CONTENTION – Judicial CONtrol of Immigration DeTENTION

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I. SETTING THE SCENE

1. FIRST STAGE of judicial control,
i.e. judicial *control of Initial Detention acc. to Art. 15(2) RD*

Q1. The ***initial*** detention is ordered by:

- An administrative authority. The TCN concerned has the right to take proceedings by means of which the lawfulness of detention is subject to a judicial review (AT, BE, BG, CZ, SI, SK)

The administrative authority that issued the return decision has the powers to also issue an order for immigration detention in order to "prepare the return" (Article 44, Para.6 of the Law on Foreign Nationals in the Republic of Bulgaria) when the required conditions of necessity and proportionality are met. *The TCN concerned has the right to submit an appeal against the detention order within 14 days from the moment of his/her factual detention (Article 46a, Para.1 of the Law on Foreign Nationals in the Republic of Bulgaria). The fact that the preclusive term for appeal does not run from the moment of serving the detention order, but from the moment of factual detention, affects access to information and access to judicial review by the TCN in practice.*

- An administrative authority. The order must be endorsed by a judicial authority within a specific time-limit (NL)

Not relevant.

- Administrative authority. However, it can order detention of a certain length, and detention which goes beyond that length is ordered by a judicial authority (IT, HU, FR)

Not relevant.

- A judicial authority on request of an administrative authority (DE)

Not relevant.

Q1.1. For any response you chose in the previous question, please explain whether the judge **controls *ex officio* all the elements of the lawfulness** irrespective of the arguments of the parties or whether the judge **limits the control only to the arguments** raised by the parties:

The judge controls ex officio all the elements of the lawfulness irrespective of the arguments of the parties. This follows from the general provision of Article 168(1) and (2) of the Bulgarian Code on Administrative Procedure.

Q1.2. What are in your opinion the **advantages and disadvantages** of the options you chose in **Q1** and **Q1.1**?

Regarding Q1, the disadvantage is that often the TCN is not able to submit the appeal against the detention order within fourteen days from the start of detention and therefore the right to appeal the initial detention is precluded. The national law does not even require the detention authorities to inform the detainee of the detention order and his right to appeal. As noted, Article 46a, Para.1 of the Law on Foreign Nationals in the Republic of Bulgaria explicitly states that the term to appeal starts to run from the moment of the factual detention.
If there was an automatic judicial review of the detention order, the rights of detainees would have been better protected.

Regarding Q.1.1, the advantage is better protection of the rights of the addressees of the detention order once they have accessed the court.
However the need for legal aid remains as there might be cases in which the judge might not have an indication for an existing defect.

Q2. Please provide below a short description of **the system of legal aid** for pre-removal detainees in your Member State

As far as the general legal assistance system is concerned, according to Article 21 of the Law on Legal Aid (LLA) the types of legal aid provided by lawyers and funded by the State are as follows:
1. Legal advice with regard to reaching a pre-trial agreement or bringing the case to the court;
2. Preparation of documents for bringing the case to the court;
3. Procedural representation;
4. Legal representation upon police detention for up to 72 hours.

*Therefore, **the Law on Legal Aid does not envisage legal assistance at first instance administrative procedures, that is, in the administrative procedure when an immigration detention order is issued**. Legal aid concerns only access to the court upon appeal, as well as representation in court.*

*The policy of Bulgaria with regard to access to the legal assistance system by TCN in immigration detention has changed after **the amendments in the Law on Legal Aid of 19 March 2013**. Prior to these amendments, asylum seekers and irregular immigrants did not have a recognized right to legal aid in order to access the court, but only once they have initiated a valid court case. That is, if the person managed to somehow write an appeal in the Bulgarian language and correctly submit it on time (for which he/she received no legal aid), only then he/she could ask the court to be appointed a lawyer for the court hearing.*

*The amended (as of 19 March 2013) Article 22 of LLA provides that the legal aid under Article 21, Paragraphs 1 and 2 (that is, legal advice and preparation of documents for bringing the case to the court) is provided free of charge to inter alia **"foreign nationals against whom a coercive administrative measure (deportation, expulsion or entry ban) is imposed and foreign nationals in immigration detention, who do not have the means and***

wish to have legal assistance" *(Article 22, Paragraph 9 of LLA).*

However this is not ex officio or automatic legal aid. In order to access it, the person has to make an application and submit respective evidence with regard to his/her legal situation and lack of means. The application for legal assistance in accessing the court is made before the head of the National Bureau for Legal Aid. The application for representation in an initiated court case is made before the respective court. However, in spite of the amendments of the 19th of March 2013, as of today there is ***no practical application of this new right to legal aid****. Access to it seems to be highly problematic.*

Another challenging issue with regard to the implementation of the new provisions of LLA is that attorneys providing legal aid on behalf of the National Bureau for Legal Aid ***lack knowledge and experience in immigration law****. Immigration law is yet not part of the curriculum at law faculties in Bulgaria. In the National Register on Legal Aid there is no specialization of lawyers by field of expertise. There is an urgent need of training in immigration law for lawyers inscribed in that Register.*

Q3. Do the competent judicial authorities, i.e. the courts ordering, endorsing or reviewing (administrative decision regarding) the initial detention belong to:

- □ Civil jurisdiction
- **X Administrative jurisdiction**
- □ Criminal jurisdiction
- □ Special jurisdiction
- □ Else

Please specify, if the answer is "else"

Q4. Is the judge ordering, endorsing or reviewing the ***initial*** detention,

- Hearing only detention cases in general (special competence)?

Not relevant.

- Hearing only immigration law cases?

Not relevant.

- **Hearing a wide range of cases not limited to immigration/detention (general competence)?**

In Bulgaria there are the so-called administrative courts, that is, courts that hear cases on appeals against acts of state administrative authorities (public law cases). These cases could range, for example, from tax law to refugee law.
The first level administrative courts are city or regional administrative courts.
The second level administrative court is the Supreme Administrative Court (SAC). SAC has divisions that hear certain types of same cases. Thus the immigration detention cases are heard by the 7th division of SAC, while the cases of asylum seekers are heard by the 3rd division of SAC.

Q5. If the detention is ordered **by an administrative authority** and **reviewed on the initiative of the detainee by a judicial authority**, does your Member State's legislation provide for a second level of jurisdiction for the examination **of the lawfulness of detention**?
X YES NO

Q5.1. If the answer to the previous question is YES, please elaborate on **any differences** in the control of lawfulness of detention **between the first and the second levels of jurisdiction**:

The first level jurisdictions reviews both the facts and the law.
The second level jurisdiction (cassation) reviews only the application of the law, it does not do fact-finding. (Article 219 of the Code on Administrative Procedure)

Q6. If the detention is **ordered/endorsed by a judicial authority**, does your Member State's legislation provide for **a second level of jurisdiction** for the examination of the lawfulness of detention?
YES NO
Not relevant for BG.

Q6.1. If the answer to the previous question is YES, please elaborate on any differences in the control of lawfulness of detention between the first and the second levels of jurisdiction:

Not relevant for BG.

Q7. If relevant, please elaborate in the following on **any on-going legislative changes** relating to the **QQ. 1-6**, which will affect in the future the judicial control of detention:

Currently there are no tabled draft laws in the National Parliament relating to pre-removal detention.
There is a draft law introducing detention of asylum seekers. Its reasoning cites transposition of Directive 2013/33/EU.

2. SECOND and SUBSEQUENT STAGES of judicial control,

i.e. *judicial control of continuing detention according to Art. 15(3)*

Q8. The lawfulness of continuing detention is controlled by a judicial authority:

- □ Only **when** the detention order is **renewed**
- □ **Independently** from the renewal order (i.e. irrespective of the time when the detention order is renewed)
- **X Both options are possible**

Q8.1. What are in your opinion the **advantages and disadvantages** of the option you chose in the previous question?

In Bulgaria there is discussion as to whether the judicial authority has the competence to renew the detention order (see, for example, Ruling of 12 July 2011 of the Supreme Administrative Court in case No. 8799/2011). Under the general legal system in Bulgaria the judicial authority acts as a decision-making body only when the procedure is not an adversarial one. However the Law on Foreign Nationals in the Republic of Bulgaria, in its Article 46a, Para.4, introduces an exception to the general system and stipulates that ***it is the court, which following the elapse of the initial six months of detention, shall decide whether to renew or discontinue it****. This discussion has underlined the preliminary ruling request in the Mahdi case C‑146/14 PPU before the CJEU. A tentative prognosis of the effect of the Judgment of the CJEU of 05 June 2014 in the Mahdi Case is that the judicial authority would at least be able to require the administrative authority to provide the factual and the legal grounds on which it pleads for the continuation of the pre-removal detention.*
The disadvantage of the approach when the judicial authority is the one that renews the detention order is the scope of the right to effective remedies of detainees. As noted above, the second level judicial authority in Bulgaria has a limited scope of judicial review, that is, it establishes only the conformity of the judgment of the first level jurisdiction with the law and does not do fact-finding. Therefore, the detainees remain without a possibility for judicial review of the facts on which the renewal decision is based.

According to established case law in Bulgaria (following the precedent-setting Ruling of 27 May of 2010 of the Supreme Administrative Court in case No.2724/2010), at any time the detainee has the right to ask the administrative authority to review the continuity of detention, independently from the renewal decision.

2.1 Judicial control of detention exercised on the occasion of the renewal of detention

Q9. When judicial control is exercised **on the occasion of the renewal of detention** and the renewal decision was taken by the administration, is the judicial review of the lawfulness of the renewal order:

- Automatic

Not relevant.

