DUBLIN II Regulation
National Report

European network for technical cooperation on the application of the Dublin II Regulation

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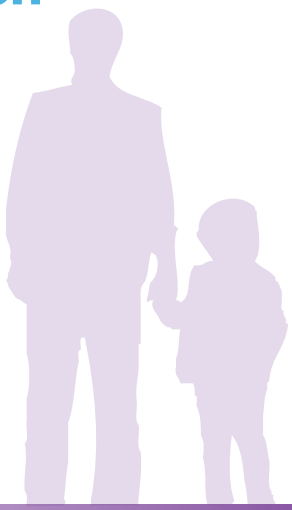

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May 2012.

Acronyms (Dublin II Regulation, ECtHR, ECRE etc)

CJEU: Court of Justice of the European Union.

Dublin II Regulation: Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

LAR: Law on Asylum and Refugees.

Qualification Directive – Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

RCD (Reception Conditions Directive): Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

Return Directive: Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

SAR: State Agency for Refugees.

Contents

1 Introduction

1.1 The Dublin II System: Perspectives and Challenges at the European Level

The Dublin Regulation,[1] as its predecessor the Dublin Convention, was designed to ensure that one Member State is responsible for examining the asylum application of an asylum seeker and to avoid multiple asylum claims and secondary movement. It is confined to fixing uniform grounds for the allocation of Member State responsibility on the basis of a hierarchy of criteria binding on all EU Member States as well as Iceland, Norway, Switzerland and Liechtenstein. On the ten year anniversary of its entry into force this research provides a comparative overview of national practice in selected Member States on the application of this Regulation.

Our research shows that the operation of the Dublin system continues to act to the detriment of refugees, causing families to be separated and leading to an increasing use of detention. The Dublin procedure leads to serious delays in the examination of asylum claims and by doing so, effectively places peoples' lives on hold. The hierarchy of criteria is not always respected whilst Art. 10 is the predominant criterion used in connection with Eurodac. State practice demonstrates that asylum seekers subject to this system may be deprived of their fundamental rights *inter alia* the right to be heard, the right to an effective legal remedy and the very right to asylum itself as access to an asylum procedure is not always guaranteed. Reception conditions and services may also be severely limited for asylum seekers within the Dublin system in a number of Member States. There is an increasing use of bilateral administrative arrangements under Art. 23 and most States resort

1 Council Regulation (EC) No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, L 50/1 25.2.2003.

to informal communication channels to resolve disputes in the allocation of responsibility. Evidentiary requirements are very strict in some Member States, which in turn creates difficulties for asylum seekers in substantiating family links or showing time spent outside the territories of the Dublin system. A number of Member States also apply an excessively broad interpretation of absconding thereby extending the time limits for Dublin transfers further increasing delays in the examination of asylum claims. Furthermore the problems inherent in the Dublin system are also exacerbated by varied levels of protection, respect for refugee rights, reception conditions and asylum procedures in Member States creating an 'asylum lottery'.

The national reports provide an insight into the application of this Regulation at the national level whilst the comparative report outlines the main trends and developments at the European level. This research comes at a time when the Grand Chambers of both the European Court of Human Rights and the Court of Justice of the European Union have questioned the compatibility of the Dublin system with asylum seekers fundamental rights. In addition the EU institutions have recently reached a compromise agreement upon a recast Dublin III Regulation that introduces significant reforms including the creation of a mechanism for early warning, preparedness and crisis management. Despite these significant advances, the findings of this research demonstrates the continuous need to carefully evaluate the foundational principles of the Dublin system and its impact both with respect to asylum seekers' fundamental rights and Member States. It is hoped that this research will aid the Commission's review of the Dublin system within the forthcoming launch of a 'fitness check' and for any future dialogue on the assignment of responsibility for the examination of asylum claims.[2]

2 European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on enhanced intra-EU solidarity in the field of asylum, An EU agenda for better responsibility-sharing and more mutual trust, COM 2011 (835), 2.11.2011 p.7.

1.2. Overview of the Dublin II Regulation in Bulgaria

The national report has been prepared within the framework of the project "European network for technical cooperation on the application of the Dublin II regulation". The national expert is a practising lawyer and an academic, which has been reflected in the methodology for drafting the report. The final document produced is the result of the first hand practical experience of the author, desk-based research and interviews with the relevant Dublin authorities[3].

The question whether Bulgaria is generally a transferring or receiving State in Europe does not have a straightforward answer. If we look at the statistics, in 2011 Bulgaria carried out 52 outgoing transfers undertaken in practice and received 46 incoming transfers. However, the number of outgoing requests by Bulgaria has been only 110, while the number of incoming requests to Bulgaria has been double – 219 incoming requests were received in 2011.

The national legal instrument in Bulgaria incorporating the Dublin Regulation is the Law on Asylum and Refugees (LAR, in Bulgarian: *Закон за убежището и бежанците*). The competent authority to issue the decision on the responsible Member State to examine the asylum application is the so-called 'decision-making organ' at the State Agency for Refugees (in Bulgarian: *Държавна агенция за бежанците*). In cases of incoming or outgoing transfers, the actual transfer process is assisted by the Ministry of the Interior (Directorate 'Migration' and Directorate 'Border Police') and the State Agency 'National Security'.

