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UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES
*Regional Office
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VERENIGDE NATIES

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VOOR DE VLUCHTELINGEN

*Regionale Vertegenwoordiging
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**Background Note on the
Protection of Asylum Seekers and Refugees
in Bulgaria**

Domestic refugee legislation and practice

1. The 1991 Bulgarian Constitution provides in Article 27 (2) that “the Republic of Bulgaria shall grant asylum to foreigners persecuted for their opinions or activity in the defence of internationally recognised rights and freedoms”; Article 98 (10) empowers the President to grant asylum and Article 27 (3) provides that the conditions and procedures for the granting of asylum shall be established by law. On 2 December 2002, a new Law on Asylum and Refugees (LAR) entered into force. Chapter 2, Articles 7-11 of the LAR, elaborate the different types of protection: refugee status, humanitarian status and temporary protection. As stipulated by Article 2(1) of the LAR the President shall grant asylum. The LAR also provides for grounds for refusal / cessation / withdrawal of protection, for suspension of the asylum procedure and for discontinuation of status [Chapter 3]; the rights and obligations of aliens who are seeking or who have been granted protection [Chapter 4]; the competent administrative body [Chapter 5]; the refugee status determination procedures [Chapter 6]; and the judicial control of pertinent decisions [Chapter 7].
2. The process of amending the 2002 LAR, aimed at further alignment of the national refugee legislation with the international standards and the emerging EU *acquis* has started in April 2004. UNHCR Representation in Bulgaria, in coordination and with clearance from UNHCR HQ, submitted its comments to the first Draft Amendments to the LAR presented by the SAR to the Parliament in April 2004. Currently, the first draft amendments of the LAR are pending the review in the second reading before the Legal Commission of the Parliament. UNHCR acknowledges that, compared to the 1999 Refugee Law, the 2002 Law on Asylum and Refugees represents significant progress in aligning Bulgarian law with international and European standards. The primary improvements include the establishment of the State Agency for Refugees as the single central refugee authority deciding on asylum applications on first instance and dealing with all refugee and asylum issues, as well as the introduction of the possibility of judicial review for decisions taken in the accelerated procedure. The LAR stipulates that “any alien may apply for protection in the Republic of Bulgaria in accordance with the provisions of this law” and foresees the possibility of applying for asylum before an official of the State Agency for Refugees, any other State authority or even at a diplomatic or consular authority of the Republic of Bulgaria.

3. UNHCR maintains¹ the following main comments / concerns regarding the 2002 LAR:
 - (a) Article 13 wrongly equates grounds for rejection of asylum applications as manifestly unfounded with circumstances in which refugee status might be canceled or withdrawn;
 - (b) Article 15, items 6 to 8 are not in line with the cessation clause of the 1951 Geneva Convention, by allowing for cessation of refugee status on the grounds of a mere wish to move to a third country or return (not re-establishment) to the country where persecution was feared;
 - (c) In Article 16, several of the numerous grounds for rejection of an asylum application, discontinuation of procedure or withdrawal of status are at odds with international refugee law as well as European standards and the provision does not adequately distinguish between rejection, discontinuation of a procedure or withdrawal of status.
4. UNHCR Representation in Bulgaria initiated a review of the 10 years of building the national system for refugee protection in the country, resulting in the joint publication with the State Agency for Refugees with the Council of Ministers, in consultation with the Delegation of the European Commission in Bulgaria, and the refugee-assisting NGO partners. The objective was to review and document the past ten years of progress (1993-2003) in building the national system for refugee protection since the ratification of the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol in 1993, and to look together ahead toward further harmonization with the international standards and the evolving EU asylum *acquis* in the “post-Amsterdam 2004-2006” phase of Bulgaria’s EU accession. The overall assessment of the refugee work in Bulgaria in past ten years leads to the conclusion that the national system for refugee protection, by and large, is functioning. In general the existing system provides that: 1) persons in need of international protection, in principle, have access to territory, 2) asylum seekers normally have access to efficient asylum procedures and are treated in accordance with international protection standards, 3) refugee rights are respected to a large extent and effective durable solutions for refugees are endeavored, 4) public opinion is mostly receptive to the needs of refugees and 5) effective partnerships are in place and functioning, with the active support and advocacy of the UNHCR Representation.

