

Advocacy Paper: Accommodation as ATD Prerequisite

Rositsa Atansova, assigned by Center for legal aid – Voice in Bulgaria

The study of accommodation options for irregular migrants in Bulgaria reveals a gradually shrinking space. Access to state services, State Agency for Refugees (SAR) reception centers and municipal housing has become increasingly more difficult for beneficiaries of international protection, which has adversely affected the chances of people without documents. Placement in statutory-run accommodation, in turn, does not qualify as a formal alternative to detention, but amounts to tolerated stay without any formalities. Private housing remains the most readily available housing option and the only one that is currently stipulated as ATD in the law. Such practice remains unsustainable and insecure, as it rests on administrative discretion of the authorities, rather than individual right, and the risk of detention is always present. Possible solutions lie in advocating for access to services on the basis of the new Law on Social Services and NGOs stepping in as mediators, guarantors or service providers for irregular migrants.

Methodology



The present investigation of housing options for irregular migrants in Bulgaria is based on meetings with stakeholders who were strategically selected on the basis of the following criteria. The interviewees represent a balanced and comprehensive range of concerned sides, among which count government agencies and local authorities, NGOs, service providers and beneficiaries. The interviews provided information about the range of existing services, which was not available through desk research alone. The meetings further allowed for investigation of potential obstacles to access and presents an opportunity to advocate with key actors for facilitated entry of people in irregular situation. The advocacy strategy at the end of the document, ultimately, recommends short and mid-term course of action for improving access to accommodation and ensuring greater reliance on ATD.

Detention by Presumption

The application of alternatives to detention remains limited in practice, because detention is applied by default to foreign nationals who have lost the right of residence, and not as a measure of last resort. There is thus an improper reversal of the burden of proof, whereby the authorities do not need to show that concerned persons are “obstructing the execution of the removal order”, pose a “risk of absconding”, or do not comply with the conditions of the alternative measures (Law on Foreigners in the Republic of Bulgaria (LFRB), Art. 44(6)). Instead, it is up to people in irregular situation to rebut the presumption of detention by proving that they fulfill the requirements for the application of alternatives. Center for Legal Aid (CLA) – Voice in Bulgaria practice and cases of other NGOs do not indicate that there was any individualized assessment of the principles of necessity, reasonableness and proportionality, in line with European and international legal standards in ATD. Authorities, instead, were only willing to consider an alternative measure when an individual met the conditions through case management support.

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Such view is further illustrated by the newly adopted Strategy on Migration 2021-2025, which emphasizes that Bulgaria maintains and has even extended detention capacity with the help of AMIF funding.² In comments to the Strategy project, UNHCR points to the limited application of alternatives, despite the expansion of the ATD portfolio by the 2016 amendments in the Law on Foreigners. The agency recommends that the document include an analysis of the compatibility of the legal framework in the field with international standards, as well as of any impediments to the practical application of alternatives.³ The authorities respond, in turn, that the relevant standards are already incorporated both in the legal provisions and in the individual assessment of the risk of absconding. In their view detention is the main precautionary measure and alternatives can only be applied where the risk of absconding is minimal. The response to UNHCR's comments states, in addition, that the human dignity of people in irregular situation needs to be balanced against the need to preserve public order and national security.

Officials have thus introduced additional requirements that condition the application of ATD and that do not correspond to national and international legal criteria. The reasoning in the Strategy project gives us a glimpse into the decision-making process, which reverses the ATD logic by positing detention as the default measure and the alternative as a subsequent option. A requirement of "minimal risk of absconding" is substituted for the necessity and proportionality assessment, with the need to secure the return procedure as primary consideration at the expense of individual rights. General and vague justifications, such as a potential threat to public order and national security, takes the place of evaluating whether the foreign national obstructs the execution of the removal order or does not comply with the conditions of the alternative measure.