The decision on the responsible Member State to examine the asylum application can be appealed within a preclusive[4] seven-day period that starts to run from the day of serving the decision to the asylum seeker. The appeal is addressed to the Sofia City Administrative Court. Its judgment is final and cannot be an object of further appeal. The appeal has no suspensive effect on the execution of the transfer decision unless the court rules otherwise.

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3 The interviews were conducted in January 2012.

4 "Preclusive" seven-day period means that the appeal must be submitted within seven days from serving the decision. Otherwise it is inadmissible before the court.

In case of taking charge of an asylum seeker, he/she is admitted in the asylum procedure carried out by the State Agency for Refugees. The general procedural rules for examining the asylum application apply.

If the asylum procedure is still pending, the person shall receive a decision on the substance of his/her asylum application.

In case of taking back of an asylum seeker, if his/her application has already been decided on the substance by the State Agency for Refugees or the asylum seeker has been absent for over three months and ten days, the asylum procedure is discontinued. The foreign national will be treated as an irregular immigrant that should return to his/her country of origin. The asylum seeker has a right to reapply for asylum if there are new substantial circumstances related to his need for international protection. However the consecutive asylum application should be made as soon as possible.

Detention might be applied in the period before the registration of the person's asylum application and in the period following his/her registration during the Dublin procedure until the application is admitted for examination by Bulgaria. According to a recent monitoring report[5], the average length of detention at the time of the visits in 2011 was 64 days. However, that period might last much longer. Its timeframe is arbitrary as it depends on the registration of the asylum application (see below).

Detention has also been applied to registered asylum seekers for another reason. According to Article 47 (2) (1) of the Law on Asylum and Refugees (in Bulgarian: Закон за убежището и бежанците), the State Agency for Refugees disposes also of 'transit centres' for processing of asylum applications within the Dublin procedure for determining the Member State responsible to examine an asylum application and within the accelerated procedure for manifestly unfounded applications. The head of SAR has issued an order stating that until such a transit centre is inaugurated in Bulgaria, its role will be played by the immigration detention centres for foreign nationals. The first transit centre in Bulgaria was opened

5 Open Society Institute. Independent custody visiting in Special Centres for Temporary Accommodation of Foreigners Operated by the Ministry of Interior between January and June 2011, Sofia, February 2012.

on 03 May 2012 in the village of Patrogor near the Bulgarian-Turkish border. On 04 May 2012 it hosted its first twelve inhabitants who were transferred from the immigration detention centre in Lyubimets. The transit centre in Pastrogor has a capacity of 300 spaces, divided in rooms of six beds.

With regard to pronunciation by the Bulgarian authorities on the reception/living conditions in another Member State within the Dublin system context, currently there is a reference for a preliminary ruling to the CJEU (Case C-528/11) made by the Sofia City Administrative Court in the case of *Halaf v. the decision-making body at the State Agency for Refugees.* The case concerns an asylum seeker who following the Dublin Regulation rules should be transferred to Greece but the Court sought clarity from the Court of Justice on a number of legal issues in that regard.

In relation to administrative cooperation with other Dublin Units, there are Administrative Arrangements concluded by Bulgaria with Austria, Hungary and Romania under Article 23 of the Dublin Regulation. Further details on the agreements are provided in section 3.7. below.

The analysis of the statistics of the State Agency for Refugees in 2011 reveals that the majority of outgoing requests for taking charge have been under Articles 9, 10, 11 and 12 of the Dublin Regulation – 58 requests in total, out of which 40 transfers were realized.

The number of outgoing requests under Articles 6, 7, 8 and 14 of the Dublin Regulation in 2011 are 9, out of which 1 outgoing transfer was realized. In 2011 No outgoing transfer under Article 15 of the Dublin Regulation actually took place, although Bulgaria sent six outgoing requests under that provision.

The study of the Bulgarian case law on the Dublin Regulation reveals that the ground most often invoked for outgoing transfers has been Article 10 of the Dublin Regulation.

With regard to outgoing requests for taking back in 2011, Article 16.1.c of the Dublin Regulation has been the only ground invoked by the Bulgarian Dublin Unit. There have been 37 outgoing requests on this basis, out of which 11 transfers were realized.

Practical challenges in Bulgaria:

Access to the asylum procedure in Bulgaria in general can be arbitrary at times. In practice there is a gap of time between the submission and the registration of the asylum application. Even if the person has submitted the asylum application, he/she is not regarded as an asylum seeker until he/she is registered as such by the State Agency for Refugees. In case there is a removal order against the foreign national, it can be executed in the meantime.

Asylum seekers who have first been caught as having crossed the border irregularly are usually first placed in immigration detention pending a removal order as irregular immigrants. According to Article 20 (2) of Ordinance 1201 on immigration detention, the foreign national is released from detention once his/her asylum application has been admitted for examination by the State Agency for Refugees.

Since August 2011 Bulgaria ceased sending outgoing Dublin requests to Greece and respectively realizing Dublin transfers. Instead of that, it appears that Bulgaria returns asylum seekers who have come through Greece by not registering them as asylum seekers, but as irregular immigrants under the readmission agreement with Greece[6]. An indicator for that is the sharp increase in the number of persons removed under readmission arrangements in the statistics of the Migration Directorate at the Ministry of the Interior: from 79 in 2010 to 230 in 2011. The vast majority of these readmissions are under the agreement with Greece.

