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ПОСТОЯННО ПРЕДСТАВИТЕЛСТВО НА  
РЕПУБЛИКА БЪЛГАРИЯ ПРИ СЛУЖБАТА НА ООН И  
ДРУГИТЕ МЕЖДУНАРОДНИ ОРГАНИЗАЦИИ В ЖЕНЕВА



MISSION PERMANENTE DE  
LA REPUBLIQUE DE BULGARIE AUPRES DE L'ONU ET  
LES AUTRES ORGANISATIONS INTERNATIONALES A GENEVE

No 274

Geneva, May 31th, 2016

The Permanent Mission of the Republic of Bulgaria to the United Nations Office and other international organizations in Geneva presents its compliments to the Secretariat of the United Nations (Office of the United Nations High Commissioner for Human Rights) and has the honour to transmit herewith the information provided by the Bulgarian authorities with regard to the Joint Communication from Special procedures, REFERENCE: BGR1/2016, 31 March 2016, sent by the Working group on Arbitrary Detention, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the human rights of migrants, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding allegations of mistreatment of asylum seekers and migrants.

The Permanent Mission of the Republic of Bulgaria to the United Nations Office and other international organizations in Geneva avails itself of this opportunity to renew to the Secretariat of the United Nations (Office of the United Nations High Commissioner for Human Rights) the assurances of its highest consideration.

*Annex: in accordance with the text – 7 pages*



**Office of the High Commissioner for Human Rights  
Working group on Arbitrary Detention,  
Special Rapporteur on the right of everyone to the enjoyment of the highest  
attainable standard of physical and mental health,  
Special Rapporteur on the human rights of migrants,  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment  
or punishment**

**Geneva**

**INFORMATION PROVIDED BY THE GOVERNMENT OF BULGARIA ON THE INQUIRY BY THE WORKING GROUP ON ARBITRARY DETENTION, THE SPECIAL RAPPORTEUR ON THE RIGHT OF EVERYONE TO THE ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH, THE SPECIAL RAPPORTEUR ON THE RIGHTS OF MIGRANTS, AND THE SPECIAL RAPPORTEUR ON TORTURE**

The government of the Republic of Bulgaria would like to convey the following information on the situation of asylum seekers and migrants:

**1.**

The continuing migratory pressure towards Europe increases the threats to the internal security and public order of the EU Member States, as well as to their public health systems and international relations, and there is also increased risk of terrorist threats related to migration.

In this regard, the protection (surveillance) of the state border is a legally binding obligation stipulated in the Constitution and the national legislation, and the Republic of Bulgaria is implementing strict measures to execute this obligation both at entry and exit. The measures include physical protection of the border by police officers, use of integrated systems, technical devices and engineering constructions, as well as use of weapons and auxiliary devices pursuant to the respective provisions of the national legislation, mainly provisions of the Penal Code and the Law on the Ministry of Interior.

The checks performed so far on different allegations in this regard based on partial or incomplete information, have not proved cases of exceeding police powers and/or excessive use of physical force against persons trying to cross illegally the state border. In this regard we would like to stress that all received allegations are checked not only by the Border Police, but also by the other competent state authorities – Internal Affairs Directorate of the Ministry of Interior, the prosecution authorities and the judiciary. It should also be underlined that Bulgaria is a transit country for the economic migrants trying to reach Central and Western Europe, and they are deliberately hiding their identity documents and their true nationality, and using false names is a common practice. Most of the migrants do not want and refuse humanitarian protection and in cases when they apply for it, this act is usually used for their temporary stay in the country – a short period during which they organise their subsequent illegal border crossing. In many cases the illegal border crossings are done by organised large groups of people (60-70 persons, usually young, healthy and physically strong men), who refuse to obey to police orders, try to escape and hide, in order to try another illegal border crossing at different place. In such cases the police officers have to use the opportunities provided by law, so that the offenders respect and obey the orders. The use of weapon is a measure of last resort, applied only in cases when there is risk for the life of the police officers, as for example the use of firearms in the case when a ricochet bullet killed an Afghan citizen. It should be underlined that according to the existing legislation and practice, pre-trial proceedings were initiated immediately in this case. So far there are no cases when there is an intentional use of weapons or excessive use of physical force and auxiliary devices towards illegal migrants.