- Possible only on application of the detainee

Not relevant for Bulgaria as the decision on renewal of detention following the elapse of the initial six months is taken by the judicial authority (Article 46a, Para.4, Law on Foreign Nationals in the Republic of Bulgaria).

This is different from the obligation to review the continuity of detention on a monthly basis, which is vested with the administrative authority. However the national provision, which stipulates this obligation (that is, Article 44, Para.8 LFRB), does not require the administration to issue a written act upon that monthly review.

Q9.1. For each of the response you chose in the previous question, please explain whether the judge controls *ex officio* all the elements of the lawfulness irrespective of the arguments of the parties or whether the judge limits the control only to the arguments raised by the parties:

Not relevant for BG.

Q10. What are in your opinion the **advantages and disadvantages** of the options you chose in **Q9** and **Q9.1:**

Not relevant for BG.

Q11. If the response to the **Q9** is **"possible only on application of the detainee"**, does your Member State's legislation provide for **a second level of jurisdiction** for the examination of the lawfulness of renewal order
YES NO
Not relevant for BG

Q11.1. If the answer to the previous question is YES, please elaborate on any **differences** in the control of lawfulness of detention **between the first and the second levels** of jurisdiction:

Not relevant for BG.

Q12. If the renewal decision is taken by a judicial authority, is there any **second level of jurisdiction** for the examination of the lawfulness of renewal of detention?
YES NO
The answer is a matter of interpretation. The decision of the first level administrative court can be appealed before the Supreme Administrative Court in accordance with the general rules of the Code on Administrative Procedure. That is, the Supreme Administrative Court will act as a court of cassation, reviewing the lawfulness of the renewal of detention only with regard to the application of the law, without a possibility to establish new facts.

Q12.1. If the answer to the previous question is YES, please elaborate on **any differences** in the control of lawfulness of detention **between the first and the second levels of jurisdiction**:

The decision of the first level administrative court can be appealed before the Supreme Administrative Court in accordance with the general rules of the Code on Administrative Procedure. That is, the Supreme Administrative Court will act as a court of cassation, reviewing the lawfulness of the renewal of detention only with regard to the application of the law, without a possibility to establish new facts.

2.2 Judicial control of detention exercised independently (in time) from the renewal of detention

Q13. If the lawfulness of continuing detention is controlled **independently from the renewal order**, the lawfulness of detention is reviewed by:

- An administrative authority *ex officio* with an automatic judicial review

Not relevant.

- **An administrative authority *ex officio* with the possibility of judicial review on the application of the TCN concerned** – чл.44, ал.8

*According to Article 44, Para.8 of the Law on Foreign Nationals in the Republic of Bulgaria, **every month** the administrative authority together with the Migration Directorate at the Ministry of the Interior (the latter is the authority that runs the immigration detention centres) make an ex officio review as to whether the grounds for immigration detention are still present.* *The advantage of this provision is that it seems to provide for a relatively frequent self-monitoring by the detaining authorities.* *The disadvantage is that the provision does not envisage an obligation of the authorities to issue a written act stating the results of the review and therefore its practical implementation is doubtful. As no administrative act in this regard is served to the detainees, the possibility for judicial review is yet only theoretical. There is no case law in this regard.*

- An administrative authority on application by the TCN concerned with an automatic judicial review

Not relevant.

- **An administrative authority on application by the TCN concerned with the possibility of judicial review on the application of the TCN concerned**

According to established case law in Bulgaria (following the precedent-setting Ruling of 27 May of 2010 of the Supreme Administrative Court in case No.2724/2010), at any time the detainee has the right to ask the administrative authority to review the continuity of detention, independently from the renewal decision. *An advantage in this regard is that the detainee at any time can prompt the detaining authority to review the continuity of detention.* *The disadvantage is that if the administrative authority refuses to release the TCN, the judicial review on the application of the TCN concerned takes a lot of time (from several months to about an year) as the two-level judicial review follows the general rules and timeframes of the Code on Administrative Procedure.*

- A competent court *ex officio* with no possibility of second level review of lawfulness of detention

Not relevant.

- A competent court *ex officio* with the possibility of second level review of lawfulness of detention on application of the TCN concerned

Not relevant.

- A competent court on application by the TCN concerned with no possibility of second level review of lawfulness of detention

Not relevant.

- A competent court on application by the TCN concerned with the possibility of second level review of lawfulness of detention

Not relevant.

Q14. What are in your opinion the **advantages and disadvantages of the option you chose** in the previous question?

Already answered above with the respective two options.

Q15. Is the **judge** controlling the lawfulness of continuing detention **the same** as the one ordering/endorsing/reviewing (administrative decision regarding) **the initial order** of detention?
YES NO X, although it might happen on rare occasions, if the cases are heard by the same court and the same judge is chosen twice by the court's automated system for random allocation of cases

Q15.1. If the answer to the previous question is NO, please explain briefly the difference:

Besides the fact that cases within the same court are allocated by an automated system for random allocation of cases, it might also happen that both cases fall under the jurisdiction of different courts. The initial detention order is reviewed by the court in the location of the administrative authority that issued it, while the decision on the renewal of detention is made by the court where the detention centre is (currently the latter could be either the Sofia City Administrative Court for the Bousmantsi detention centre near Sofia or the Haskovo Administrative Court for the Lyubimets detention centre near Svilengrad). *In case of judicial control of detention exercised independently (in time) from the renewal of detention, the TCN can appeal the decision of the administrative authority before the court in the region where the administrative authority is established (for example, the detention order might have been issued by different regional units of the Border Police).*

Q16. If relevant, please elaborate in the following on any on-going legislative changes relating to the **QQ. 8-15**, which will affect in the future the system judicial control of detention:

Currently there are no draft laws tabled in the National Parliament in relation to pre-removal detention. *There is a draft law introducing detention of asylum seekers. Its reasoning cites*

transposition of Directive 2013/33/EU.

3. Control of facts and law

Q17. The control exercised by the judge in your Member State on the materiality of the **facts** of a case of detention is:

- a control limited to a manifest error of assessment

Not relevant.

- **a full control not limited to a manifest error of assessment**

According to the general principles of the administrative procedural law upon judicial review of administrative acts (Article 170 of the Code on Administrative Procedure), the administrative authorities and the TCN for whom the contested administrative act is favourable, should establish the existence of the factual grounds specified therein and shall prove the compliance with the legal requirements for its issuance. Therefore, the detention authority should prove that the facts actually existed, not just allege that there is no manifest error of assessment.

With regard to pre-removal detention in particular, the case law is focused on facts substantiating the risk of absconding (in particular, whether the TCN has or does not have identity documents and whether he/she has entered the country illegally) and, eventually, on the national security.
The TCN has the burden of proof with regard to facts that lead to favourable consequences for him (for example, the possibility to apply an alternative to detention or less coercive measure).

Usually the national courts tend to conclude that lack of identity documents and/or illegal entry substantiate a risk of absconding (see, e.g., Judgment of 26 June 2012 of the Supreme Administrative Court in case No.3368/2012; Ruling of 24 January 2014 of the Sofia City Administrative Court in case No.12187/2013).
However the case law is not uniform. Recently the Haskovo Administrative Court, which reviews the duration of pre-removal detention at the Lyubimets immigration detention centre, has developed a solid body of case law stating that the mere fact of impossibility to present identity documents does not constitute a lack of cooperation by the TCN, if he/she has signed a declaration for voluntary return and the impossibility to present ID documents is an objective one beyond the current control of the TCN (see, e.g., the following practice of the Haskovo Administrative Court: Ruling of 11 April 2013 in case No.48/2013; Ruling of 13 August 2013 in case No.202/2013; Ruling of 13 May 2014 in case No.172/2014).

Q18. The control exercised by the judge in your Member State on **legal elements** of a case of detention is:

- a control limited to a manifest error of assessment

Not relevant.

- **a full control not limited to a manifest error of assessment**

The judge examines, ex officio, all the elements of the lawfulness irrespective of the arguments of the parties. This follows from the general provision of Article 168, Paras. 1 and 2 of the Bulgarian Code on Administrative Procedure. One ground for challenging the lawfulness of the administrative act is contradiction to the material law (Article 146, point 4 of the Code on Administrative Procedure).
Furthermore, the court applies ex officio the law of the European Union and leaves without application the national provisions if they contradict the former.
See, e.g., Ruling of 27 May 2010 of the Supreme Administrative Court in case No.2724/2010; Ruling of 11 April 2013 of the Haskovo Administrative Court in case No.48/2013; Ruling of 13 August 2013 of the Haskovo Administrative Court in case No.202/2013.

Q19. If relevant, please elaborate in the following on any on-going legislative changes relating to the **QQ. 17-18**, which will affect in the future the control of facts and law:

Currently there are no tabled draft laws in the National Parliament relating to pre-removal detention.
There is a draft law introducing detention of asylum seekers. Its reasoning cites transposition of Directive 2013/33/EU.

4. Proportionality in general

Q20. Describe briefly how the judge will in your Member State assess the proportionality of a detention (quote the **main elements to be controlled** on that basis):

In general the judge will assess proportionality of detention against the background of the risk of absconding. In this relation the judge takes into account the personal conduct of the TCN (illegal border crossing – both entry and also especially exit attempt - and criminal conviction for that) and whether the TCN is considered to constitute a threat to the national or public security of the country. Certain removal and detention orders in Bulgaria are issued by the State Agency for National Security (SANS) and judges are particularly reluctant to repeal orders issued on national security threat claims. For example, compare the favourable rulings for TCNs of the Haskovo Administrative Courts – e.g., Ruling of 11 April 2013 in case No.48/2013; Ruling of 13 August 2013 in case No.202/2013; Ruling of 13 May 2014 in case No.172/2014 – and its Ruling of 03 June 2014 in case No. 175/2014 concerning a detention order by SANS.