6 Agreement between the Republic of Bulgaria and the Republic of Greece on the Readmission of Illegally Staying Persons, signed in Athens on 15 December 1995. The text of the agreement is not public. Only the decision of the Council of Ministers to confirm the agreement is published, but not the agreement itself.

All asylum-seekers who are returned to Greece as irregular immigrants are first prosecuted for illegal border crossing. The Bulgarian Penal Code exempts only asylum seekers from criminal liability. In spite of having submitted an asylum application, until the person is registered by the Refugee Agency, he/she has not been regarded as an asylum seeker and therefore is not exempted from criminal punishment. The criminal offence is a conditional sentence, that is, it will be effectuated only upon repetition of the crime.

Regarding the practice whereby an applicant argues that the sovereignty clause should be applied for Bulgaria to examine the asylum claim, the case law of the Bulgarian court has been that it cannot oblige the administrative authority to apply Article 3(2) of the Dublin II Regulation. In this relation, one shall bear in mind a clarification regarding the competence of the Bulgarian court to overrule administrative decisions from the point of view of general administrative law. The national law differentiates between imperative provisions (with the verb 'shall') and non-imperative provisions (with the verb 'may). Article 3 (2) is a non-imperative provision (with 'may'). According to general administrative law, the court has the competence to review only the application of imperative provisions. The application of non-imperative provisions is left to the discretion of the administrative authority and is not subject to judicial review.

Recommendations with respect to these practical challenges are made at the end of the report.

2 The National Legal Framework and Procedures

**The national legal instrument in Bulgaria incorporating the Dublin Regulation is the Law on Asylum and Refugees (LAR, in Bulgarian: *Закон за убежището и бежанците*). More specifically, transposition of the Regulation is found in Chapter VI, Section I"a" of LAR, which title is '*Procedure for determining the Member State responsible for examining the asylum application. Transfer*'. The chapter contains ten framework provisions (articles) and makes reference to the directly applicable rules of the Dublin regulation. There is also a sub-law Ordinance adopted by the Council of Ministers on 28 December 2007 on the '*responsibility and coordination of the state bodies that realize actions on the implementation of Regulation 343/2003 of the Council of 18 February 2003, Regulation 1560/2003 of the Commission of 2 September 2003, Regulation 2725/2000 of the Council of 11 December 2000 and Regulation 407/2002 of the Council of 28 February 2002'.*

With regard to the asylum system in general, upon the examination of his/her individual application, an asylum seeker might be recognized (granted) the following forms of protection:

- **Refugee status** (*bejanski statut*): it is recognized to a person who has a well-founded fear of being persecuted in his/her country of origin because of his/her race, religion, nationality, political opinion or membership in a "particular social group" (that is, the 1951 Geneva Convention definition).

- Subsidiary protection **'humanitarian status'** (*humanitaren statut)*: it is recognized to a person who is at a real risk of suffering serious harm in his/her country of origin, because of:

- death penalty;

- torture, inhuman or degrading treatment or punishment;

- serious threat to a civilian's life because of indiscriminate violence in an armed conflict in accordance with the Qualification Directive

Furthermore, Article 9 (8) of the Law on Asylum and Refugees states that 'humanitarian status' might also be granted on ground of other 'humanitarian circumstances', as well as because of the reasons stated in the Conclusions of the Executive Committee of UNHCR.

- **Asylum** by the President of the Republic of Bulgaria – under the Constitution of the Republic of Bulgaria the President has discretionary powers to grant asylum to foreign nationals who have been persecuted for their opinion or for actions in defense of internationally recognized rights and freedoms, as well as if the state interest so requires or there are other exceptional circumstances. However, so far the President has not made use of these powers and has not granted asylum to anyone, although in the period 22/01/2002 – 15/01/2012 there have been 152 applications for asylum before the President by 156 foreign nationals.

The competent body to examine the asylum application is the head of the State Agency for Refugees. Asylum applications should be submitted without any delay as otherwise the applications might be rejected as manifestly unfounded.[7] Asylum applications can be submitted through any state organ (such as, e.g., the Border Police or the Migration Directorate in case of irregular entry), which is obliged to refer the application immediately to the State Agency for Refugees.

Asylum applications maybe submitted in a written or an oral form. Preferably it is recommended that such applications are submitted in a written form and the state body should provide an entry number from its registrar upon receipt, which will serve as a proof of submission. Asylum applications can be written in the language

7 An application is considered as manifestly unfounded not only on grounds of delay, but also on the grounds listed in Article 23(4)(a) and (c) to (o) of the EU Procedures Directive, which Article 13 of the Bulgarian LAR transposes into national law.

that the person speaks or writes. The State Agency for Refugees shall be able to translate it. It is recommendable however that the application makes a clear reference that its addressee is the State Agency for Refugees.

It is noteworthy that access to the asylum procedure in Bulgaria can sometimes be arbitrary. In practice there is a gap of time between the submission and the registration of the asylum application. Even if the person has submitted the asylum application, he/she is not regarded as an asylum seeker until he/she is registered as such by the State Agency for Refugees. In case there is a removal order against the foreign national, it can be executed in the meantime.[8]

Once an asylum application is registered, the State Agency for Refugees examines whether another country is responsible for the asylum application under Dublin. If Bulgaria is the State responsible to examine the asylum application, there are two types of asylum procedures that could apply:

- The first one is the so-called 'accelerated' procedure for manifestly unfounded applications[9]. In these cases, the examination of the asylum application is conducted and a decision is issued within three days from the day on which the decision that Bulgaria is competent to examine the asylum application enters into force.