Taking into consideration the increased threat of terrorist acts by organisations and persons linked to or sympathising to ISIS, the Republic of Bulgaria will continue to apply strict measures for control of the state border, prevention of attempts for illegal border crossings, detection, detention and registration of all persons who have entered illegally to

the territory of the country. At the same time the Republic of Bulgaria is strictly observing the non-refoulement principle, defined in the Charter of Fundamental Rights of the EU, Treaty on the functioning of the EU, UN Convention on Refugees, the Schengen Borders Code and other acts from the secondary legislation of the EU, and is giving possibility to all persons to apply for humanitarian protection and asylum. All persons who have applied for international protection after crossing the border at the border crossing points are transferred to the registration and reception centres of the State Agency for Refugees (SAR) where their applications are processed.

The accommodation (detention) at the Specialised Homes for Temporary Accommodation of Foreigners (SHTAF) of the Migration Directorate of the Ministry of Interior is solely a measure for administrative coercion following the issuing of the respective decision. The legislation envisages a period of 6 months after which the relative administrative authority considers all facts and circumstances and issues an administrative act for releasing the person from SHTAF or prolongation of the stay there. In case the stay is prolonged the respective administrative court on territorial principle is being notified. The competent authorities of the Ministry of Interior have taken the necessary measures to comply with the deadline with regard to foreigners applying for international protection, stipulated in Art. 6 of Directive 2013/32/EU.

There are other measures for administrative control stipulated in the Law on Foreigners in the Republic of Bulgaria (presentation of a person each week in a territorial unit of the Ministry of Interior) which are alternatives to the detention.

There is no compulsory accommodation of unaccompanied minors. In these cases the territorial Directorate for Social Assistance is notified and the respective measures stipulated in the Law for Protection of Children are applied.

## 2.

Pursuant to an ordinance of the District Prosecutor's Office in Burgas, the Internal Affairs Directorate initiated checks and gathered statements from officers seconded to the Regional Directorate of the Ministry of Interior responsible for the territory serviced by Border Police Station of Malko Tarnovo for the period 1 November 2014 – 27 November 2015. All statements received – over 2000 – were analysed. A request was sent also to the Inspectorate Directorate of the Ministry of Interior which has performed thematic checks for the same period with regard to the organisation for surveillance of the state border of the Republic of Bulgaria and for prevention, suppression and detection of cases of illegal border crossing and migrant smuggling.

As a result of the thorough inspection of the Internal Affairs Directorate of the Ministry of Interior, a total of two cases of misconduct by officers of the Ministry of Interior were identified. The relevant disciplinary sanctions were imposed to the respective officers.

## 3.

In the course of a police operation on 5 August 2015 two officers of Sofia Metropolitan Directorate of the Ministry of Interior were detained for taking illegally money from foreigners residing illegally in Bulgaria. Pre-trial proceedings were initiated in the Investigative Department of Sofia City Prosecutor's Office, charges were pressed and a Signed Promise measure to secure appearance was imposed.

## 4.

In order to ensure the security of the foreigners, all SHTAF are equipped with systems for effective video surveillance and control, covering all zones within their perimeter.

Teams of psychologists from the Institute of Psychology of the Ministry of Interior work in SHTAFs, providing psychological assistance and support to the foreigners. The joint work with the ACET Centre for providing psychological and psychiatric assistance to the foreigners is also giving good results.

5.

Pre-trial proceedings N 90/2015 has been initiated with the first actions on the investigation after the death of the said Afghani citizen, which occurred as a result of surpassing the limits of self-defence by an officer of the Border Police. The Supreme Prosecutor's Office of Cassation and the Appeals Prosecution's Office in Burgas are actively engaged on the case.