Safe countries of origin and third safe countries

5. Pursuant to Article 48 (3) of the LAR, the Council of Ministers approved on 11 April 2003 a list of ‘safe third countries’ and another list of ‘safe countries of origin’. Of 28 originally proposed countries for the list of ‘safe countries of origin’, 15 were finally included, namely the Republic of Albania, Bosnia and Herzegovina, the Republic of Macedonia, Serbia and Montenegro, Republic of Turkey, Ukraine, the Republic of Armenia, the People’s Republic of Bangladesh, Republic of Georgia, China; Algeria, Ghana, Ethiopia, Nigeria, and Tanzania. As for the list of ‘safe third countries’, the approved list was reduced from 72 proposed to 6 countries: Bosnia and Herzegovina, the Republic of Macedonia, Romania, Russian Federation, Serbia and Montenegro and Ukraine. On 14 April 2004 the Council of Ministers approved the same list of ‘safe third countries’ and list of ‘safe countries of origin’ as submitted by the SAR in 2003.
6. UNHCR continues to raise its concerns about the inclusion of particular countries on these lists and continues to ask the Government to review them in agreement with related international and European practice and standards, as well as to ensure the case by case approach in reviewing individual applications for protection.

¹ For a comprehensive analysis of the UNHCR position, see ‘UNHCR Comments on the 2002 Law on Asylum and Refugees’ available on the Internet http://www.unhcr.bg/bglaw/en/unhcr_comments_lar2002_en.pdf.

Statistics

7. From 1 January 1993 until 31 May 2004, a total of 13 232 persons applied for protection in the Republic of Bulgaria. Some 1 385 persons were recognized as refugees (330 children) and 3202 were given humanitarian status (738 children). According to the statistical report from the SAR (1993-2003), the refugee status procedure was suspended in 495 cases out of which 113 were asylum seeking children. In 5401 cases the procedure was discontinued (under Art. 15 and 16 LAR). Statistical reports indicate the trend of the increasing rate of granting humanitarian status and decreasing refugee status recognition rate.²

Appeal

8. The LAR provides for the possibility for asylum applicants and refugees to appeal all decisions and acts taken by the State Agency for Refugees. As per the law, asylum applicants or refugees lodging an appeal should have adequate time to prepare for her/his case, should be duly informed of the time-limits for lodging their appeal, with automatic suspensive effect, and are thus allowed to remain in the territory of Bulgaria until a final decision is reached. Under an accelerated procedure, an appeal should be lodged within seven days while in the regular procedure, there is a time limit of 14 days. UNHCR appreciates that the time-frame for the Supreme Administrative Court to issue a decision has considerably decreased over the last few years. Since the Supreme Administrative Court began to deal with asylum appeals in late 1996, it has received more than 3,500 appeal applications. It overturned 6.4% of the negative first instance administrative decisions. The Sofia City Court is competent judicial authority to review the appeals of the SAR decisions in the accelerated procedure, and has received some 750 cases since January 2003. It overturned about 6% of negative first instance administrative decisions.

Registration / reception

9. In line with the EU membership negotiations and the provisional closure of the Chapter 24 of the JHA on 29 October 2003, Bulgaria continued with implementing strict border control measures which may have contributed to decreasing number of applications³ for protection and increasing number of persons denied entry into territory.⁴
10. There are two registration / reception centers for asylum seekers in Bulgaria; one within the premises of the State Agency for Refugees in Sofia with the capacity to accommodate about 400 asylum seekers, and the second in the village of Banya near Nova Zagora, with the capacity for accommodating some 80 asylum seekers. Besides, two centers for temporary accommodation of asylum seekers, run by the National Service Border Police (NSBP), prior to their accommodation in the Banya and Sofia centers, are located at the Turkish/Bulgarian border check point Kapitan Andreevo and in Liubimetz. As asylum seekers can only register in the first two centres, they sometimes face difficulties in reaching these locations.

² For illustration, in 2001, 385 persons were recognized as refugees, while 1185 were granted humanitarian protection, in 2002: 75 persons were recognized as refugees, while 645 persons were granted humanitarian status and in 2003: 19 persons were recognized as refugees and 411 were granted humanitarian status. Source: State Agency for Refugees with the Council of Ministers, 25 May 2004. This trend continues in 2004: from 1 January 2004 until 31 May 2004, total of 10 persons were recognized as refugee while 123 were granted humanitarian status.