- The second type of asylum procedure is the so-called 'regular' one. In these cases, the first instance decision on the asylum application is issued within three to nine months from the day on which the decision that Bulgaria is competent to examine the asylum application enters into force.

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8 On the problem of access to the asylum procedure, see Information Note on the Arbitrariness regarding Access to the Asylum Procedure in Bulgaria, LCRI, 3 January 2012, available at http://lcrien.wordpress.com/2012/01/03/information-note-on-the-arbitrariness-regarding-access-to-the-asylum-procedure-in-bulgaria/ (accessed on 16 April 2012); ECRE interview with Valeria Ilareva, 14 February 2012, available at http://www.ecre.org/media/news/latest-news/breaking.html#ecre-interview-with-valeria-ilareva-phd-practitioner-and-academic (accessed on 16 April 2012).

9 An application is considered as manifestly unfounded not only on grounds of delay, but also on the grounds listed in Article 23(4)(a) and (c) to (o) of the EU Procedures Directive, which Article 13 of the Bulgarian LAR transposes.

The official language of the asylum procedure is Bulgarian. However asylum seekers have a right to an interpreter provided free of charge by the State Agency for Refugees. This applies to the asylum interviews and to serving the decision on the asylum application. The right to information and the right to an interpreter are elaborated in section 3.5 below in the report.

The State Agency for Refugees does not provide legal aid and it is up to the applicant to find a lawyer. There are non-governmental organizations that provide free legal aid. Further information on access to legal aid is provided in section 3.5 below in the report.

During the asylum procedure (including for asylum applicants in the 'Dublin' procedure) asylum seekers have the following **rights**:

1. Right to remain on the territory of Bulgaria;

2. Right to accommodation and food.

Registered asylum seekers are usually accommodated in the open reception centres of the State Agency for Refugees. There is one reception centre in the capital Sofia and another one in the village of Banya near the city of Nova Zagora. If the asylum seeker wishes so, he/she is allowed to live at an address outside the reception centre, but in that case he/she has to cover the accommodation expenses himself/herself and he/she receives no social assistance.

Asylum seekers who have entered the country irregularly and those who have submitted a consecutive/subsequent asylum application might be placed in immigration detention until admitted into the 'regular' asylum procedure.

According to Article 47 (2) (1) of the Law on Asylum and Refugees (in Bulgarian: *Закон за убежището и бежанците*), the State Agency for Refugees disposes also of 'transit centres' for processing of asylum applications within the Dublin procedure for determining the Member State responsible to examine an asylum application and within the accelerated procedure for manifestly unfounded applications. The head of SAR has issued an order stating that until such a transit centre is inaugurated in Bulgaria, its role will be played by the immigration detention centres for foreign nationals. The first transit centre in Bulgaria was opened as late as on 03 May 2012 in the village of Patrogor near the Bulgarian-Turkish border.

On 04 May 2012 it hosted its first twelve inhabitants who were transferred from the immigration detention centre in Lyubimets. The transit centre in Pastrogor has a capacity of 300 spaces, divided in rooms of six beds.

3. Right to social assistance in conditions equal to those applied for Bulgarian citizens. The amount of social assistance per month is 65 BGN (approximately 33 Euro). At the same time, as stated at point 8 below, asylum seekers are not allowed to work during the first year.;

4. Right to health insurance and free medical assistance in conditions equal to those applied for Bulgarian citizens;

5. Right to psychological assistance;

6. Right to receive a registration card (that is, a temporary stay permit);

7. Right to an interpreter (including sign language);

8. Asylum seekers are allowed access to the labour market only after one year has elapsed from the moment of submitting the asylum application.

The 'Dublin' procedure is prescribed in Chapter VI, Section I"a", of the Law on Asylum and Refugees (LAR), which makes reference to the directly applicable rules of the Dublin regulation.

Article 67a (2) LAR provides that the procedure for determining the Member State responsible for examining the asylum application is initiated in either of the following three ways:

a) with the registration of a foreign national who has submitted an asylum application;

b) when the State Agency for Refugees has been signalled by the Ministry of the Interior and the State Agency for National Security about the presence of an illegally staying foreign national on the territory of the Republic of Bulgaria;

c) when Bulgaria receives a request for taking charge or for taking back of a foreign national.

If there is proof and/or circumstantial evidence that **another Member State shall take back or take charge of the asylum application**, Bulgaria makes a request to that country for transfer of the asylum seeker. Once the other Member States agrees to accept the asylum seeker, a decision is issued that states a refusal to initiate an asylum procedure in Bulgaria and allows transfer to the competent Member State. In that case, the asylum seeker in question is issued a *laissez-passer* and arrangements are made with regard to the time and place of arrival of the asylum seeker.

In cases where Bulgaria **takes charge** of an asylum seeker from another Member State, he is admitted in the asylum procedure carried out by the State Agency for Refugees. The general procedural rules for examining the asylum application apply. In case of **taking back** of an asylum seeker, if his/her application has already been decided on the substance by the State Agency for Refugees, the asylum procedure is discontinued.