All necessary and possible actions have been undertaken, including inspections, interrogations, experiments and investigations by specialists. Twice, in March and in April 2016, cooperation, under the Vienna Convention on consular relations, has been requested from the embassy of the Islamic Republic of Afghanistan in the Republic of Bulgaria on certain documents.

The case is to be heard in court in detail, in accordance with the results of the abovementioned actions.

6.

As EU Member State the Republic of Bulgaria is applying strictly the EU acquis as well as the national legislation with regard to control of state borders, fundamental rights, access to territory to the persons seeking for protection and the non-refoulement principle defined in Art.33, Para 1 of the UN Geneva Convention relating to the status of refugees of 1951.

7.

In order to provide information to the foreigners seeking for protection, the Border Police receives leaflets in different languages from the representation of UNHCR, SAR, the Bulgarian Red Cross, the Bulgarian Helsinki Committee, etc. The leaflets are put at sight at the border crossing points and at the detention premises of the border police stations. In the way the persons receive easily access to information at the border – the persons seeking protection are immediately informed on a language they understand about the procedures which will follow, their rights and obligations, and the possible consequences in case they don't follow their obligations. They are provided with the contact information of the representation of UNHCR and NGOs in Bulgaria.

With regard to the foreigners arriving at the border, the Border Police is applying the provisions of the international law, bilateral and multilateral agreements to which the Republic of Bulgaria is a party and has taken commitments and obligations. The procedures for reception of foreigners, inquiries, administrative processing, distribution and sending them to other authorities are carried out in compliance with the national legislation in force. All administrative actions towards the detained persons are carried out in the presence of licensed interpreters.

Each person accommodated in SHTAF has access to the competent legal representations and legal assistance. The Migration Directorate is working together with the Bulgarian Helsinki Committee which is providing weekly legal assistance to the persons in need of such.

The Ombudsman of the Republic of Bulgaria is monitoring the implementation of the compulsory administrative measures and representatives of the Ombudsman are meeting the foreigners accommodated in SHTAF.

In case the foreigners wish, there is a possibility of daily visits of lawyers. On visible and accessible by the foreigners places there are information materials on languages they understand. The judicial authorities are judging the lawfulness of each of the administrative acts imposed on the foreigners.

#### 8.

The right of each person to seek and be granted asylum in another state is a fundamental human right defined in Art.14, Para 1 of the Universal Declaration of Human Rights of 1948. Every foreigner can ask for protection in the Republic of Bulgaria, in compliance with the Law on asylum and refugees. The application for providing protection is made in person and by own will, based on the Constitution of the Republic of Bulgaria and in particular Art.27 and 98, point 10 thereof stipulating the right of asylum-seeking.

On the basis of a trilateral Memorandum of Understanding between UNHCR, the Bulgarian Helsinki Committee and the General Directorate of Border Police, the representation of UNHCR in Bulgaria is initiating and organising trainings of border police officers on topics of current interest, as "Access to territory and procedure for providing a refugee status in the Republic of Bulgaria", "Vulnerable groups", "Rescue operations at sea", "Cultural and social paradigms of the Middle East and North Africa societies". Psychologists also take part in the trainings and special attention is paid to the issues related to respecting fundamental rights and police ethics.

A total of 3 trainings involving 65 officers (officers performing border control and police investigators) were carried out in 2015, and since the beginning of 2016 there has been another training for 20 officers of the General Directorate of Border Police.

With regard to the signals received by international organisations and NGOs on violations of human rights, of non-refoulement principle and push-backs of foreigners crossing the state borders, all Border Police units were provided with instructions to observe strictly the EU and national legislation related to protection of human rights, access to territory of persons seeking for protection and non-refoulement principle. The return of third country nationals to the territory of a neighbouring state is performed following strictly the existing bilateral readmission arrangements or using the mechanisms of the joint border committees.