Accommodation Options and Access

Not all residential options available to people in irregular situation can serve as a component of ATD. Interviews with stakeholders indicate that only private housing with the financial support of a guarantor, plus any cumulative measure in art. 44(5) LFRB, can be formalized as an alternative. When foreign nationals are accommodated in a hostel or in social services, for instance, the authorities are usually informed of the situation, which amounts to tolerated stay, but without any formalities. The risk of renewed detention is, therefore, always present and the accommodation arrangement is not sustainable or secure. Migration officials, on the other hand, are eager to see vulnerable cases go to specialized services, in order not to bear responsibility for any

² National Strategy on Migration of the Republic of Bulgaria 2021-2025.

Available at: https://www.mvr.bg/docs/default-source/strategicheskidokumenti/%D0%B-D%D0%B0%D1%86%D0%B8%D0%BE%D0%BD%D0%B0%D0%BB%D0%BD%D0%B0-%D1%81%D1%82%D1%80%D0%B0%D1%82%D0%B5%D0%B3%D0%B8%D1%8F-%D0%BF%D0%BE-%D0%BC%D0%B8%D0%B3%D1%80%D0%B0%D1%86%D0%B8%D1%8F-%D0%BD%D0%B0-%D1%80%D0%B5%D0%BF%D1%83%D0%B1%D0%BB%D0%B8%D0%BA%D0%B0-%D0%B1%D1%8A%D0%BB%D0%B3%D0%B0%D1%80%D0%B8%D1%8F-2021---2025-%D0%B3.pdf?sfvrsn=c2951dba_2

³ Reference reflecting suggestions and positions, p. 22. Project of National Strategy on Migration of the Republic of Bulgaria. Available at:

<https://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=5827>

emergencies on the premises. Still, access to services even for the most vulnerable is not a given, but negotiated on a case-by-case basis with social service departments and service managers. Such placements frequently involve bending the rules and actors are less and less willing to oblige, particularly in light of the Covid-19 pandemic.

Private Housing

Private housing is the most readily available option for people in irregular situation and the only one that can currently qualify as a formal alternative measure. Under art. 72(5) of the Regulations on the Implementation of the Law on Foreigners, a guarantor can present a notarized declaration to the migration authorities to certify that he or she will provide housing and financial support to a foreign national. In case the guarantor is a tenant, an additional declaration needs to be submitted certifying the consent of the owner of the property that the foreign national reside at the address. The ability to provide financially should be substantiated through proof of regular and stable income, which amounts to at least two minimal-wage salaries per month (700 BGN). The authorities then can inspect the premises to verify the suitability of the accommodation.

Private housing presents a number of challenges to people without a right to legal residence. Foreign nationals struggle to find guarantors and, in most cases, still have to find and fund housing on their own. They face discrimination and mistrust from landlords and fall victim to exploitative rental arrangements due to limited choices. Employers and members of ethnic, religious or refugee communities have served as guarantors and, depending on need, have provided proof of financial support or even funds for rent. Rejected applicants for international protection use their personal number of foreigner (PNF) to provide some form of identification and enter into contractual arrangements. Certain brokers are sympathetic to the plight of irregular migrants and have been instrumental in finding suitable housing. Guarantors, in turn, report that their role has sometimes been abused when people leave without warning, but most often it has greatly benefitted people by giving them space and security to plan next steps.

A search by CLA did not find any relevant caselaw for the past three years, which sanctions providing private housing to people in irregular situation. Such practice is in line with the EU Fundamental Rights Agency (FRA)'s recommendations and facilitates access to the private housing market.⁴ Valid ID, in contrast, is required for staying in a hotel or hostel, where people without documents have found temporary accommodation through intercession by various NGOs. Staying in a hostel is a short-term option due to the significant expense, which organizations such as the Bulgarian Red Cross (BRC) and the Council for Refugee Women have paid on emergency basis through project funding. They have developed a relationship with a particular hostel chain ("Hostel Chance") and serve as mediator, while also informing the authorities about the whereabouts of irregular migrants. Frequently, however, potential residents don't show up, which further strains the careful balance of compromise between the hostel management and the migration officials.

