

Criminalization of Refugees in Bulgaria

Information Note

13 June 2013, Dr. Valeria Ilareva¹

The following information note aims to provide explanation regarding the underlying causes of the problem of criminalization of refugees in Bulgaria. The triggering event for preparing it has been the public interest to the case of a Syrian couple and their baby in Bulgaria. The case received publicity after a national TV station showed the first visit of the baby to his father at prison where he is serving a sentence for illegal border crossing.²

In contradiction to Article 31 of the 1951 United Nations Convention relating to the Status of Refugees asylum seekers in Bulgaria are found guilty of crossing the border illegally, for which they receive criminal sentences under Article 279 of the Bulgarian Penal Code.

In its annual report on 2012 the Bulgarian Helsinki Committee (BHC) notes that

‘in 2012 the majority of asylum seekers – (...) 66% of the 365 cases that were monitored – were sentenced for illegal border crossing. An ex officio examination by the Prosecution Office of the Republic of Bulgaria revealed that the only objective criterion as to whether to prosecute the person has been the presence of a valid identity document as criminal proceedings can be carried out only with regard to persons whose identity is established beyond doubt. Therefore the submitted asylum applications have not been taken into account at all by the organs of the investigation and the prosecution in contradiction with Article 279 (5) of the Penal Code and Article 31 of the Geneva Convention on the Status of Refugees’.³

According to Article 279, Paragraph 1 of the Bulgarian Penal Code ‘*a person who enters or crosses the frontier of the country without a permit from the respective bodies of the government or, though with a permit, but not through the places specified for that purpose, shall be punished by deprivation of liberty for up to five years and by a fine of one hundred to three hundred levs.*’

Article 279, Paragraph 5 of the Bulgarian Penal Code exempts from criminal liability those ‘*who enter the country to avail of the right of asylum*’. However in spite of having submitted an asylum application, until the person is registered by the State Agency for Refugees (SAR), he/she is not regarded as an asylum seeker and therefore is not exempted from criminal punishment. In its annual report for 2012 BHC informs that only 9% of the newly arrived asylum seekers who were received by the Border Police were registered as asylum seekers

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² bTV, *Romeo and Juliet from the Middle East*, 01 June 2013, <http://btvnews.bg/bulgaria/romeo-i-zhulieta-ot-blizkiya-iztok.html> (accessed on 13 June 2013)

³ Bulgarian Helsinki Committee (BHC), *Human Rights in Bulgaria in 2012*, 26 March 2013, pages 44-45, available in Bulgarian language at http://www.bghelsinki.org/media/uploads/annual_reports/2012_bg.pdf (accessed on 13 June 2013)

upon asking for asylum, while the rest 91 % were first detained as irregular immigrants by the Migration Directorate at the Ministry of the Interior.⁴

The underlying cause for criminalization of refugees in Bulgaria is **arbitrary access to the asylum procedure**⁵. In order for an asylum seeker to be regarded as such and *not* as an illegal immigrant, his/her asylum application needs to be *registered* by the State Agency for Refugees (SAR). At the same time, Bulgarian law does not provide for a time limit, within which an asylum application that has been submitted is registered. As the majority of refugees enter the territory of the host country in an irregular manner, they have many difficulties in actually registering their claims. With regard to non-registration of a submitted asylum application, the Bulgarian *Law on Asylum and Refugees* does not envisage any remedies and the general law on administrative procedure does not offer *effective* remedies. Under the Code on Administrative Procedure there is a possibility to submit a complaint to the Court against the inaction of SAR to register an asylum seeker. The Court is asked to oblige SAR to register and process the asylum application. In practice this court case lasts a few months, after which there is a judgement, which in the majority of cases SAR appeals before the Supreme Court. In reality, it can take over half a year to register the asylum seeker. In the meantime, this person is treated as an irregular immigrant. Apart from being criminally sanctioned for illegal entry, asylum seekers also face the risk of return (*refoulement*) prior to their registration. The 2012 information note⁶ presenting the facts in a number of court cases of non-registration stated that “*in spite of the court judgments in their favour, 20 % of the asylum seekers in these cases were removed from Bulgaria as irregular immigrants before the State Agency for Refugees came to register them.*”

Publicly SAR names as a reason for the ‘late’ registration problem the insufficient capacity of the reception accommodation centres of SAR. The reception capacity of SAR is indeed low. It disposes of two reception centres and one transit centre with an overall capacity to host 805 asylum seekers altogether.⁷ However, even if the sole concern of SAR in delaying the asylum seeker’s registration is accommodation, the asylum procedure should be initiated in view of ceasing the actions to sanction asylum seekers for irregular entry. Currently however there is no rule of law in this regard.

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⁴ BHC (2013), cited above, page 44.

⁵ On the problem of access to the asylum procedure, see Information Note on the Arbitrariness regarding Access to the Asylum Procedure in Bulgaria, LCRI, January 2012, available at http://lcrien.files.wordpress.com/2012/01/information_note_access.pdf (accessed on 13 June 2013); ECRE interview with Valeria Ilareva, 17 February 2012, available at <http://www.ecre.org/media/news/latest-news/breaking.html#ecre-interview-with-valeria-ilareva-phd-practitioner-andacademic> (accessed on 13 June 2013); Ilareva, Valeria, Bulgaria’s Treatment of Asylum Seekers, *Forced Migration Review*, Issue 29 (2007), pp.60-61, available online at <http://www.fmreview.org/FMRpdfs/FMR29/60-61.pdf> (accessed on 13 June 2013)

⁶ Information Note on the Arbitrariness regarding Access to the Asylum Procedure in Bulgaria, cited above

⁷ There is one reception centre in Sofia with a capacity to host 425 persons; one reception centre at the village of Banya with the capacity to host 80 persons and one transit centre in Pastrogor with the capacity to host 300 persons.