In order to regulate all applicable tactical actions of all police officers and officers performing tasks related to protection of the state border, an initial instructing (briefing) is performed, in order to get them acquainted with the situation along the border and with the main provisions of the Handbook on fundamental rights prepared by the Frontex Agency for the purposes of training border guards, as well as to give guidance with regard to the procedure of applying for protection to the border police officers and the actions for detection of foreigners at the state border. During the daily instructions of the officers deployed at the border, the instructing officers pay special attention to the strict observation of the legislation in the area of border control and the protection of fundamental rights, the procedures for applying for protection to the MoI authorities pursuant to the Law on Asylum and Refugees, including the rules and procedures for use of

weapons, auxiliary devices and physical force and not allowing humiliating behaviour towards foreign nationals, violation of their fundamental rights and illegal taking of their personal belongings. A series of specific methodological guidance and interpretation documents related to observing the said measures were sent to the units at the border and their implementation is monitored and controlled daily by high ranking officers.

The General Directorate of Border Police is cooperating actively with UNHCR and the Bulgarian Helsinki Committee on the basis of the signed trilateral Memorandum of Understanding. Pursuant to the Memorandum, the Border Police is providing full and free access of UNHCR and BHC to the persons detained in the border areas, in order to guarantee the access to territory and to international protection of those in real need, to assist the activities of the representatives of the two organisations in the detention facilities at the border and their access to the documentation registered by the Border Police related to the persons subject to the Memorandum.

In order to implement the provisions of the Memorandum, the representatives of UNHCR and BHC are monitoring all borders and facilities for 24-hour police detention of persons in the border areas, and there is no limitation of the number of the monitoring visits. Pursuant to the Memorandum, the access is granted without prior authorisation or preliminary defining of the hour of the visit, the frequency of the visits, their duration or any circumstances related to detained persons. Annual reports for monitoring of the borders are prepared on the basis of these monitoring visits and so far there are no allegations in them for physical (police) violence, and/or rude, inhuman or humiliating behaviour of border police officers towards detained persons.

#### 9.

With regards to used alternatives to the use of lethal firearms we would like to underline that the Republic of Bulgaria successfully implements an additional and highly effective measure such as the construction of temporary engineering facility at the most sensitive areas of the Bulgarian-Turkish border. Firstly, a facility with a length of 30 km was built and after its completion the attempts to illegally enter into the territory of the country significantly dropped at this area of the state border. In connection with the increasing attempts to illegally enter into the Republic of Bulgaria through places not designated for this, the gradual construction of temporary engineering facility was continued at the Bulgarian-Turkish land border. The aim is for the facility to cover the entire Bulgarian-Turkish border, including the river areas.

The construction of new sections of temporary engineering facility at the state border aims not only to enhance the capacity of the Ministry of Interior to counteract to illegal migration at the separated as most operational parts of the Bulgarian-Turkish border but to redirect the migrant flows towards the official Border Crossing Points and to limit to minimum the risks for the life and health of individuals and groups of illegal migrants when they attempt to enter into Bulgaria through difficult to cross and unfamiliar areas. Successful in this regard is the use of the developed and introduced Integrated System for Border Surveillance. Thanks to it significant efficiency has been achieved in connection with receiving early information for planned or carried out violations of the state border.

#### 10.

A National expert group was formed in Bulgaria on alternatives to detention of citizens of third countries with the aim to prepare two final documents – recommendations to the

system for administrative detention of citizens of third countries and a draft amending and supplementing the national legislation regarding the procedure and the alternatives to detention of citizens of third countries.