³ According to the Statistical report prepared by the UNHCR Representation in Bulgaria, the number of applications in 2002 was 2888, declined to 1549 in 2003 and the trend continued in 2004; for the period from 1 January to 31 May the number of registered applications is 429.

⁴ Statistical report of the MOI, NSBP (dated 23 January 2004): the number of third country nationals denied entry into Bulgaria was 6907 (mostly coming from Turkey (2375) and Tunisia (340)).

11. Once registered and admitted to the country and to the refugee status determination procedure, asylum-seekers are provided with identification documents (IDs). Recognised refugees and persons granted humanitarian statuses are also issued with an ID and travel documents. The State Agency for Refugees provides each asylum-seeker with support equivalent to the social welfare payments in Bulgaria, subject however to availability of funds. According to the LAR, asylum seekers may be accommodated either in the governmental reception centers or in private dwellings, if the government facilities are full, subject to an individual needs assessment (Article 29(2) of LAR). Furthermore, the Government of Bulgaria provides free primary education for children. Asylum-seekers are not allowed to work - with the exception of activities that are organised by the State Agency for Refugees.

Integration

12. UNHCR Representation in Bulgaria, in support the integration of recognized refugees, co-organized, with the State Agency for Refugees and relevant partners, a number of conferences, which contributed to the 2003 adoption by the Government of a concrete initial integration package as a matter of policy and relevant state funding that foresees refugees having a possibility to integrate into Bulgaria's social and economic fabric. UNHCR's priority continues to be focused on refugee integration, which remains a great challenge for the consolidation of the national system of protection as Bulgaria has only shifted slowly from a refugee-transit country to a a refugee-receiving country. Activities to support integration, including vocational training and language classes, take place in an Integration Centre at the State Agency for Refugees (established in 1997 with the support of UNHCR). Integration measures for recognized refugees may also be offered to asylum-seekers, subject to availability of spaces. Recognized refugees may have access to scholarships for higher education under the Bulgarian system or the UNHCR scholarship program (DAFI programme, managed by UNHCR and the Bulgarian Red Cross, with funding from Germany). Whereas the programs for the asylum-seekers are implemented through the Government with financial support of UNHCR, the program for recognised refugees is implemented directly by UNHCR and its implementing NGO-partners. Recognized refugees have the same rights as Bulgarian citizens with regard to employment, education, medical facilities and social assistance. During 2003, 17 recognized refugees acquired Bulgarian citizenship.

Freedom of movement

13. Border authorities have been keeping asylum-seekers in detention-like conditions, particularly at Sofia Airport's Transit Zone. The length of detention varies from a few days to a few weeks under difficult conditions, often lacking basic facilities and with limited outside contact. UNHCR and its implementing partners such as the Bulgarian Helsinki Committee, monitor closely this situation and have been granted regular access to asylum-seekers at the airport and detention centers in Sofia.
14. Persons with refugee and humanitarian status crossing the country's border without the permission of the competent authorities at non official crossing points or merely wishing to leave for another country may be penalized as per the LAR. In addition, in October 2002, the Government introduced stricter measures aiming at tightening the control over irregular migration from Bulgaria to other countries. According to the revised Law on Bulgarian Identity Documents, holders of Bulgarian IDs who are readmitted or expelled to Bulgaria because of a criminal offense or violation of visa regime abroad, may be deprived of their passport / travel document for up to two years. UNHCR obtained written confirmation from the Ministry of the Interior that these measures are directed at Bulgarian nationals only. However, as measures are directed at all holders of Bulgarian identity documents, they may, even inadvertently, affect refugees and persons granted humanitarian status.

15. Specific recommendations

- a. Further revise the LAR to ensure its full conformity with international and European standards;
- b. Revise the list of ‘safe countries of origin’ and the list of ‘safe third countries’ to ensure consistency international and European standards and practice and to ensure that the case by case approach in reviewing individual applications for protection is respected;
- c. Continue capacity-building activities with the authorities and the judiciary on international law, standards and best practices;
- d. Continue close monitoring of the state practice in order to ensure a balance between the migration control priorities and international refugee law standards and obligations;
- e. Monitor the practice of detention of asylum seekers with a view to ensuring improved living conditions in detention and to limiting the time frame for detention of asylum seekers.

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