In practical terms, when a transferred asylum seeker arrives back in Bulgaria, the State Agency for Refugees informs the Border Police of the date and place of arrival of the asylum seeker and provides a copy of his/her *laissez-passer*. If the foreign national had been imposed an entry ban for Bulgaria, the State Agency for Refugees informs the respective organ that it should repeal the entry ban in question. The Border Police receives the asylum seeker at his/her entry in Bulgaria. If his/her asylum application has not yet been decided on its substance by the State Agency for Refugees, the Border Police should hand over the person to the State Agency for Refugees and the person is usually accommodated at an open reception centre. If his/her asylum application has already been rejected on its substance by the State Agency for Refugees, the Border Police normally hands over the person to the Migration Directorate and he/she is detained pending removal.[10]

If the transferred foreign national to Bulgaria **has not yet applied for asylum in the country**, until registered as an asylum seeker he/she is treated as an irregular immigrant and is detained pending removal. From immigration detention the person has a right to submit an asylum application, which the migration authorities are

10 For information on access to subsequent asylum applicants in Bulgaria see above.

obliged to forward as quickly as possible to the State Agency for Refugees.

The competent authority to issue the decision on the responsible Member State to examine the asylum application is the so-called 'decision-making organ' at the State Agency for Refugees. In cases of incoming or outgoing transfers, the actual transfer process is assisted by the Ministry of the Interior (Directorate 'Migration' and Directorate 'Border Police') and the State Agency 'National Security'.

The decision on the responsible Member State to examine the asylum application can be appealed within a preclusive seven-day period that starts to run from the day of serving the decision to the asylum seeker. The appeal is addressed to the Sofia City Administrative Court and is submitted through the State Agency for Refugees. The Sofia City Administrative Court is a judicial body specialized in the appeal of administrative acts issued by state bodies. It is not specialized in asylum cases.

The appeal has no suspensive effect on the execution of the transfer decision unless the court rules otherwise. The court appoints a court hearing and should stipulate a judgment on the lawfulness of the transfer decision within one month from initiating the court case. This judgment is final and cannot be subject to a further appeal.

With regard to the 'Dublin Units' in Bulgaria, one is found at the State Agency for Refugees and the other one at the Migration Directorate at the Ministry of the Interior.

There is a special 'Dublin Unit' at the State Agency for Refugees that consists of two officials working in the capacity of a 'decision-making organ' and one person responsible for the technical matters (registration of the requests, preparing files, controlling the requests and applications...) concerning the application of the Regulation.

The 'Dublin Unit' at the Migration Directorate at the Ministry of the Interior is actually not specialized as a separate unit, but it encompasses officials working in the unit 'Counteraction to the Illegal Immigration'. It is responsible for the Eurodac database, the placement in detention of asylum-seekers and other migrants and cooperation with others Dublin Units.

There is no information available about Dublin Liaison officers employed in other Member States or about Dublin Liaison officers from other Member States in Bulgaria.

Regarding inter-governmental cooperation agreements, the following have been concluded by Bulgaria:

- With Romania – *Administrative Agreement between the Ministry of the Interior of the Republic of Bulgaria and the Ministry of Administration and the Interior of Romania regarding the practical ways for facilitated application of Council Regulation (EC) 343/2003*[11]. It is in force since 1 May 2011;

- With Hungary - *Administrative Agreement between the Government of the Republic of Bulgaria and the Government of the Republic of Hungary regarding the practical ways for facilitated application of Council Regulation (EC) 343/2003*[12]. It is in force since 26 March 2009;

- With Austria - *Administrative Agreement between the Federal Ministry of the Interior of the Republic of Austria and the Ministry of the Interior of the Republic of Bulgaria regarding the practical ways for facilitated application of Council Regulation (EC) 343/2003.*[13]

11 The text in Bulgarian language is found at the following internet link: http://www.citybuild.bg/act/administrativno-sporazumenie/2135726814 (accessed on 14 May 2012).

12 The text in Bulgarian language is found at the following internet link: http://dv.parliament.bg/DVWeb/showMaterialDV.jsp;jsessionid=FBCE5F966A5F0B865B146F0B0B20C481?idMat=19737 (accessed on 14 May 2012).

13 The text in Bulgarian language is found at the following internet link: https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2007_III_113/COO_2026_100_2_377067.pdf (accessed on 14 May 2012).

3 The application of the Dublin II Regulation in Bulgaria

3.1 The Application of Dublin II Regulation Criteria

In Bulgaria the only competent court to review decisions by the Dublin Unit at SAR is the Sofia City Administrative Court (in Bulgarian: *Административен съд – София град)*. Its practice has been homogeneous in rejecting all appeals of asylum seekers on Dublin decisions, taking the stance that the court is not competent to oblige SAR to apply the sovereignty clause.

The Court has the power to review the imperative material and procedural law aspects of the lawful application of the Dublin Regulation. The limited volume of case law so far reveals no practice of complaints on the incorrect use of criteria under the Dublin regulation.

The only case in which the court has applied a different approach has been the Halaf case, in which a request for a preliminary ruling was sent to the CJEU. Therefore the case is still pending examination at the national level until the CJEU has made a ruling in that case to aid interpretation by the national court.

The analysis of the statistics of the State Agency for Refugees in 2011 reveals that the majority of outgoing requests for taking charge have been under Articles 9, 10, 11 and 12 of the Dublin Regulation – 58 requests in total, out of which 40 transfers were realized.