Secondly, if no risk of absconding is found to exist, the judge would also examine the possibility to apply a less coercive measure, that is, weekly reporting, if the TCN has own accommodation and means of subsistence. Often lack of proof for accommodation and means of existence is also invoked by the judge in order to further substantiate risk of absconding. See, e.g., Ruling of 24 January 2014 of the Sofia City Administrative Court in case No.12187/2013.

Sometimes the judge might also consider other individual circumstances in the case such as the health condition and the right to respect for private and family life (e.g., Judgment of 09

April 2010 of the Sofia City Administrative Court in case No.1811/2010), but in many cases these circumstances are also declared irrelevant (see, e.g., Judgment of 21 February 2014 of the Sofia City Administrative Court in case No.649/2014; Judgment of 14 April 2014 of the Sofia City Administrative Court in case No. 12484/2013)

5. Expediency (or deference in English & opportunité in French) in general

Q21. The control exercised by the judge in your Member State on a case of detention can touch upon expediency?

YES

Not relevant.

NO

According to the general rules of administrative procedure in Bulgaria, expediency is not subject to judicial control as it is left within the discretion of the administrative authorities. Expediency is interpreted as the right of the administrative authorities to choose between two equal options.

In the contemporary case law in Bulgaria following the adoption of Directive 2008/115, pre-removal detention is considered to exclude expediency issues as it should always meet the conditions of proportionality (the latter is an imperative norm under Article 6 of the Bulgarian Code on Administrative Procedure).

Q21.1. If the response to the previous question is YES, please elaborate on any changes in this respect, brought about by the implementation of the Return Directive:

Not relevant.

Q22. If relevant, please elaborate in the following on any on-going legislative changes relating to the **QQ. 20-21**, which will affect in the future the control of expediency:

Currently there are no tabled draft laws in the National Parliament relating to pre-removal detention.

There is a draft law introducing detention of asylum seekers. Its reasoning cites transposition of Directive 2013/33/EU.

II. ELEMENTS OF LAWFULNESS NOT EXPLICITLY MENTIONED IN ART. 15 RD

1. Quality of law

Q23. Is there any case-law in your Member State concerning the assessment of the quality of the legal provisions applying to pre-removal detention in terms of their **preciseness**, **foreseeability** or **accessibility**?

X YES NO

Q23.1. If the response to the previous question is YES, please elaborate on the relevant case-law:

Usually that assessment relates to the conformity of Bulgarian legal provisions with general EU legal standards or concrete EU Directive provisions.

A landmark achievement of the Bulgarian judiciary in this regard is the practical change brought in the Law on Foreign Nationals in the Republic of Bulgaria by leaving without application Article 46a, Para.4 in the part that says that judicial renewal of detention following the elapse of the first six months takes place in a closed hearing without the participation of the TCN. The practice of convening an open hearing with the participation of the detained TCN has become a stable case law in Bulgaria following the two precedent-setting judgments of the Supreme Administrative Court in the cases of Kapinga (Ruling of 27 May 2010 in case No. 2724/2010) and Tsiganov (Ruling of 08 February 2011 in case No. 14883/2010). In those cases the Supreme Administrative Court invoked inter alia Article 47 (the right to a public hearing in particular) of the Charter of Fundamental Rights of the European Union in relation to Article 15 of Directive 2008/115, as well as Article 5 (4) and Article 13 of the European Convention on Human Rights.

2. Compliance with procedural rules

Q24. What is the impact of (non-)compliance with domestic procedures relating to detention on the lawfulness of detention? *Please also elaborate on possible **procedural flaws** which according to your Member State's case-law **do not affect the lawfulness of detention** (e.g. the right to be heard as suggested by the CJEU in G.R.)*

One of the problematic issues in Bulgarian case law against the background of the right of every person to be heard, before any individual measure which would affect him or her adversely, is taken under Article 41 (2) of the EU Charter of Fundamental Rights, concerns the practice of the administrative authorities not to give the TCN to be detained a possibility to present arguments in favour of the applicability of a less coercive measure in his/her case. Such a right to be heard before the administrative act is issued is also stipulated in Article 34 and 35 of the Bulgarian Code on Administrative Procedure. However the judges tend to consider infringement of those provisions as minor ones (i.e., not constituting

sufficient grounds for finding the administrative act unlawful), because the TCN had a chance to present his/her arguments and evidence before the court in the process of judicial review.

Q25. If relevant, please elaborate in the following on any on-going legislative changes relating to the **QQ. 23-24**, which will affect in the future the judicial control of detention:

Currently there are no tabled draft laws in the National Parliament relating to pre-removal detention.
There is a draft law introducing detention of asylum seekers. Its reasoning cites transposition of Directive 2013/33/EU.

III. PARTICULAR ELEMENTS OF ART. 15 RD

1. Purposes of detention

Q26. Does the **judge** controlling the lawfulness of pre-removal detention **also control the lawfulness of a return decision**?
YES NO X

Q26.1. Please elaborate in the following on consequences of the response you chose in the previous question:

The consequences are that different judges can assess same facts in different ways and thus give them different weight. The return decision and the detention decision are two different administrative acts subject to separate judicial review, but they are often based on the same facts. For example, the return decision is based on the alleged fact that the TCN tried to use the country as a transit point for Western Europe, while the detention decision is based on the alleged risk of absconding.
Case law: By judgment of 21 February 2014 in case No.649/2014 the Sofia City Administrative Court dismissed the appeal and confirmed the detention order of a TCN; By judgment of 11 June 2014 in case No.1188/2014 the Supreme Administrative Court, acting as a first-instance court, repealed the return decision in the case of the same TCN. The court deciding on the detention order accepted that the person constituted a public order threat and therefore there was a risk for his absconding. The court deciding on the return decision accepted that the facts in the case did not amount to the conclusion that the TCN was a public order threat and therefore repealed the return decision.

Q27. Does your Member State's legislation differentiate between the two possible purposes of detention according to Art. 15 RD, *i.e.* the preparation of the return or carrying out the removal process?
X YES NO

1.1 Preparation of the return

Q28. If the answer to the **Q27** is YES, please elaborate on the **meaning of "the preparation of the return"** with reference to relevant provisions and pertinent case-law:

Article 44, Para.6 of the Law on Foreign Nationals in the Republic of Bulgaria states that pre-removal detention is imposed in order to 'organize' the return.
In fact, carrying out of the removal process is only mentioned as a ground for release of the TCN under Article 20 of Ordinance Iз-1201 от 1.06.2010 issued by the Minister of the Interior. However there is judicial practice when the Migration Directorate asks the court to renew detention or extend its duration in order to carry out the removal process and the court grants that renewal.
There is no legal definition in national law of 'preparation of return'. According to established case law, it concerns the filling out of a questionnaire with data on the TCN's identity, which is provided inter alia to the respective embassy of the third country in order to obtain an identity document or passavant; the procedure for obtaining funding for and

making the necessary travel arrangements. See, e.g, Ruling of 28 March 2014 with reference for a preliminary ruling to the CJEU in the case of Mahdi, case No.1535/2014 of the Sofia City Administrative Court and case C-146/2014 of the Court of Justice of the European Union.

Q29. Does the judicial control of the cases where the purpose of detention is "the preparation of the return" differ from the cases where the purpose of detention is "carrying out the removal process"?
YES NO X

Q29.1. If the answer to the previous question is YES, please elaborate on those differences (*e.g. no or restricted application of the principle of proportionality during "preparation of return", especially the impossibility to evaluate whether there is a reasonable prospect of removal. Another example of the restricted application of the proportionality principle in such cases might be the impossibility to assess in detail whether the administration acts with due diligence*):

Not relevant.

Q29.2. Please indicate if there is any time-limit fixed in the national legislation for the detention "in order to prepare the return":

There is no separate regulation apart from the admissible length of detention in general (that is, 6+6+6 months for adults and three months for accompanied minors) and the monthly review of the grounds for detention by the administrative authorities under Article 44 (8) LFRB.

Q29.3. Please elaborate on **any changes** in the treatment by judges of the questions raised in **QQ. 28-29.2**, brought about by **the implementation of the Return Directive**:

The most fundamental change is the introduction of a time limit to the length of detention (see, e.g., the Kadzoev case, C-357/09 PPU, following a preliminary ruling request by the Sofia City Administrative Court). Previously no time limit to immigration detention existed in Bulgaria and it could last for years on. Before the adoption of Directive 2008/115, Bulgarian law provided that immigration detention lasted 'until the obstacles for the execution of the removal order ceased to exist'.

Q30. If relevant, please elaborate in the following on any on-going legislative changes relating to the above-mentioned questions on the "preparation of return", which will affect in the future the interpretation of this criterion:

Currently there are no tabled draft laws in the National Parliament relating to pre-removal detention.
There is a draft law introducing detention of asylum seekers. Its reasoning cites transposition of Directive 2013/33/EU.

1.2 Successful removal and its reasonable prospect

Q31. Do courts apply the criterion of **a reasonable prospect of removal** when reviewing the lawfulness of an ***initial*** **detention order**?