⁴ Fundamental Rights Agency (2011). Fundamental rights of migrants in an irregular situation in the European Union. Available at https://fra.europa.eu/sites/default/files/fra_uploads/1827-FRA_2011_Migrants_in_an_irregular_situation_EN.pdf

The Law on Social Services was adopted in 2020 with a scope that potentially covers people in irregular situation. Under art. 7 “every person” in need of support is entitled to access social services. Art. 24 of the Regulations on Implementation, in addition, addresses the circumstances of stateless persons and asylum-seekers who cannot objectively provide proof of current address. Administrative practice, however, has not caught up with the new provisions, as registration in any social service still requires some sort of personal identification number, which effectively excludes people without documents. At a UNHCR working group on housing, an official from the Ministry of Labor and Social Policy confirmed that the requirement also restricts the access to services for recipients of international protection, but an exception is made regarding victims of domestic violence and trafficking. NGOs who assist rejected asylum-seekers have frequently used PNFs to register them in services, even if it is not currently clear when the number expires.

There are a number of state or state-funded social services, which irregular migrants could potentially access depending on need. Through social services referral mothers with small children can be accommodated in mother and baby units for up to six months. NGOs report that the six-month term can be repeatedly renewed through informal negotiations with the service provider and the authorities who bend the rules for vulnerable people with no place to go. Such arrangements on case-by-case basis are the norm, even though they are not sustainable and exist not because of individual right, but due to administrative discretion of the authorities.

Undocumented adults, however, can still access services most easily if they are registered as accompanying children due to the application of child protection laws regardless of migration status. Victims of domestic violence and trafficking also have relatively unobstructed access to crisis centers in emergency situations.

Single men and women in irregular situation who face homelessness or struggle with a disability find it very difficult to access suitable services. There is 1 center for crisis accommodation and 3 centers for temporary accommodation through Sofia Municipality. The crisis center allows people to only stay the night during the 6 winter months, whereas the temporary accommodation center permits a stay of up to 3 months within a calendar year. BRC reports that the management of the crisis center used to show understanding regarding people without documents in dire situations and let them stay, but this is no longer the case. The Covid-19 pandemic has further deteriorated access, as residents are now exceptionally allowed to stay during the day as well, but admitted with a negative PCR test. Recently BRC was only able to secure the short-term accommodation of a former Soviet citizen whose status had been regularized prior to entry.

NGO Accommodation

There are a number of NGOs who run services privately or through delegated state funding. Most frequently services with a residential component are crisis centers or shelters for victims of domestic violence or traffic, which cater, in particular, towards women and children. Foundation “Association Animus”, for instance runs “St. Petka” crisis center for women and children victims of domestic violence. PULS Foundation, in turn, operates a crisis center for persons and children victims of violence and/or at risk of traffic.

The access of people without documents to these specialized services has been relatively unobstructed once genuine need has been established. The rise of anti-migrant sentiment and the shrinking civic space in Bulgaria in recent years, however, has led to authorities questioning whether migrant and refugee women constitute a legitimate group of beneficiaries for certain services.

“Concordia Bulgaria” Foundation is a notable exception, which has seen a significant number of referrals as a result. Concordia runs a low-threshold service, which admits people under the age of 35. People can stay for up to 2 weeks in the center for temporary accommodation without providing documents and can prove their identity in alternative ways. The foundation is private and runs the service through private funding exclusively. The flexible age limit and documentation requirement has made Concordia the only accommodation option for people in crisis situations on the territory of Sofia Municipality who have not been granted a place in a crisis or temporary accommodation center. The Council of Refugee Women report accommodating a woman in Concordia as the accompanying adult to her teenage-son. Capacity, however, remains insufficient and the foundation alone cannot make up for a range of suitable services.