The number of outgoing requests under Articles 6, 7, 8 and 14 of the Dublin Regulation in 2011 are 9, out of which 1 outgoing transfer was realized. No outgoing transfer under Article 15 of the Dublin Regulation took place.

The study of the Bulgarian case law on the Dublin Regulation reveals that the ground most often invoked by the national authorities for outgoing transfers has been Article 10 of the Dublin Regulation.

With regard to outgoing requests for taking back in 2011, Article 16.1.c of the Dublin Regulation has been the only ground invoked by the Bulgarian Dublin Unit. There have been 37 outgoing requests, out of which 11 transfers were realized.

Irregular Border Crossing has often been the criterion indicating responsibility under Article 10 of the Regulation in decisions for outgoing Dublin transfers to Greece, frequently in conjunction with evidence from the EURODAC system. With regard to the visa criterion and the residence permit criterion, no case law or administrative practice has been found in this regard in Bulgaria.

According to the statistics of the State Agency for Refugees, in 2011 Bulgaria sent 58 outgoing request on the grounds of 'entry and documents' (Article 9, 10, 11 and 12 of the Dublin Regulation) – 7 to Germany and 51 to Greece. The realized outgoing transfers on this ground are 40.

The number of incoming requests in 2011 on the same ground is 44 – 1 from Belgium, 4 from Germany, 3 from Italy, 3 from Cyprus, 1 from Luxembourg, 2 from the Netherlands, 3 from Austria, 9 from Romania, 1 from Finland, 6 from Sweden, 1 from the United Kingdom, 8 from Norway and 8 Switzerland. The number of realized incoming transfers from those countries on this ground are 8.

3.2 The Use of Discretionary Provisions

Article 15 humanitarian clause

According to the statistics provided by the Bulgarian State Agency for Refugees, in 2011 there have been no outgoing transfers for humanitarian reasons under Article 15 of the Dublin Regulation. Bulgaria had sent six requests in this regard (2 to Germany, 1 to Austria and 3 to Norway), but none of them has been accepted.

In 2011 Bulgaria has not received any incoming transfers for humanitarian reasons under Article 15 of the Dublin Regulation.

It had received six requests under the Humanitarian clause from Norway, but accepted neither of them.

Sovereignty clause

The asylum seeker and his/her legal representative can request the application of the sovereignty clause, but the decision whether to allow that request is within the discretion of the decision-making organ. The case law of the Bulgarian court in this regard has been that it cannot oblige the administrative authority to apply Article 3(2) of the Dublin II Regulation.

Please see the detailed clarification in this relation above.

3.3 The Practicalities of Dublin Procedures

Deadlines and Member State practice

This has been the practice of 'acceptance' of transfer requests by Greece. Until August 2011 Bulgaria sent outgoing transfer requests under the Dublin Regulation to Greece. They were usually 'accepted' by Greece not by an explicit reply, but by silent consent under the rules of the Regulation with regard to respect of deadlines. In the first half of 2011 Bulgaria sent 63 outgoing requests to Greece, out of which 44 were in practice carried out.

Circumstantial evidence

There is no regulation of this issue in the national law as LAR makes reference to the Dublin regulation and its implementing rules. Besides the data from the EURODAC system, other circumstantial evidence (often the account on the travel route of the applicant) could be invoked

for sending a request to another Member State for taking responsibility, although it might not be as convincing for accepting it.

E.g., in a recent decision of 02 April 2012 for transfer of the asylum seeker to Hungary, the decision-making organ at SAR had tracked the flights via which the applicant had reached Bulgaria using a false passport. As Hungary has been the first Dublin State via which the applicant travelled, it accepted to take charge of his asylum application.

Stay outside the EU

In the case law it is found as a ground for shift of responsibility from another Dublin State to Bulgaria in examining the asylum application. Thus in the case of Mr.G, an asylum seeker in Bulgaria, the fingerprints check in the EURODAC system revealed that he had applied for asylum in Cyprus in March 2007. That is why Bulgaria sent a request to Cyprus for taking back of Mr.G, but in January 2011 Cyprus replied that he had left Cyprus in February 2009 and returned to his country of origin. Therefore Cyprus rejected the request and the Bulgarian State Agency for Refugees accepted that Bulgaria is responsible to examine the asylum application.[14]

Eurodac

The Dublin procedure in Bulgaria always involves a check in the central EURODAC system as to whether the asylum seeker has been registered as an irregular migrant or as an asylum seeker in another Dublin State, as well as regarding eventual return/removal. The case law on the Dublin Regulation reveals that a EURODAC hit is usually present in the decisions for accepted outgoing transfers. In 2011 Bulgaria sent 32 outgoing requests on the basis of EURODAC. In 2010 their number was 45.

14 E.g., Judgment № 1995 of 09.02.2012 of the Supreme Administrative Court in case № 4832/2011.

Article 19 of the Dublin Ordinance[15] provides that the National Institute on Criminalistics and Criminology at the Ministry of the Interior is the body responsible for realizing those Eurodac checks and for informing the Migration Directorate and the State Agency for Refugees on the results. It also receives the fingerprints taken at the respective stations at the State Agency for Refugees, the Migration Directorate and the Border Police and submits them in the national and in the central database. It is also the body that deletes the stored fingerprints.