YES NO X

Q31.1. If the answer to the previous question is NO, please elaborate on any known reasons **why** the courts do not apply this test at that stage of review:

With regard to initial detention, the criterion of a reasonable prospect of removal is not explicitly stated in Article 44 (6) of the Law on Foreign Nationals in the Republic of Bulgaria. In comparison, it is explicitly stated in Article 44 (8) with regard to renewal of detention.
Therefore it depends on how the concrete judge will apply Article 15 of Directive 2008/115.
This does not mean that there is no relevant case law so far. For example, Judgment of 02 September 2013 in case No.11595/2012 of the Supreme Administrative Court of the Republic of Bulgaria. In it the Supreme Court repealed as wrong the decision of the Sofia City Administrative Court that had invoked the test of the reasonable prospect of removal when reviewing the initial detention order. The Supreme Court stated that the detention order should be confirmed as the TCN was undocumented and had entered the country illegally which constituted a risk of absconding.

Q32. What are the **defining factors** for assuming that there is **no reasonable prospect** of removal? Please choose from the following list:

- Lack of **due diligence** of national authorities

  There are no explicit national provisions, but there is case law.
  For example, according to the Ruling of 13 August 2013 of the Haskovo Administrative Court in case No.219/2013, the inaction of the administrative authority in executing the removal order cannot be attributed to the detriment of the TCN.

- The **resources** (human and material) at the disposal of the authorities

  Not relevant.

- **Transport infrastructure** (e.g. when there is no functioning airport in the Member State of return or there is no route of return)

  Not relevant.

- **Conduct of the TCN concerned**, especially if the latter refuses the cooperation which is indispensable for the issuance of relevant documentation by the Member State of return (cf. ECtHR, *Mikolenko)*

  There are no explicit national provisions, but there is case law.
  For example, in the Mahdi case before the Sofia City Administrative Court (case No.1535/2014) and the CJEU (case C‑146/14 PPU), the refusal of the TCN to

voluntarily return to his country of origin led to the refusal of the third country to issue him identity documents necessary for his return. Following the judgment of the CJEU of 05 June 2014, by ruling of 06 June 2014 the Sofia City Administrative Court replaced detention with a less coercive measure, that is, weekly reporting.
The judge based her decision on the lack of a reasonable prospect of removal. Namely, in her decision the national judge said: "In view of the above data on the behavior of M. and considering possible actions for the enforcement of his return, it is concluded that there is not any reasonable need, based on the grounds provided by law, for the person to continue to be detained for the purpose of arranging his removal from the country, which is confined to the issue of an identity document from the Embassy of S. Furthermore, the Directorate "Migration" has not listed specific actions that it intends to take and which require the presence of M."

- **Conduct of the Member State of potential return** (e.g. an embassy in a given MS refuses generally the cooperation in cases of forced return and accepts only voluntary returns or it does not confirm the nationality of the person concerned (Cf. ECtHR, Tabesh))

There are no explicit national provisions, but there is case law as cited above in the Mahdi case.

- The **lack of a readmission agreement** or no immediate prospect of its conclusion;

Not relevant.

- **Strasbourg proceedings** (especially when the Rule 39 is applied)

Not relevant.

- Parallel **national judicial proceedings of suspensory character**, making the return impossible within the fixed time-limits

The Code on Administrative Procedure in general allows for the suspension of the preliminary execution of any administrative measure when it is likely to cause severe harm or irrevocable consequences to its addressee (Articles 60 and 166). However there is hardly any case law in this regard for the suspension of the execution of pre-removal detention in particular.
The Law on Asylum and Refugees (Article 67) provides for the ex officio suspension of any removal process during the asylum procedure. However, the majority of the national case law on pre-removal detention of asylum seekers in Bulgaria contradicts the Judgment of the CJEU in the Kadzoev case (case C-357/09 PPU) as it considers the fact of the pending asylum procedure or the submitted asylum application as irrelevant to the lawfulness of the pre-removal detention order. See, e.g., Judgment of 26 June 2012 of the Supreme Administrative Court in case No.3368/2012, as well as the rulings of the Sofia City Administrative Court in cases No.12187/2013, 4514/2013 and 6950/2013. The case law to the contrary is rather exceptional and therefore difficult to find – see, e.g., Judgment of 01 February 2011 of the Sofia Region Administrative Court in case No.12/2011.

- Return will be impossible because of the **considerations in accordance with Art. 5 RD** (*non-refoulement* in broader sense, i.e. also covering all cases mentioned in Art. 15 Qualification Directive; best interest of the child; family life; the state of health of the third Member State national concerned)

Not relevant.

- Else

Not relevant.

Q33. Assuming that the national courts apply the test of a reasonable prospect of removal already at the FIRST STAGE of judicial control of detention, does the relevant case-law indicate **any differential treatment** of the above-listed factors **during that FIRST vs. SECOND and any subsequent STAGES** of judicial control?
X YES NO N/A

Q33.1. If the answer to the previous question is YES, please elaborate on any such differences, also indicating any difference in the intensity of review:

The difference would be with regard to the due diligence test. *The initial detention is bases only on the risk of absconding and is usually reasoned by the need to get an identity document issued.*

Q34. Please elaborate on the issue of the **time-frames** within which a reasonable prospect of removal must exist according to the national case-law. Consider if necessary different scenarios applicable to the above-listed factors (cf. Concept Note, III. 2.2.2):

Neither the national law, nor the case law has elaborated any time-frames within which a reasonable prospect of removal must exist (e.g., within which the embassy should reasonably provide an answer, etc.). Usually the courts follow the general time limits of detention itself (6+6+6 months).

Q35. When deciding on the existence of a reasonable prospect of removal, the courts:
- X Limit their assessment to **an abstract or theoretical possibility of removal**
- Require **clear information on its timetabling or probability** to be corroborated with relevant **statistics** and/or **previous experience in handling similar cases**
- Else

Q35.1. Please elaborate in detail (with reference to pertinent national case-law) on the selected responses in the previous question:

There is no detailed national regulation or case law in this regard. Usually the detaining authority has to present evidence about the actions taken by it with due diligence in order to carry out the removal order. These actions normally take the form of an interview with the TCN in order to elucidate whether he/she wants to return voluntarily; eventually letters sent to the embassy of the third country with a view to issuing a travel document, and making and funding the travel arrangements. See, for example, see, e.g., the following practice of the Haskovo Administrative Court: Ruling of 11 April 2013 in case No.48/2013; Ruling of

13 August 2013 in case No.202/2013; Ruling of 13 May 2014 in case No.172/2014; and the following practice of the Sofia City Administrative Court: the rulings in cases No.12187/2013, 4514/2013 and 6950/2013.

Q36. The control exercised by the judge in your Member State on the requirement "that prospects of removal be reasonable" is:

- a control limited to a manifest error of assessment

Not relevant.

- a full control not limited to a manifest error of assessment, also substituting **judge's own discretion to that of decision-making authority**

This reply follows from the general rules on administrative procedure and judicial review in Bulgaria as explained above. It is not specifically substantiated with the case law on the requirement "that prospects of removal be reasonable", where the assessment is not a detailed one.
The Court tends to presume that the embassy of the third country acts bona fide and with due diligence. See, e.g., Ruling of 13 August 2013 of the Haskovo Administrative Court in case No.219/2014.

Q37. Please elaborate on any changes in adjudicating the issue of a reasonable prospect of removal, brought about by the implementation of the Return Directive:

The major change was brought by the Kadzoev case (case C-357/09 PPU), in which the Sofia City Administrative Court made a request for a preliminary ruling before the CJEU. The concept of unreturnable migrants has gradually gained strength in Bulgarian practice, which subsequently led also to the amendment in the Law on Foreign Nationals in the Republic of Bulgaria in August 2013 (State Gazette No.70/2013) by which Article 44, Para.8 of the LFRB was changed to explicitly state that "When in the light of the particular circumstances of the case it is established that there is no reasonable possibility for legal or technical reasons for the forced removal of the foreigner, the person shall be released immediately".

Q38. If relevant, please elaborate in the following on any on-going legislative changes relating to the above-mentioned questions on "a reasonable prospect of removal", which will affect in the future the interpretation of this criterion:

Currently there are no tabled draft laws in the National Parliament relating to pre-removal detention.
There is a draft law introducing detention of asylum seekers. Its reasoning cites transposition of Directive 2013/33/EU.

2. Necessity grounds of detention

2.1 Avoiding or hampering the preparation of return or the removal process

Q39. Does your Member State's legislation further specify the meaning of ***avoiding*** the preparation of return or the removal process?
YES NO X N/A, *i.e. in your MS avoiding return is not a detention ground*

Q39.1. If the answer to the previous question is YES, please elaborate *with reference to pertinent case-law* on the specific cases falling under this concept:

Not relevant.

Q39.2. If the answer to the previous question is NO, please elaborate on how this concept is interpreted by the courts:

In Bulgarian law and practice, the meaning of avoiding the preparation of return or the removal process is interrelated with the concept of the risk of absconding. Thus Article 44, Para.6 of the Law on Foreign Nationals in the Republic of Bulgaria (LFRB) states as a ground for detention only the hampering of the removal process, along with the risk of absconding. Then §1, point 4 of the Additional Provisions of the LFRB provides a legal definition of the term 'risk of absconding', which encompasses avoiding of the removal process. *In practice the discussion is focused on the illegal border crossing attempts (especially if the TCN tried to exit Bulgaria in order to continue his/her way to another country – e.g., Judgment of the Sofia City Administrative Court in case No.649/2014) or to the inability of the TCN to present identity documents and its consequences (see, e.g, the differing practice in this regard of the Sofia City Administrative Court, e.g., Ruling in case No.12187/2013, and the Haskovo Administrative Court, e.g., Ruling in case No.219/2013).*

Q40. Does your Member State's legislation further specify the meaning of ***hampering*** the preparation of return or the removal process?
YES NO X N/A, *i.e. in your MS hampering return is not a detention ground*

Q40.1. If the answer to the previous question is YES, please elaborate *with reference to pertinent case-law* on the specific sub-categories falling under this concept:

Not relevant.

