USSR) or is unwilling to receive the person back on its territory, or for some reason the country of origin cannot be determined.

These can also be persons who applied for international protection and did not meet the requirements laid down LAR, but their return to their country of origin would put their lives at risk. Custody visitors conducted two interviews with foreigners in such a situation: they had applied for asylum in Bulgaria but their applications had been rejected. Both interviewees had been persecuted in Syria for political reasons and claimed they feared for their lives.

A “tolerance status” should be introduced in the Bulgarian immigration legislation in order to address the needs of the above groups. Such status has been introduced in several EU Member States, including Romania and Belgium, the latter being the source from which Bulgaria has drawn experience in developing its irregular migration management policy. This “tolerance status” will solve the problem with foreigners being detained for more than 18 months at SCTAF, which is in violation of European standards for human rights protection and will fill in the existing legal gap in terms of the status to be granted to such people after their release from SCTAF. Currently, the Strategic Programme for Integrated Return Management (2011–2013) contains a proposal to introduce such a status into the Bulgarian legislation for a period of 90 days, provided that the foreigner is registered in an Assisted Voluntary Return Programme. When planning this legislative change, the scope of this status should be extended by defining both the circumstances under which the extension is possible and the rights and obligations it entails.

The introduction of such a status should be in parallel with providing opportunities for alternatives to immigration detention: accommodation in regular lodgings outside the centre, which will offer foreign nationals free movement, opportunities for employment and training, in combination with administrative controls. There are a number of successful practices in terms of alternatives to immigration detention worldwide, which have been summarised in the Community Assessment and Placement model.¹⁸ This model describes the steps which government authorities can take to secure alternatives to detention, such as:

- **introduce the “presumption against detention” when determining the migration status of a foreign national**, as stipulated in Art. 15 (para. 1) of Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third country nationals, and the effective laws in Argentina, Venezuela, New Zealand etc.;
- **detailed assessment of each individual case** to determine risk, vulnerability, health status;
- **introduce community support programmes for these target groups** by providing accommodation opportunities at open-access centres, as well as legal assistance, interpretation services, providing for basic needs.

¹⁸ <http://www.scribd.com/doc/54661929/IDC-Handbook-There-are-alternatives>

Bulgaria has already been convicted by the European Court of Human Rights in relation to its immigration detention practices (see for example: *Al Nashif and others v. Bulgaria* (application № 50963/99), *Raza v. Bulgaria* (application № 31465/08), *M. and others v. Bulgaria* (application № 41416/08), *Auad v. Bulgaria* (application № 46390/10), which requires a thorough review and update of the relevant legislation. **It is imperative for the National Council on Migration Policy with the Minister of Interior to consider the introduction of a “tolerance status” and to take steps to further develop the regulatory framework and ensure the more frequent use of alternatives to immigration detention. With the assistance of NGOs, specialized trainings may be conducted to raise the awareness and skills of Mol officers , who are the ones to most frequently apply the coercive accommodation measure.**

CONCLUSIONS

The average length of detention at SCTAF (64 days) has decreased since the 2009 monitoring report of the Bulgarian Helsinki Committee (14.21 months), which is regarded as a very positive development.

A continuing cause for concern is that asylum seekers are detained for almost as long (59.5 days) as foreigners awaiting deportation/expulsion (69 days).

The issue of the prolonged detention of asylum seekers and the legal status of immigrants who cannot be returned to their countries of origin is still outstanding.

The overall awareness of detainees about the grounds for their detention, their rights in detention and the subsequent procedures (including asylum seekers) to be initiated with respect to their case is on an extremely low level. This is mostly due to the lack of professional interpretation services at SCTAF and the poor level of communication between staff and detainees, as very few members of the staff either speak a foreign language and or have been trained to communicate with people from different cultures.

The access of detained foreigners to legal aid is limited to the aid provided by NGO resources and retained lawyers. The medical and psychological assistance ensured at SCTAF and the coordination with external healthcare establishment is an issue, which affects detainees' health status. There is a pressing need for medications, which should be at the disposal of the medical staff at the centre.

While during the reporting period **there were no reports on cases of physical abuse by SCTAF staff, custody visitors registered complaints about unjustified placement in the Individual High Security Room, which calls for a review of this procedure and the criteria for its application by the management of the Migration Directorate.**

There are no registered problems related to the access to consular authorities and the failure to respect refusals on the part of asylum seekers to have meetings with such authorities.

Detainees at SCTAF have **limited opportunities** for correspondence and phone calls due to the lack of free phone and internet connection. This fact, in combination with the limited social contacts and opportunities for keeping in touch with the outside world, leads to increased vulnerability, the risk of depression and higher stress amongst detainees.

As regards issuing orders to impose CAMs by Border Police officials, an extremely detrimental and **unlawful** practice was registered, which must be immediately put an end to. The worrying practice relates to the fact that unaccompanied minors are registered on the CAM order of an adult detained in the same group without the two

individuals being in a family relationship. This practice is deemed dangerous in that it could eventually lead to secondary victimization of unaccompanied minors.