Article 3 (1) of the 'Administrative Agreement between the Ministry of the Interior of the Republic of Bulgaria and the Ministry of Administration and the Interior of Romania regarding the practical ways for facilitated application of Council Regulation (EC) 343/2003', in force since 1 May 2011, provides that the reply to a request for taking back based on a hit in the EURODAC system should be made as soon as possible and not later than 10 days.

Timeframes

The Bulgarian Law on Asylum and Refugees (LAR) refers to the Dublin regulation with regard to the deadlines to be respected within the procedure for determining the Member State responsible to examine the asylum application and the eventual transfer.

When the decision-making organ at the State Agency for Refugees (SAR) pronounces that another Member State is responsible to examine the asylum application, in the same decision it also states the deadline within which the transfer should be realized. It is calculated as six months from the date in which the respective Member State accepted the outgoing request. The decision also includes the disclaimer that the transfer should be realized within that period 'unless the conditions for prolonging it are present'.

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15 Ordinance adopted by the Council of Ministers on 28 December 2007 on the 'responsibility and coordination of the state bodies that realize actions on the implementation of Regulation 343/2003 of the Council of 18 February 2003, Regulation 1560/2003 of the Commission of 2 September 2003, Regulation 2725/2000 of the Council of 11 December 2000 and Regulation 407/2002 of the Council of 28 February 2002'.

According to Article 84 (1) LAR, the appeal against the decision of the decision-making organ of SAR has no suspensive effect unless the Court rules otherwise. That is, unless the Court allows the request of the asylum seeker to have the transfer suspended until the court case is pending, the transfer is executable in the meantime.

With regard to final access to the asylum procedure following the Dublin procedure, Article 68 (1) of LAR provides that the accelerated procedure under the law is initiated:

- Point 1: when the decision that Bulgaria is responsible to examine the asylum application enters into force;

- Point 2: if no decision has been taken within the deadlines set in Regulation (EC) 343/2003 of the Council and Regulation (EC) 1560/2003 of the Commission.

If the asylum application is considered manifestly unfounded, it will be rejected within three days from initiation of the accelerated procedure. If no decision is taken within three days from the initiation of the accelerated procedure, the asylum application will be examined in the regular asylum procedure.

3.4 Vulnerable Persons in the Asylum Procedure

According to Article 29 (4) LAR, upon registration the asylum seeker shall be accommodated in a transit centre, a reception centre or another type of accommodation provided by the State Agency for Refugees after assessing his/her health condition, family status and material status. Every applicant goes through medical screening and testing and is quarantined until the time of obtaining the findings thereof.

The health status of the applicant is explicitly stated as a ground for consideration when handing over an irregular migrant who has submitted an asylum application for registration to the State Agency for Refugees. This is stipulated in the Ordinance adopted by the Council of Ministers on 28 December 2007 on

the *'responsibility and coordination of the state bodies that realize actions on the implementation of Regulation 343/2003 of the Council of 18 February 2003, Regulation 1560/2003 of the Commission of 2 September 2003, Regulation 2725/2000 of the Council of 11 December 2000 and Regulation 407/2002 of the Council of 28 February 2002'*[16]. According to Article 10 (2) of the Ordinance, when an irregular migrant who is placed in detention pending removal submits an asylum application, the Migration Directorate at the Ministry of the Interior should *inter alia* provide the Refugee Agency with 'copies of documents certifying the health condition of the foreign national'. According to Article 16 (3) of the Ordinance, when the Border Police at the Ministry of the Interior has detained an irregular immigrant who submits an asylum application and hands him over to the State Agency for Refugees, that should be done along with all the documents necessary for determining the Member State responsible for examining the asylum application *and the documents certifying his/her health status*.

In case of an **outgoing** transfer, Article 7, paragraph 3, point 2 of the Ordinance states that when there is a decision by the decision-making organ of the State Agency for Refugees (SAR) that another Member State is responsible to examine the asylum application, SAR informs the Migration Directorate at the Ministry of the Interior about the need to accompany the foreign national, as well as *inter alia* about his health condition.

If the person to be transferred has been in immigration detention during the Dublin procedure, the legal regulation on immigration detention provides for an obligatory medical examination before the person is released from the detention centre.

The medical assessment is done by a doctor or a doctor's assistant from the Medical Institute at the Ministry of the Interior. The medical assessment takes place at the medical unit of the detention centre. According to a governmental respondent, if the medical examination reveals that the person is not fit to travel, the date of his/her transfer is postponed.

16 The Ordinance could be accessed on the following link (in Bulgarian language): http://lex.bg/laws/ldoc/2135576190 (visited on 12 November 2012).

Unaccompanied minors

Under Article 25 (1) of the Law on Asylum and Refugees, unaccompanied children are appointed a legal guardian in accordance with the general procedure prescribed in the Family Code or the Law on Child Protection. Under Article 25(5) of LAR, if no such guardian under the Family Code is appointed, the child should be represented in the asylum procedure by the Social Assistance Directorate at the Social Assistance Agency at the Ministry of Labour and Social Policy. However it is hard to find implementation of this theoretical mechanism in practice. Often no guardian is appointed at all. There is case law in which the Court repeals the decision of the State Agency for Refugees on the asylum application on the sole ground that the asylum procedure was carried out without following the provisions of Article 25 (1) and (5) LAR.[17]

The Family Code does not provide for a time length of the legal guardianship. Therefore it lasts until the child comes of age. Taking into consideration the fact that the position of the legal guardian is 'honorary', the lack of remuneration might be a discouraging factor for the level of engagement of the guardian.