Q40.2. If the answer to the previous question is NO, please elaborate on how this concept is interpreted by the courts:

Article 44, Para.6 of the Law on Foreign Nationals in the Republic of Bulgaria (LFRB) states as a ground for detention the hampering of the removal process or the risk of absconding. However usually it is the risk of absconding that is invoked by the administrative authorities and discussed by the courts. *There is no legal definition of the term 'hampering' of the removal process.*

2.2 Risk of absconding

Q41. Does your Member State's legislation define ***objective criteria*** based on which the existence of a risk of absconding can be assumed?
X YES NO N/A *i.e. in your MS a risk of absconding is not a detention ground*

Q41.1. If the answer to the previous question is YES, please elaborate *with reference to pertinent case-law* on those objective criteria (*please also mention if the consideration whether there is a risk of absconding* ***goes beyond the mere fact of an illegal stay or entry***):

§1, point 4v of the Additional Provisions of the Law on Foreign Nationals in the Republic of Bulgaria (LFRB) provides a legal definition of the term 'risk of absconding'. According to it, a risk of absconding of a person against whom there is a removal order exists "when in the light of the facts one can make a reasonable assumption that the same person will try to deviate from the implementation of the imposed measures. Data in this regard may be the fact that the person cannot be found at the pointed address of residence, presence of previous infringements of the public order or previous convictions regardless of rehabilitation, the fact that he has not left the country within the given period for voluntary departure or he has clearly shown that he will not comply with the imposed measure, the fact that he has forged documents or has no documents at all, he submitted false information, he already absconded, he has not complied with the prohibition of entry, and others." In the prevailing national case law this definition has been cited in order to conclude risk of absconding on the basis of the sole facts that the person has no identity documents and has entered the country irregularly – e.g., judgments of the Supreme Administrative Court (Judgment of 26 June 2012 in case No.3368/2012, Judgment of 31 January 2012 in case No. 6018/2011), Sofia Region Administrative Court (Judgment of 10 February 2012 in case No. 1167/2011), etc. In other less frequent cases the Court concluded that the detaining authority has not provided sufficient arguments and evidence that the TCN meets the criteria in the definition for risk of absconding – e.g., judgment of the Sofia City Administrative Court of 9 April 2010 in case No.1811/2010 and judgment of the Sofia Region Administrative Court of 18 February 2011 in case No 34/2011.

The consideration whether there is a risk of absconding goes beyond the mere fact of an illegal stay or entry. Precedent-setting in this regard has been Judgment of 05 August 2011 of the Supreme Administrative Court in case No. 13868/2010. In this judgment SAC invoked inter alia Recital 6 and 13 of the Preamble of Directive 2008/115. The court made the conclusion that the consistent interpretation of the national law in relation to the EU law required the authorities to take into account also other facts such as the ones specified in Article 44(2) LFRB, namely "the authorities shall take into account the duration of the alien's residence in the Republic of Bulgaria, the categories of vulnerable persons, the existence of proceedings under the Law on Asylum and Refugees or proceedings for renewal of a residence permit or other authorization offering a right to stay, his family situation, and the existence of family, cultural and social ties with the country of origin.".

Q42. If your Member State's legislation does not define aforementioned objective criteria, can the criterion of a risk of absconding still be invoked as a ground of detention?
YES NO
Not relevant for BG.

Q42.1. If the answer to the previous question is YES, please elaborate on how this concept is interpreted by the courts:

Not relevant.

Q43. Assuming that your Member State' legislation sets objective criteria defining a risk of absconding, please elaborate on the question **how individual situation and individual circumstances are taken into consideration by courts** when establishing whether there is a risk of absconding?

Please see answer to question 41.1 above; to be read in conjunction with the obligation of the court to control ex officio all the elements of the lawfulness of administrative acts irrespective of the arguments of the parties (Article 168, Paras. 1 and 2 of the Bulgarian Code on Administrative Procedure).

Q44. Please elaborate on any **overlaps between** the concepts **"risk of absconding"** and **"avoiding/hampering return",** which can be observed in the national legislation and/or case-law:

There is an overlap between the concepts of 'avoiding the preparation of return or the removal process' and the concept of 'risk of absconding'. Thus Article 44(6) of the Law on Foreign Nationals in the Republic of Bulgaria (LFRB) states as a ground for detention only the hampering of the removal process, along with the risk of absconding. Then §1, point 4 of the Additional Provisions of the LFRB provides a legal definition of the term 'risk of absconding', which encompasses avoiding of the removal process. According to it, a risk of absconding of a TCN against whom there is a removal order exists "when in the light of the facts one can make a reasonable assumption that the same person will try to deviate from the implementation of the imposed measures". *Regarding application of the national legislation in the case law, please refer to the answer at Q.39.2.*

Q45. Having regard to the phrase "in particular" in Art. 15(1) RD, does either your Member State's legislation or the relevant case-law **allow any other ground of detention** apart from "avoiding/hampering return" and "a risk of absconding" (*please note that **we do not refer here to public order grounds** which are excluded from Art. 15(1) RD*)?
X YES NO

Q45.1. If the response to the previous question is YES, please elaborate in the following on those grounds *with reference to pertinent case-law:*

According to Article 44(6) of the Law on Foreign Nationals in the Republic of Bulgaria, an additional separate (autonomous) ground of detention is the fact that the personal identity of the TCN is unknown. In this regard in its Judgment of 05 August 2011 in case No.

13868/2010 the Supreme Administrative Court stated that the national provision contradicts Article 15 of Directive 2008/115 and therefore should be left without application.
In spite of that, the national case law continued to be contradictory and arbitrary with regard to the application of this part of the national provision. This was a reason for a preliminary ruling question to the CJEU in the case of Mahdi, case C‑146/14 PPU. In its Judgment of 05 June 2014 the CJEU stated that Article 15(1) and (6) of Directive 2008/115 did not allow for a national regulation as the one in question, according to which renewal of detention could be done solely on the ground that the TCN has no identity documents.

Q46. Please elaborate on **any changes in adjudicating** the issues relating to "a risk of absconding" and "avoiding/hampering return", brought about by the **implementation of the Return Directive**:

Prior to the adoption of the Return Directive, the Bulgarian legislation did not have a definition of 'risk of absconding' in the context of immigration law, but instead invoked the definition and practice from criminal law.
In 2011 a legal definition of 'risk of absconding' was introduced in the Law on Foreign Nationals in the Republic of Bulgaria (cited above at Q.41.1.)

Q47. If relevant, please elaborate in the following on any on-going legislative changes relating to the above-mentioned questions on the "avoiding/hampering return" and "a risk of absconding", which will affect in the future the interpretation of these criteria:

Currently there are no tabled draft laws in the National Parliament relating to pre-removal detention.
There is a draft law introducing detention of asylum seekers. Its reasoning cites transposition of Directive 2013/33/EU.

3. Alternatives to detention

Q48. Does your Member State's legislation oblige administrative or judicial authorities taking detention decisions to consider alternatives to detention?
YES NO X

Q49. Which of the following alternatives to detention exist in your Member State (in law as well as in practice)?

- Registration obligation

Not relevant.

- Deposit of (travel) documents

Not relevant.

- Bond/bail, i.e. deposit of an adequate financial guarantee

Not relevant.

- **Regular reporting to the authorities**

Article 44(5) of the Law on Foreign Nationals in the Republic of Bulgaria (LFRB) envisages weekly reporting to the authorities in the following way: "When there are obstacles for the foreigner to leave the country immediately or to enter another country, by order of the authority that issued the order for imposing compulsory administrative measure, the foreigner is obliged to appear weekly in the territorial structure of the Ministry of Interior at his residence in the manner determined by the rules implementing the law, unless the obstacles to the implementation of the deportation or expulsion, cease to exist and measures are scheduled for the forthcoming removal."

The procedure for imposing weekly reporting is stipulated in the Implementing Rules of the LFRB, Article 72. In case the TCN does not dispose himself/herself with accommodation and means of existence in Bulgaria, another person has to provide those to him/her. The latter signs a declaration on the residence address of the TCN and provides proof of sufficient means of subsistence for the TCN in an amount not less than the lowest social pension for the country.

The court requires the TCN to provide evidence with regard to meeting the cited requirements under Article 72 of the Implementing Rules of the LFRB. See, e.g., Ruling of 24 January 2014 in case No.12187/2013 of the Sofia City Administrative Court.

- Community release/supervision

Not relevant.

- Designated residence

Not relevant.

- Electronic tagging

Not relevant.

- Home curfew

Not relevant.

- Else

Not relevant.

Q50. When there is a **certain <u>risk of absconding</u>**, what are the main considerations (embodied in the national legislation and/or in the relevant case-law) for opting for **alternatives to detention instead of detention**?

In Bulgaria if there is a (certain) risk of absconding, no alternative to detention is applied.

Q51. When the TCN concerned **avoids or hampers the return procedures**, but there is still no risk of absconding, what are the main considerations (embodied in the national legislation and/or in the relevant case-law) for opting for **alternatives to detention instead of detention**?