Denomination-run Accommodation

Caritas Sofia is the largest charity of the Catholic Church in Bulgaria and runs “St. Anna” Center for Social Rehabilitation and Integration of Refugees. The center does not have a residential component, even though families in need have stayed on the premises short-term and by exception. Caritas Sofia works with asylum-seekers and recipients of international protection and has funded short-term stays in hostels for Dublin returnees and private housing for recognized refugees for up to 6 months. The latter project is now over, but it supported beneficiaries in attaining financial independence, as the organization paid the rent in full for the first 3 months, 75% for the 4th month, 50% for the 5th, and 25% for the last month. The notable difference with irregular migrants is that under the current legal framework, which does not provide paths to regularization, people without documents cannot work towards financial independence in a similar way. Other denominations, such as the Chief Mufti’s Office, have provided assistance in kind to reception centers, but do not run any accommodation or shelter services.

State Agency for Refugees Centers

2020 amendments to the Law on Asylum and Refugees (LAR) have significantly shortened the post-decision period that allowed recipients of international protection to stay on reception center premises. Art. 32(3) LAR, which stipulated that refugee or humanitarian status holders could receive financial assistance towards housing for 6 months following the entry into force of the decision on their application, has now been removed. As a result, people are asked to move out of SAR premises within 14 days of receiving a positive decision, as opposed to the previous term of 30 days with a possibility of extension due to humanitarian reasons.

The changes brought about increased risk of homelessness among recipients of international protection in the midst of winter and the pandemic. In response to the

challenging situation UNHCR organized a working group, whose discussions further revealed that status holders cannot access state social services until they obtain identity documents. Such practice is contrary to the provisions of the Law on Social Services and the attendant rules on implementation. The restricted possibility for recipients of international protection to stay on SAR premises makes it unlikely that open centers can be used for the accommodation of irregular migrants in the foreseeable future.

Municipal Housing

The legal regime governing municipal housing has been recently amended, but it remains prohibitive for recipients of international protection and virtually non-applicable for people in irregular situation. In a study for UNHCR Gabova notes that recipients of international protection are not an explicit target group for municipal housing policies.⁵ Decisions of administrative courts have, however, canceled the requirement for an applicant to be a Bulgarian citizen, which should, in principle, facilitate access for status holders and reduce grounds for discrimination. Standing administrative conditions and the lack of clauses that guarantee access still make it extremely difficult for beneficiaries to qualify. As it stands, the normative framework requires a 10-year address registration to access municipal housing and a 2-year address registration to access reserve housing.

Currently 4 districts of Sofia have entered into rental agreements with private landlords for the accommodation and integration of recipients of international protection.⁶ Vitosha and Oborishte have established the model, which entails collaboration with BRC and project funding through AMIF. The district municipalities can then enter into integration agreements with status holders, as envisioned by the Order on Integration, whose implementation continues to suffer from the lack of dedicated funding. 12 families have gone through the program overall, but only 4 to 5 families are usually accommodated concurrently. Landlords have been more willing to cooperate due to the direct contract with the municipality, but municipal officials have also struggled to find residents at short notice to fill the places of those who suddenly leave.

Summary of Accommodation Options

The study of accommodation options for irregular migrants reveals a gradually shrinking space. Access to state services, SAR reception centers and municipal housing has become more difficult even for beneficiaries of international protection, which has adversely affected the chances of irregular migrants to get a placement. Service providers are less willing to bend the rules to accommodate people without documents in crisis, particularly in light of pandemic measures. Mothers with children and victims of domestic violence or traffic are the only groups that face less impediments, but even there access frequently involves protracted negotiations with service providers and social workers to renew referrals on case by case basis. Placement in a service, ultimately, does not qualify as a formal alternative to detention, but amounts to tolerated stay that is not formalized in any way.