Food quality was **assessed as being very poor, and quantities insufficient to feed male detainees.**

Detention at SCTAF largely **fails to meet the international standards for the protection of the rights and freedoms of detained persons.** The Centre exceeds capacity in rooms which do not allow any privacy at all. There are effectively no separate rooms to accommodate families and individuals with special needs – asylum seekers, unaccompanied minors, pregnant women etc. Male detainees' access to sanitary facilities is limited.

Maintenance and sanitation at SCTAF in Busmantsi **is inadequate.** The Migration Directorate provides no funds for the purchase of clothes, shoes, personal hygiene supplies, and sports and recreational equipment for detainees.

MAIN RECOMMENDATIONS

Provision of professional interpretation services:

- It is imperative for the Mol to provide budgetary funds needed to appoint in-house interpreters or conclude a long-term contract with a translation company for services to be used by SCTAF staff.

Access to legal counsel:

- It is recommended that Mol's Migration Directorate makes proposals for broadening the range of individuals entitled to legal aid under LAA in order to include detained foreigners, and for introducing a procedure for automatic judicial review at the time of detention.

Provision of medical care:

- It is of paramount importance for the Health Act to lay down explicit provisions concerning foreigners in immigration detention, thus ensuring state funding for their health insurance.
- It is also imperative to improve the access to psychological counselling for detainees, especially torture survivors, asylum seekers, and people with mental disabilities. This can be achieved by increasing the number of in-house psychologists at SCTAF by contracting one or more NGOs offering this type of specialized services in order to provide psychological counselling to a larger number of detainees.

Attitude towards the detained foreigners and prevention of violence at SCTAF:

- The SCTAF needs to develop a clear mechanism and criteria for imposing disciplinary measures. This procedure should provide for the offender's right to be informed about the reason for the punishment imposed, to go through a hearing and use witnesses on his/her behalf, as well as legal safeguards to appeal the disciplinary measure.

Detention of children and minors:

- It is necessary to terminate the unlawful practice of Border Police officers registering unaccompanied minors on the detention orders of detained

adults with whom the children have no family relations, and subsequently housing them together. Unaccompanied minors should be accommodated separately from adults in order to ensure their protection and prevent secondary victimization by traffickers or smugglers.

- Unaccompanied children seeking asylum should be immediately placed in the reception centres of the State Agency for Refugees.
- It is imperative for the National Council on Migration Policy to the Minister of Interior to focus its efforts on developing a strategy to introduce open-access centres, as is the practice in Belgium (whose model Bulgaria has been following). These could be used to accommodate families with children, unaccompanied minors, and other vulnerable groups.

As regards asylum seekers:

- With regard to asylum seekers filing applications at the border with Border Police officers, it should be noted that on 22 November 2011 amendments to the Ordinance on the responsibility and coordination of government authorities came into force¹ and thus the provision authorising (in Article 16, Para. 3) Border Police officers to refer asylum seekers applying at the border for accommodation in SCTAFs was repealed (amend. SG No 81 of 18 November 2011).
- The detention of asylum-seekers should be applied only in exceptional circumstances (threat to national security or public order), after careful consideration of each individual case and for the shortest possible period.

Regarding the alternatives to immigration detention and opportunities for granting a temporary status:

- The National Council on Migration Policy with the Minister of Interior should make a comprehensive review in order to update immigration legislation and consider introducing the “tolerance status” for foreigners whose deportation from the country is not feasible (see 2.11). This type of status would solve the issue with the detention of foreigners for more than 18 months at SCTAF, which is in violation of the European standards on human rights protection, and will fill in the existing legal gap in relation to the status granted to people in this category after their release from SCTAF.
- It is imperative for the National Council on Migration Policy with the Minister of Interior to take steps to further develop the regulatory framework for ensuring a wider use of alternatives to immigrants’ detention: accom-

¹ Adopted by CoM Decree No 332 of 28.12.2007, promulgated OG No. 3 of 11 January 2008.

modation in a residential setting outside the Centre, thus allowing foreign nationals' to enjoy free movement, employment and training opportunities, in combination with administrative controls. With the assistance of NGOs, specialized trainings can be conducted to raise the awareness and skills of Mol officers , who are the ones to most often apply the coercive accommodation measure.

- Constant efforts should be made to strengthen the administrative capacity of Mol's Migration Directorate, as many of the abovementioned problems, such as the slow communication between institutions, the lack of information on procedures carried out with respect to foreigners, the lengthy procedures for deportation/expulsion or transfer to SAR are linked not only to budgetary funds but also to human resources and effective management.

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HUMAN RIGHTS

Since 1999, the Law Programme of the Open Society Institute – Sofia has been committed to upholding the principles of the rule of law and human rights protection in Bulgaria. The Programme supports the implementation of the judicial reform in areas that are directly relevant to modernisation of criminal procedure, facilitation of Bulgarian citizens' access to justice, and adoption of the *acquis communautaire*.

Now that Bulgaria is already an EU member state, the Law Programme aims to guarantee the continuation and irreversibility of reforms in the judicial system and emphasizes on improving transparency and accountability in the work of the judicial and law-enforcement institutions. The Programme is conducting surveys, civil-society monitoring of the operation of institutions, evaluation of the effectiveness of the application of newly adopted legislative amendments, and promotion and adaptation of successful foreign practices for effective management in the judiciary and law enforcement.

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