The concepts of avoiding the return procedures and risk of absconding overlap in Bulgaria (as noted above).
If the TCN hampers the return procedures, but there is still no risk of absconding, the main considerations for opting for regular (weekly) reporting instead of detention are the ones stipulated in Article 72 of the Implementing Rules of the LFRB. In a case where the TCN does not have accommodation and means by which to live in Bulgaria, another person has to provide those to him/her; the latter signs a declaration on the residence address of the alien and provides proof of sufficient means of subsistence for the TCN in an amount not less than the lowest social pension for the country.

Q52. When deciding on the use of pre-removal detention, are competent authorities required to **assess every available or possible alternative to detention** to justify their effectiveness or the lack thereof in a given case?
YES NO X

Q52.1. If the response to the previous question is NO, please elaborate on the reasons why it is not the case *(please also explain here whether in cases where administration does not indicate the appropriateness of any alternative to detention, **the courts can take initiative and assess if there is any alternative to detention** which can be applied effectively in a given case*):

Before replying to the question, it is noteworthy that in the national law (LFRB) the alternative to detention (regular reporting) precedes by order of enumeration the detention. In other words, regular reporting is envisaged in Paragraph 5 of Article 44, while detention is envisaged in Paragraph 6 of Article 44.
This has made lawyers argue that the order of enumeration is indicative of the order of consideration that authorities should give to the two measures. However, there is no explicit requirement for that in the LFRB itself.
Article 44(6) of the LFRB, which stipulates the conditions for imposing pre-removal detention, does not transpose the requirement of Article 15(1) of the Return Directive to first consider alternatives to detention.
***This has led to the practice in Bulgaria that when deciding on detention the administrative authorities do not discuss the possibility for an alternative to detention**, but only whether the requirements under Article 44(6) of the LFRB are present.*
Upon judicial review, the courts can take initiative and assess if there is any alternative to detention which can be applied effectively in a given case, provided that the TCN presents evidence about available accommodation and sufficient means of existence in line with Article 72 of the Implementing Rules of LFRB.

Q52.2. The control exercised by the judge in your Member State on the consideration of alternatives to detention by the administration is:

- a control limited to a manifest error of assessment

Not relevant.

- a full control not limited to a manifest error of assessment, also substituting **judge's own discretion to that of decision-making authority**

It follows from the general provision of Article 168(1) and (2) of the Bulgarian Code on Administrative Procedure that the judge examines, ex officio, all the elements of the lawfulness irrespective of the arguments of the parties.

Q53. Please elaborate on the question whether and how **an individual, case-by-case evaluation** is conducted when deciding on whether detention or any alternative to it should be applied (*especially in those cases where **statistics or previous experience with the same group** of people speak clearly in favour of detention*):

In Bulgarian case law there is no formal referral to statistics or previous experience with the same group of people *An individual approach is taken in each case. It concerns, firstly, assessment of whether a risk of absconding exists. If there is no risk of absconding, an assessment of the conditions for imposing regular reporting under Article 72 of the Implementing Rules of LFRB will be made (the accommodation and sufficient means of existence test).*

Q54. Please elaborate on **any changes in adjudicating** the issues relating to alternatives to detention, brought about by **the implementation of the Return Directive**:

Previously regular reporting under Article 44(5) of the LFRB was imposed not weekly, but daily (as the only possibility). Furthermore, it was imposed automatically to every TCN released from immigration detention, without a consideration of the individual facts in the case. *In March 2013 Article 44(5) of the LFRB was amended to provide for weekly instead of daily reporting of the TCN. This legal amendment was preceded by pertinent case law in which the courts repealed orders for daily reporting as disproportionate and not reasoned ones. In order to reach that conclusion the national courts invoked the Return Directive (Article 9(3) in relation to Article 7(3), as well as recitals 6 and 13 of the Preamble). See, for example, Judgment of 18.11.2011 of the Supreme Administrative Court in case No.15810/2010, as well as Judgment of 27.12.2011 of the Sofia City Administrative Court in case No.9722/2011.*

Q55. If relevant, please elaborate in the following on any on-going legislative changes relating to the above-mentioned questions on "alternatives to detention", which will affect in the future the interpretation of this criterion:

Currently there are no tabled draft laws in the National Parliament relating to pre-removal detention. *There is a draft law introducing detention of asylum seekers. Its reasoning cites transposition of Directive 2013/33/EU.*

4. Proportionality of the length of detention

4.1 Defining the length of detention

Q56. Taking into consideration the requirement that any detention shall be for "as short a period as possible", **how is the length of *initial* detention determined in your Member State**?

- By wholesale application of the time-periods fixed by national law

The detention orders in Bulgaria do not specify an exact length of detention in individual cases. The national law does not explicitly require that. Article 44(8) of the LFRB only provides that detention can last until the grounds for it cease to exist, but not longer than six months, which can be prolonged to up to 18 months.

In practice, one can interpret it that every single detention is ordered for six months, unless the grounds for it cease to exist earlier. In the precedent setting Kapinga case, Ruling of 27 May 2010 of the Supreme Administrative Court in case No. No.2724/2010 (cited on a number of occasions in the report), the Supreme Court stated that the TCN has the right to challenge the continuing existence of the grounds for detention at any moment prior to the elapse of the six months frame. In practice the TCN makes an application for his release before the authority that issued the detention order and the refusal of the authority to release him/her is subject to judicial review in court.

- By exact determination of the length of detention, which is strictly necessary for successful removal in each particular case:

Not relevant.

Q56.1 Please also elaborate on the question when the time of Art. 15 RD-detention starts running according to your national legislation (e.g. from the date of removal/detention order, from the date of apprehension, from the date of actual placement under detention, etc.)?

From the date of apprehension and actual placement under detention. According to Article 46a(1) of the LFRB the 14-days term to appeal the detention order starts to run from the "factual accommodation' (note: in Bulgarian law pre-removal detention is referred to as 'coercive accommodation').

Q57. Taking into consideration the requirement that any detention shall be for "as short a period as possible", how is the length of ***subsequent*** detention determined in your Member State?

- By wholesale application of the time-periods fixed by national law

The subsequent detention is renewed for a period 'not longer than' six more months. This follows from Article 46a(4) in relation to Article 44(8) of the LFRB. See, for example, the Ruling of 24 January 2014 of the Sofia City Administrative Court in case No.12187/2013. The case law, including the cited ruling, contains no elaboration on the phrase 'not longer than' six months. It is cited from the law.

- By exact determination of the length of detention, which is strictly necessary for successful removal in each particular case:

Not relevant.

Q58. The control exercised by the judge in your Member State on the requirement that detention should be "as short as possible" is:

- a control limited to a manifest error of assessment

Not relevant.

- a full control not limited to a manifest error of assessment

Renewal of detention in Bulgaria is decided by the court upon the facts presented by the administrative authorities and the TCN. This follows from Article 46a(4) of the LFRB. See, e.g., Ruling of 27 May 2010 of the Supreme Administrative Court in case No. No.2724/2010, as well as the preliminary ruling request in the case of Mahdi C‑146/14 PPU before the CJEU.

Q59. Please elaborate on any **changes in adjudicating the issues relating to the length of detention**, brought about by the implementation of the Return Directive:

A landmark achievement of the Bulgarian judiciary in this regard is the practical change brought in the Law on Foreign Nationals in the Republic of Bulgaria by leaving without application Article 46a(4) in the part that says that judicial renewal of detention following the elapse of the first six months takes place in a closed hearing without the participation of the TCN. The practice of convening an open hearing with the participation of the detained TCN has become a stable case law in Bulgaria following the two precedent-setting judgments of the Supreme Administrative Court in the cases of Kapinga (Ruling of 27 May 2010 in case No. 2724/2010) and Tsiganov (Ruling of 08 February 2011 in case No. 14883/2010). In those cases the Supreme Administrative Court invoked inter alia Article 47 (the right to a public hearing in particular) of the Charter of Fundamental Rights of the European Union in relation to Article 15 of Directive 2008/115, as well as Article 5 (4) and Article 13 of the European Convention on Human Rights.

Q60. If relevant, please elaborate in the following on any on-going legislative changes relating to the above-mentioned questions on the "defining the length of detention", which will affect in the future the interpretation of this criterion:

Currently there are no tabled draft laws in the National Parliament relating to pre-removal detention.
There is a draft law introducing detention of asylum seekers. Its reasoning cites transposition of Directive 2013/33/EU.

4.2 Due diligence

Q61. Please elaborate **on how national courts interpret the "due diligence"** criterion:

The case law on this issue varies between the Sofia City Administrative Court, which decides on the renewal of detention of detainees at the Bousmantsi detention centre near

Sofia, and the Haskovo Administrative Court, which decides on the renewal of detention of detainees at the Lyubimets detention centre near Svilengrad.

The prevailing case law of the Sofia City Administrative Court (see, e.g., rulings of the Sofia City Administrative Court in cases No.12187/2013, 4514/2013 and 6950/2013) is that sending of one letter by the administrative authorities to the respective embassy of the TCN within the elapsed six period of detention is sufficient to meet the 'due diligence' requirement.

On the contrary, the Haskovo Administrative Court in its prevailing case law stipulates that sending of one or two letters to the respective embassy ***without any follow-up actions by the administrative authorities*** *constitutes inaction on their part (see, e.g., Ruling of 11 April 2013 in case No.48/2013; Ruling of 13 August 2013 in case No.202/2013; Ruling of 13 May 2014 in case No.172/2014).*

Q62. The control exercised by the judge in your Member State on the requirement that removal arrangements to be executed with "due diligence" is:

- a control limited to a manifest error of assessment

Not relevant.