⁵ Gabova, S. (2020). Municipal Housing Policies: Key Factor for Successful Integration at Local Level. Available at:

<https://www.unhcr.org/bg/wp-content/uploads/sites/18/2020/03/Housing-Study-FINAL.pdf>

⁶ Bulgarian Council for Refugees and Migrants. (December, 2020). Academic Bulletin: Refugees Today and Tomorrow, Issue 5. Available at:

https://academia.bcrm-bg.org/wp-content/uploads/2021/01/5.AB_printable.pdf

Private housing remains the most readily available housing option for irregular migrants and the only one that currently qualifies as a formal alternative. The further advantage of the national system is that those who lend property to people without documents do not seem to incur criminal or administrative sanctions, in line with FRA recommendations. As a downside, private arrangements are onerous due to the need to find a guarantor who is willing to provide financial support, as well as to locate suitable accommodation amidst exploitative renting schemes, discrimination and limited choices. The burden thus stays on the individual and any supporting organization to rebut the presumption of detention by fulfilling the requirements for the application of alternatives.

As introduced in the mapping paper, the range of accommodation options for irregular migrants can be mapped on a matrix (*Table 1*) in relation to the nature of the service provider and the nature of any potential partner. Both axes represent a gradation from state-run housing to private accommodation through NGO and denomination-run residential options. Such a model allows us to visualize dependency on an intermediary to access accommodation alternatives and how much of that service-provision is dominated by the state. In addition, the chart illustrates potential new loci for service-creation that might not yet exist. The map is ultimately also an instrument for measuring whether the prevalent responses are community-based or institutional.

	state-run	NGO-run	denomination-run	private housing
STATE	<ul style="list-style-type: none"> ■ <i>National Commission for Combating Trafficking in Human Beings</i>: crisis center for children victims of trafficking ■ <i>municipality</i>: center for crisis accommodation; center for temporary accommodation 	<ul style="list-style-type: none"> ■ (delegated services) <i>Animus</i>: crisis center for women and children victims of domestic violence; ■ <i>Mission Wings</i>: mother and baby unit; ■ <i>PULS Foundation</i>: crisis center for persons and children victims of violence and/or at risk of traffic; 		<ul style="list-style-type: none"> ■ <i>municipality</i>: municipal housing;
NGO		<ul style="list-style-type: none"> ■ <i>Concordia</i>: center for temporary accommodation 		
DENOMINATION				
PRIVATE				<ul style="list-style-type: none"> ■ <i>hotels, hostels, private housing</i>

Table 1. Post-research mapping of housing options for irregular migrants in Bulgaria on the framework and template developed in the Mapping Paper

ATD, Accommodation and Regularisation

Given the standing presumption of detention, it is not clear whether the availability of more housing options for irregular migrants will necessarily lead to greater application of alternatives. Such causal connection cannot be assumed, as there seems to be general political resistance to community-based solutions on national security grounds. The presumption of detention and its relationship with the availability of accommodation needs deeper investigation. It appears that authorities tolerate stay in services when it will spare them the responsibility for vulnerable individuals and are willing to apply alternatives when presented with a ready-made solution. The reversal of the ATD logic, which sees detention as the primary precautionary measure, as opposed to a measure of last resort, however, should be challenged on its own terms, so that it does not lead to the creation of additional requirements for migrants.

The current system remains unsustainable and insecure, as it rests on administrative discretion, rather than personal entitlement, and the risk of detention is always present. The introduction of regularization mechanisms or the formalization of tolerated stay will allow people without documents to access private housing or services in their own right. Art. 6(4) of Directive 2008/115 already provides a legal basis for issuing a residence permit to foreign nationals on compassionate, humanitarian or other relevant grounds without the need for additional legislative changes. The implementation of a temporary residence permit, pending return, will further address the situation of people who have already stayed in detention for the maximum term of 18 months. Currently and improperly, they are subject to ATD measures following their definitive release.

Action Plan: Short Term

Strategic Litigation

The right of undocumented people to access social services under the new provision of the Law on Social Services (LSS) could be tested through strategic litigation of a suitable case, if provision is refused. The provisions of the law are meant to cover “every person” (Art. 7(1)) within the jurisdiction, which suggests that its scope includes irregular migrants. There has been a delay in the drafting and adoption of the implementing legislation, as well as some controversy regarding the evaluation methodology of the newly created Agency for the Quality of Social Services. The access to services for recipients of international protection has also been restricted, contrary to art. 24 of the Regulations on implementation. Following a detailed risk assessment, CLA can strategically apply for a vulnerable individual to access specialized services and if placement is denied, challenge the refusal in court under art. 7 LSS.