#### 11.

With the final amendments and supplements to the Law for the Foreigners in the Republic of Bulgaria (Article 44, Item 9) a prohibition was introduced for unaccompanied minors to be forcefully accommodated in the Specialised Homes for Temporary Accommodation of Foreigners (SHTAF) of the Migration Directorate, Ministry of Interior. The law requires that this category of persons is forwarded to the competent Social Assistance Directorate, which undertakes protection measures in accordance with the Child Protection Act. Unaccompanied minors, who express the wish to receive international protection in front of officers of General Directorate Border Police, are immediately forwarded to the Registration and Reception Centres of the State Agency for Refugees (SAR) with the Council of Ministers. Based on the Memorandum of Understanding on Cooperation between the Ministry of Interior of the Republic of Bulgaria and United Nations Children's Fund (UNICEF) 20 officers of General Directorate Border Police were trained.

Memorandum of Understanding on Cooperation is aimed more specifically at guaranteeing the rights of children, participating in legal procedures and especially children victims or witnesses of crime or violence, as well as children in conflict with the law; guaranteeing the rights of refugee or migrant children applying for international protection and/or crossing Bulgaria; developing and strengthening the capacity of the Ministry of Interior as one of the responsible structures under the Child Protection Act.

#### 12.

All persons, who have illegally crossed the border, are detained for 24 hours, which is necessary only to determine their identity and health status, to carry out the registration under national and European law (Eurodac) and the following transfer to SAR (for those who have applied for protection) or to SHTAF at the Migration Directorate (for those who do not wish international protection). All detained persons are accommodated in appropriate rooms, specially equipped for this aim, and have the right to medical care, which is provided immediately if needed. It is important to note that the police structures have numerously saved the lives of elderly people, disabled persons, mothers with children, pregnant women (including women in labor). Information for this is included in the daily information bulletins of the police structures.

The activity carried out by the Border Police in the field of border control is highly assessed not only by all European police partners but also by other police structures with which General Directorate Border Police actively cooperates. In this regard the joint police patrols between officials of Frontex and representatives of the Ministry of Interior on the implementation of tasks on protection of the state border is a key guarantee for complying with international rules regarding the detected at the border area foreigners.

At SHTAF at the Migration Directorate are accommodated persons with a coercive administrative measure. During their stay they have the right to apply for protection in the Republic of Bulgaria. For the time from the submission of the application to their transfer to SAR the applicants, as well as all foreigners accommodated in the SHTAF, receive medical care under a specialised ordinance. The 24-hour medical care for the

accommodated foreigners is provided by the structures of the Medical Institute of the Ministry of Interior, situated at the SHTAF.

The accommodated persons receive an obligatory medical check in the beginning of their stay and before leaving the home. A medical check can be carried out based on a proposal of the officials at the home, who work daily with the foreigners and are acquainted with their health status. In the case of needed specialised medical assistance the sick are transferred to hospitals and receive a medical check by specialists.

The homes are equipped with stationary phones. The foreigners are allowed to use mobile phones and have access to Internet. There are TV rooms, rooms for indoor sports, grounds for outdoor sports, libraries and separate rooms for religious needs on the territory of the homes.

### 13.

The national legislation explicitly regulates the cases, in which the crossing of the state border constitutes a crime or an administrative offence. The legal distinction is based on whether the crossing of the border is through the designated places and with the relevant approval of the competent authorities (Article 279, Para (1) of the Penal Code: A person who enters or crosses the frontier of the country without a permit from the respective bodies of the government or, though with a permit, but not through the places specified for that purpose, shall be punished by imprisonment for up to five years and by a fine of between BGN one hundred and three hundred). Administrative responsibility for offences connected with border crossing is explicitly regulated in provisions of the Law for the Foreigners in the Republic of Bulgaria, as long as the act does not constitute a crime. An exception from criminal prosecution for crossing the border is stipulated in Article 279, Para (5) of the Penal Code: No one shall be punished who enters the country to avail himself of the right of asylum in accordance with the Constitution.

### 14.

The Republic of Bulgaria will present a midterm report on the implementation of the recommendations of the UPR before the Human Rights Council in due time.

Detailed information on all questions above may be consulted in the latest reports before the human rights treaty bodies, presented by the Republic of Bulgaria.