- a full control not limited to a manifest error assessment

Renewal of detention in Bulgaria is decided by the court upon the facts presented by the administrative authorities and the TCN. This follows from Article 46a(4) of the LFRB. This means, inter alia, that the reviewing court can take initiative and search for new elements in order to prove that the action taken by the competent authorities could have taken less time than that claimed by the latter.

Q63. Please elaborate on **any changes in adjudicating** the issues relating to the due diligence criterion, brought about by the **implementation of the Return Directive**:

The Haskovo Administrative Court explicitly invokes the Return Directive in saying that detention shall be for "as short a period as possible" in order to conclude that sending one or two letters to the respective embassy without any follow-up actions by the administrative authorities constitutes inaction on their part and does not meet the due diligence criterion (see, e.g., Ruling of 11 April 2013 in case No.48/2013; Ruling of 13 August 2013 in case No.202/2013; Ruling of 13 May 2014 in case No.172/2014).

Q64. If relevant, please elaborate in the following on any on-going legislative changes relating to the above-mentioned questions on the "due diligence", which will affect in the future the interpretation of this criterion:

Currently there are no tabled draft laws in the National Parliament relating to pre-removal detention.
There is a draft law introducing detention of asylum seekers. Its reasoning cites transposition of Directive 2013/33/EU.

4.3 Removal arrangements in progress

Q65. Please elaborate on how national courts check whether removal arrangements are in progress:

In assessing the lawfulness of initial detention the court is often satisfied with the existence of an issued removal order in order to presume that removal arrangements are in progress (see, e.g., Judgment of 26 June 2012 of the Supreme Administrative Court in case No.3368/2012; Judgment of 21 February 2014 of the Sofia City Administrative Court in case No.649/2014). This initial detention will be reviewed as late as following the elapse of the first six months.

In deciding on the renewal of detention, the court will also check the actions taken so far (during the first six months of detention) by the administrative authorities in order to organize or carry out the removal. In this relation, please refer to the answer to Q. 61 above.

Q65.1. The control exercised by the judge in your Member State on the requirement "that removal arrangements are in progress" is:

- a control limited to a manifest error of assessment

  Not relevant.

- a full control not limited to a manifest error of assessment, also substituting **judge's own discretion to that of decision-making authority**

  Renewal of detention in Bulgaria is decided by the court upon the facts presented by the administrative authorities and the TCN.

Q66. How do **Strasbourg proceedings**, namely when an interim measure based on the Rule 39 has been ordered, **impact on (the lawfulness of) the length of detention** (*please also consider three requirements developed by the Strasbourg court in this respect – see Concept Note III. 4.2*):

No case law in Bulgaria on this issue has been found.

Q67. How **do internal judicial proceedings suspending the return**, impact on (the lawfulness of) the length of detention:

The prevailing case law in this regard is that suspension of the return does not impact on the lawfulness of the length of detention.

The Law on Asylum and Refugees (Article 67) provides for the ex officio suspension of any removal process during the asylum procedure. However, the majority of the national case law on pre-removal detention of asylum seekers in Bulgaria contradicts the Judgment of the CJEU in the Kadzoev case (case C-357/09 PPU) as it considers the fact of the pending asylum procedure or the submitted asylum application as irrelevant to the lawfulness of the pre-removal detention order. See, e.g., Judgment of 26 June 2012 of the Supreme

Administrative Court in case No.3368/2012, Judgment of 21 February 2014 of the Sofia City Administrative Court in case No.649/2014, as well as the rulings of the Sofia City Administrative Court in cases No.12187/2013, 4514/2013 and 6950/2013. The case law to the contrary is rather exceptional and therefore difficult to find – see, e.g., Judgment of 01 February 2011 of the Sofia Region Administrative Court in case No.12/2011.

With regard to the Judgment of the CJEU in the case of Arslan, case C -534/11, the national court tends to assume that there is a national legal norm which allows detention under the Return Directive despite the existence of a filed application for asylum (see, e.g., Ruling of 10 October 2013 of the Sofia City Administrative Court in case No.7928/2013). The national legal norm in question is Article 19, Para.3 of Ordinance Iз-1201 от 1.06.2010 issued by the Minister of the Interior, which states that the examination of the asylum application in a fast-track procedure is done in the detention centre, unless the asylum authorities make an objection to the contrary. However the conformity of this national provision and practice with EU law is questionable, because Article 19(3) of the Ordinance does not require the administrative authorities to carry out the test stipulated in the Arslan case as to whether "the application was made solely to delay or jeopardise the enforcement of the return decision and that it is objectively necessary to maintain detention to prevent the person concerned from permanently evading his return".

Q68. Is there any obligation on the side of the administration or the reviewing court to **inquire with the court where the parallel proceedings about return are pending** about the possible length and/or outcome of those proceedings?
YES NO X

Q68.1. If the response to the previous question is YES, please elaborate on the relevant modalities of the mentioned inquiry:

Not relevant.

Q69. Does the period when **asylum proceedings** are pending have any impact on calculating the length of detention?
YES NO X

Q69.1. If the response to the previous question is YES, please elaborate on the relevant national case-law in this respect (please also consider CJEU, *Kadzoev and Arslan*):

Not relevant.

Q70. Please elaborate on **any changes in adjudicating** the issues relating to the removal arrangements in progress criterion, brought about by the **implementation of the Return Directive**:

In view of the answer at Q.67, unfortunately the needed changes have not yet taken place.

Q71. If relevant, please elaborate in the following on any on-going legislative changes relating to the above-mentioned questions on the "removal arrangements in progress", which will affect in the future the interpretation of this criterion:

Currently there are no tabled draft laws in the National Parliament relating to pre-removal detention. *There is a draft law introducing detention of asylum seekers. Its reasoning cites transposition of Directive 2013/33/EU.*

5. Necessity of the extension of the length of detention beyond 6 months

Q72. Does your Member State's legislation provide for the **possibility of extension of detention beyond 6 months** because of:

- A **lack of cooperation by the third-Member State national concerned**

According to Article 44(8) of the LFRB, "Exceptionally, if the person refuses to cooperate with the competent authorities or there is a delay in obtaining the documents required for the removal or expulsion, the period of detention may be extended to up to 12 additional months."
Usually both lack of cooperation by the TCN and delays in obtaining the necessary documentation from the third country are invoked in the decision for renewal of detention as interrelated grounds. See, e.g., the rulings of the Sofia City Administrative Court in cases No.12187/2013, 4514/2013, 6950/2013 and No.7928/2013.
The case law in this regard is divergent. The prevailing case law of the Sofia City Administrative Court (see, e.g., rulings of the Sofia City Administrative Court in cases No.12187/2013, 4514/2013 and 6950/2013) is that sending of one letter by the administrative authorities to the respective embassy of the TCN within the elapsed six period of detention is sufficient to meet the 'due diligence' requirement. On the contrary, the Haskovo Administrative Court in its prevailing case law stipulates that sending of one or two letters to the respective embassy without any follow-up actions by the administrative authorities constitutes inaction on their part (see, e.g., Ruling of 11 April 2013 in case No.48/2013; Ruling of 13 August 2013 in case No.202/2013; Ruling of 13 May 2014 in case No.172/2014). According to the Ruling of 13 August 2013 of the Haskovo Administrative Court in case No.219/2013, the inaction of the administrative authority in executing the removal order cannot be attributed to the detriment of the TCN.
In the Mahdi case before the Sofia City Administrative Court (case No.1535/2014) and the CJEU (case C‑146/14 PPU), the refusal of the TCN to voluntarily return to his country of origin led to the refusal of the third country to issue him identity documents necessary for his return. Following the judgment of the CJEU of 05 June 2014, by ruling of 06 June 2014 the Sofia City Administrative Court replaced detention with a less coercive measure, that is, weekly reporting. The national judge based her decision on the lack of a reasonable prospect of removal. Namely, the national court decision states: "In view of the above data on the behaviour of M. and considering possible actions for the enforcement of his return, it is concluded that there is not any reasonable need, based on the grounds provided by law, for the TCN to continue to be detained for the purpose of arranging his removal from the country, which is confined to the issue of an identity document from the Embassy of S. Furthermore, the Directorate "Migration" has not listed specific actions that it intends to take and which require the presence of M ."

- **Delays in obtaining the necessary documentation** from the third countries

See above.

- Else

Not relevant.

Q72.1. The control exercised by the judge in your Member State on the "lack of cooperation" or "delays in obtaining the necessary documentation" is:

- a control limited to a manifest error of assessment

Not relevant.

- a full control not limited to a manifest error of assessment, also substituting **judge's own discretion to that of decision-making authority**

Renewal of detention in Bulgaria is decided by the court upon the facts presented by the administrative authorities and the TCN. For example, rulings of the Sofia City Administrative Court in cases No.12187/2013, 4514/2013 and 6950/2013; rulings of the Haskovo Administrative Court in cases No.48/2013; No.202/2013; No.172/2014.

Q73. When deciding on the extension of detention, is **a new assessment of a risk of absconding** conducted?

X YES NO

Q73.1. Please elaborate on any selected response to the provisions question *with reference to pertinent national case-law*:

An indirect assessment of a risk of absconding is done through the test whether the TCN meets the conditions for substituting detention with regular reporting. According to Article 72 of the Implementing Rules of the LFRB, the TCN has to provide evidence that he/she disposes of accommodation at a set address and means of existence in Bulgaria. *See, e.g., the Ruling of 24 January 2014 of the Sofia City Administrative Court in case No.12187; the Ruling of 06 June 2014 of the Sofia City Administrative Court in the case of Mahdi, case No.1535/2014 of the Sofia City Administrative Court and case C-146/2014 of the Court of Justice of the European Union.*

Q74. When deciding on the extension of detention, is **a new assessment of alternatives to detention** conducted?