NGO as ATD Guarantor

The law does not state explicitly whether legal entities can serve as guarantors for ATD purposes. CLA practice, however, shows that the Migration Directorate has approved individuals as guarantors both in personal capacity and as representatives of foundations or companies. Such administrative practice can be clarified by the CLA offering to serve as guarantor in a suitable case. The main challenge might be fulfilling the requirement for stable and regular income, since the organization receives funding on project-basis towards planned activities. If successful, the practice can establish a solution for emergency situations and individuals with no alternative recourse. The experience can further be shared with other stakeholders, both NGOs and companies, who can be encouraged to follow suit.

Recruitment of Guarantors

Many employers, as well as members of ethnic, religious or refugee communities have served as guarantors for people in need. Even if most cases involve little risk for the guarantor and significant benefit for the irregular migrants, the identification and appointment of suitable individuals is usually done ad-hoc and accompanied with a lot of stress and difficulties. The CLA can proactively reach out to employers and community members to recruit guarantors. The volunteers can then attend an information session on their duties and responsibilities before being assigned to a case. Prior information for the procedure and risks involved will decrease tensions and unreasonable expectations, as well as popularize ATD among larger segments of society by showing a tangible way in which concerned citizens can offer help.

Mediation

CLA already promotes ATD through case management, but the process can be enhanced and streamlined. It will be useful to develop relationships with specific brokers who are sympathetic to the plight of irregular migrants and familiar with the specifics of their situation. Such on-call brokers can, in turn, identify suitable housing options and potential landlords who will not discriminate people or subject them to less advantageous rental agreements. The mapping paper has identified a number of similar good practices from other member states where NGOs have a mediating function between tenants and landlords, such as Provivienda in Madrid and Abraço in Brussels. While organizational capacity is needed for these activities, they can be built upon in the context of case-management programming. The end result is enhanced trust in the process by both beneficiaries and property-holders through the legitimacy of the intervening organization.

Action Plan: Mid-Term

Accommodation Pilot

An NGO or a consortium of organizations can administer a pilot project for the accommodation of people without documents. Such services tend to be rather expensive to run, with the additional disadvantage that irregular migrants cannot work towards financial independence. Caritas' model of decreasing financial support, will, therefore, be harder to apply. Still, there are examples from other member states of NGO-run or denomination-run residential services that cater to the needs of people in irregular situation. The added advantage for the authorities in supporting a similar initiative will be that undocumented people reside at a known location until a forthcoming resolution of their case. In the Bulgarian context the possibility to apply AMIF funding towards a pilot can be explored. The light version of the pilot does not entail running a specialized service, but rather renting housing in the organization's name for the accommodation of irregular migrants. The arrangement resembles the BRC project currently implemented through the municipalities with recipients of international protection. Similar to the service scenario, the responsible NGO will screen and select suitable candidates for entry. Landlords, in turn, will have the comfort of renting directly to an organization, as opposed to people who have difficulty providing relevant documentation.

Sustainability and potential lack of funding will be the main challenges to this option. Another risk is that beneficiaries, like status holders in municipal rentals, might disappear and thus leave gaps in service provision that undermine trust and need to be filled quickly. A co-financing model, then, can be used for funding, through which residents pay a percentage or full contribution towards rent, akin to existing ATD measures.

Regularisation

It is indispensable to continue advocating for the introduction of regularization mechanisms and programs in order that people without a residence permit can access basic rights and services. CLA has already proposed concrete legislative amendments regarding the situation of de facto Bulgarian citizens and those who have very high levels of integration. There are, however, existing regularization provisions in the law, which are currently underutilized, such as the possibility to grant permanent residence to unaccompanied minors who have received final rejections and the option to issue residence permits on humanitarian grounds under art. 6(4) of Directive 2008/115. The implementation of these provisions does not require any additional legislative changes, but will set an important precedent for further regularization efforts.