X YES NO

Q74.1. Please elaborate on any selected response to the provisions question *with reference to pertinent national case-law*:

As stated in the answer to question 73.1., the decision making judge makes a new assessment whether the TCN meets the conditions for substituting detention with regular reporting. According to Article 72 of the Implementing Rules of the LFRB, the TCN has to provide evidence that he/she disposes of accommodation at a set address and means of existence in Bulgaria. *See, e.g., the Ruling of 24 January 2014 of the Sofia City Administrative Court in case*

No.12187; the Ruling of 06 June 2014 of the Sofia City Administrative Court in the case of Mahdi, case No.1535/2014 of the Sofia City Administrative Court and case C-146/2014 of the Court of Justice of the European Union.

Q75. Please elaborate on **any changes in adjudicating** the issues relating to the extension of detention criteria, brought about by the **implementation of the Return Directive**:

In August 2013 Article 44(8) of the LFRB was amended to repeal 'national security or public order threat' from the grounds for extension of detention beyond six months. Before this legislative change took place, the courts have stipulated that they will leave without application that part of the national provisions as it contradicted Article 15(6) of the Return Directive. See, e.g., the Ruling of 11 April 2013 of the Haskovo Administrative Court in case No.48/2013.

Q76. If relevant, please elaborate in the following on any on-going legislative changes relating to the above-mentioned questions on the **possibility of extension of detention beyond 6 months**, which will affect in the future the interpretation of this criterion:

Currently there are no tabled draft laws in the National Parliament relating to pre-removal detention.
There is a draft law introducing detention of asylum seekers. Its reasoning cites transposition of Directive 2013/33/EU.

6. Different intensity of review with the lapse of time

Q77. Does your Member State's legislation, case-law or any other written or unwritten judicial practice indicate **any difference of the intensity** of the lawfulness review of detention **depending on the time spent in detention** (i.e. does the intensity of review increase with the lapse of time spent in detention)?
YES NO X

Q77.1. If the response to the previous question is YES, please elaborate on relevant national provisions and/or pertinent case-law and explain if relevant how the intensity of review increases:

Not relevant for BG.

7. Consequences of unlawful detention and re-detention

Q78. In your Member State, the declaration of detention as unlawful by judges leads to:

- Immediate release of the TCN concerned **irrespective** of whether the reasons of unlawfulness were **procedural flaws** or the breach of one of the **necessity and proportionality criteria** foreseen under Art. 15 RD

According to Article 46a(5) of the LFRB, when the court repeals the contested detention order or issues a decision for release (upon review of the duration of detention), the TCN 'is released immediately'. However it is noteworthy that in practice the court's decision must first enter into force and usually such decisions are appealed by the administrative authority before the second level of jurisdiction. During the appeal process before the second level of jurisdiction (which takes several months) the TCN awaits in detention unless the judge orders preliminary execution of his/her judgment. For the latter, see, for example, the Ruling of 06 June 2014 of the Sofia City Administrative Court in the Mahdi case, case No.1535/2014 of the Sofia City Administrative Court and case C-146/2014 of the Court of Justice of the European Union.

- Immediate release of the TCN concerned **only when** the reason of unlawfulness was the **breach of one of the necessity and proportionality criteria** foreseen under Art. 15 RD

Not relevant.

- No release of the TCN concerned when it is possible to regularise the breach with a new detention order

Not relevant.

- No release of the TCN concerned until the decision of the second level of jurisdiction

See the explanation with the first option above.

Q79. After release of the TCN concerned as a result of **declaring detention unlawful**, is it possible in your Member State to **re-detain** the TCN concerned?

X Yes No

Q79.1. If the response to the previous question is YES, please elaborate with reference to relevant provisions and pertinent national case-law on the reasons which can be invoked for the re-detention:

In Bulgaria TCNs are released from detention without being given any document as to their situation (in the sense of Recital 12 of Preamble of the Return Directive); there is no regularization mechanism either. Therefore upon consecutive administrative controls or

checks they are vulnerable to re-detention. For example, this happened to the TCN in case No.3258/2011 before the Sofia City Administrative Court. In that case the court repealed the detention order, but it took several months to reach the court decision and in the meantime the TCN had been detained.
This has been one of the issues raised by the national court in the case of Mahdi, case C-146/2014 of the Court of Justice of the European Union.

Q80. After the release from detention because of the **expiry of the maximum time-limits**, is it possible in your Member State to **re-detain** the TCN concerned?

X YES NO

Q80.1. If the response to the previous question is YES, please elaborate with reference to relevant provisions and pertinent national case-law on the reasons which can be invoked for the re-detention like for instance a new element:

Please refer to the answer to question 79.1.

Q81. Do the victims of unlawful pre-removal detention have **an enforceable right to compensation** in your Member State?

X YES NO

Q81.1. If the response to the previous question is YES, please elaborate on the relevant provisions and pertinent case-law, including some elements on the amounts of compensation:

If the detention order has been repealed as unlawful, the TCN has the right to submit a compensation claim for the unlawful administrative act that had been issued against him/her under the Law on the Responsibility of the State and the Municipalities for Harm (in Bulgarian: Закон за отговорността на държавата и общините за вреди) and the Code on Administrative Procedure.
However TCNs in Bulgaria have not so far availed of this right. No case law in this regard has been found.

Q82. If possible, please explain how widespread is the practice of asking for compensation by unlawfully detained third-country nationals:

TCNs in Bulgaria have not so far availed of this right. No case law in this regard has been found.

IV. STATISTICS

Q83. If possible, please elaborate on any available **statistics on judicial control of lawfulness of detentio**n, especially concerning the **release from detention as a consequence of the judicial control**:

There are no such statistics. *From my personal experience as a lawyer, release from detention as a consequence of the judicial control occurs rarely. In principle judges are reluctant to repeal initial detention orders. Recently there is a tendency in the Haskovo Administrative Court to release detainees upon the elapse of the initial six months of detention, unless the State Agency for National Security claims that the TCN poses a threat to the national security or public order.*

V. BEST PRACTICES

Q84. Please list here any **best practices relating to the judicial control of detention**, which you think can be deduced from your previous responses and explain briefly why you think that any particular practice is a best practice:

I would point out as a good practice of judicial review the following acts of the judiciary in Bulgaria:

***1)** The precedent-setting Ruling of 27 May of 2010 of the Supreme Administrative Court in case No.2724/2010. It established two main principles with regard to effective remedies against pre-removal detention in Bulgaria.*

Firstly, following it, now at any time the detainee has the right to ask the administrative authority to review the continuity of detention, independently from the renewal decision. An advantage in this regard is that the detainee at any time can prompt the detaining authority to review the continuity of detention.
A remaining drawback is that if the administrative authority refuses to release the TCN, the judicial review on the application of the TCN concerned takes a lot of time (from several months to about an year) as the two-level judicial review follows the general rules and timeframes of the Code on Administrative Procedure.

Secondly, it brought a de facto change in the Law on Foreign Nationals in the Republic of Bulgaria by leaving without application Article 46a(4) in the part that says that judicial renewal of detention following the elapse of the first six months takes place in a closed hearing without the participation of the TCN. The practice of convening an open hearing with the participation of the detained TCN has become a stable case law in Bulgaria following this case. The Supreme Administrative Court invoked inter alia Article 47 (the right to a public hearing in particular) of the Charter of Fundamental Rights of the European Union in relation to Article 15 of Directive 2008/115, as well as Article 5(4) and Article 13 of the European Convention on Human Rights.

***2)** The judicial decisions leaving without application the national provision that enumerated as an autonomous ground for extension of detention beyond six months the allegation that the TCN posed 'national security or public order threat'. The courts stated that that part of the national provision contradicted Article 15(6) of the Return Directive. See, e.g., the Ruling of 12 July 2011 of the Supreme Administrative Court in case No.8799/2011; the Ruling of 11 April 2013 of the Haskovo Administrative Court in case No.48/2013, etc.*

In August 2013 Article 44(8) of the LFRB was amended to repeal 'national security or public order threat' from the grounds for extension of detention beyond six months.

***3)** The case law of the Haskovo Administrative Court with regard to the application of the grounds for extension of detention beyond the initial six months under Article 15(6) of the Return Directive (e.g., Ruling of 11 April 2013 in case No.48/2013; Ruling of 13 August 2013 in case No.202/2013; Ruling of 13 May 2014 in case No.172/2014):*

3a) application of the ground 'a lack of cooperation by the third-country national':
According to the Haskovo Administrative Court the mere fact that the TCN is unable to

present a valid identity document does not constitute lack of cooperation, provided that the TCN has given information as to his/her identification. The inability to present the identity document itself, especially when the TCN entered the country without it, is an objective one beyond the current control of the TCN;

3b) application of the ground 'delays in obtaining the necessary documentation from third countries':
According to the Haskovo Administrative Court if the respective embassy has provided information and guidelines as to its requirements in order to issue a travel document to the TCN in question, the inaction of the detention authorities to meet those requirements cannot be construed to the detriment of the TCN.
According to the Haskovo Administrative Court, sending one or two letters to the respective embassy without any follow-up actions by the administrative authorities constitutes inaction on their part and does not meet the due diligence criterion

Q85. Please add here any other element not related to previous questions and that you would like to cover:

Not relevant.