The role of the legal guardian in the asylum procedure is in principle limited to presence during the asylum interviews and the serving of the asylum decision. According to Article 63a, Para.9 of the Law on Asylum and Refugees, during the interview the representative of the minor asylum seeker has a right to ask questions to the asylum seeker that have been admitted by the interviewer and to present arguments.

Generally speaking, the role of the legal guardian involves determination of the best interest of the child. However no explicit criteria or procedure in this regard exist.

Regarding tracing of family members, the only provision in this regard is Article 34 (9) LAR, which however concerns tracing of family members of persons who have already been granted

17 E.g., judgment of the Supreme Administrative Court in case No. 7749/2009 See Case summaries for more information.

refugee or subsidiary protection. With regard to asylum seekers in a Dublin procedure, the national law does not contain any specific norms. According to one of the governmental respondents, in practice family tracking is hard for the Refugee Agency as "they are not accustomed to this type of research and they don't have the necessary human resources". If an applicant informs that he/she has family members in another Member State, the Refugee Agency sends requests for information to the respective bodies and embassies of that State. According to the statistics of the State Agency for Refugees, in 2011 there has been one outgoing transfer on ground of 'family reasons'[18] to Germany, out of nine requests sent by the Bulgarian Refugee Agency to Germany (6), France (1), Italy (1) and Austria (1).

According to Article 61 (3) of the Law on Asylum and Refugees, the interviewer assigns an age assessment expertise when 'reasonable doubt arises that the foreigner is not a minor'. The method used for age assessment is a medical one, plus a social and psychological interview. In case of established fraud regarding the declared age of the applicant, the asylum application might be examined as manifestly unfounded in an accelerated procedure.

3.5 The Rights of Asylum Applicants in the Dublin Procedure

According to Article 58 (6) of the Law on Asylum and Refugees (LAR), within 15 days from the date of submission of the asylum application the applicant should be informed in a language that he/she understands about "*the order for submitting the application, the procedure that should be followed, his rights and obligations, as well as about organizations that provide legal and social aid to foreign nationals*". In practice, this provision is usually applied following the registration of the asylum seeker (as noted above, there is an arbitrary gap of time between the submission and the registration of the asylum application).

18 The reference 'family reasons' encompasses Article 6, 7, 8 and 14 of the Dublin Regulation.

The applicant is informed by way of asking him to sign a printed paper that states the above information in a language that he/she understands. A copy of this paper is given to him. The paper is also signed by an interpreter who is present, but in practice the interpreter usually only tells the applicant that this is an information brochure, that is, no verbatim word for word translation is made.

The printed information paper contains *general information* about the whole asylum process, including the Dublin procedure.

Currently the State Agency for Refugees has published specific information brochures on the Dublin procedure under a project funded by the European Refugee Fund.

Notification of the decision on the Dublin procedure is done by serving the decision in writing in Bulgarian language in the presence of an interpreter who also signs the decision. The decision also includes information on the fact that it can be appealed within seven days. Practice is different as many asylum seekers complain that the interpreter did not translate the whole of the decision, but only its result (i.e. whether the applicant is admitted in Bulgaria or is to be transferred to another Member State).

Eventual journey details are specified at consecutive meetings of the applicant with officials from the State Agency for Refugees. Usually there are interpreters in the office building that might help with the communication.

Family Unity

Following the initiation of the procedure for determining the Member State responsible for examining the asylum application (for reference, see above), Article 67b LAR provides that "*the necessary actions are taken for checking the evidence and the circumstance for determining the responsible Member State".* The provision provides that 'where necessary' also an interview is taken with the applicant.

According to §1 (3) of the Additional Provisions of LAR, '**family members**' shall mean:

a) the husband, the wife *or an individual with whom the applicant has an evidenced stable long-term relationship* and their minor unmarried children;

b) unmarried children who have come of age and are unable to provide for themselves due to grave health conditions;

a) the parents of either one of the spouses who are unable to take care of themselves due to old age or a serious health condition and there is a need that they share the household of their children.

It can be concluded that **partners from stable unmarried relationships** are considered as family members. However the law provides no definition of an 'evidenced stable long-term relationship' and it is up to the decision-making body in the individual case to assess that.

Access to the asylum procedure

In case of taking charge of an asylum seeker, he is admitted in the asylum procedure carried out by the State Agency for Refugees. The general procedural rules for examining the asylum application apply. If the asylum procedure is still pending, the person shall receive a decision on the substance of his/her asylum application.

In case of taking back of an asylum seeker, if his/her application has already been decided on the substance by the State Agency for Refugees or the asylum seeker has been absent for over three months and ten days, the asylum procedure is discontinued. The foreign national will be treated as an irregular immigrant that should return to his/her country of origin. The asylum seeker has a right to reapply for asylum if there are new substantial circumstances related to his need for international protection. However the consecutive asylum application should be made as soon as possible.

Access to the asylum procedure in Bulgaria in general might be arbitrary[19]. In practice there is a gap of time between the submission and the registration of the asylum application. Even if the person

19 For references, see the footnote above.

has submitted the asylum application, he/she is not regarded as an asylum seeker until he/she is registered as such by the State Agency for Refugees. In case there is a removal order against the foreign national, it can be executed in the meantime. This issue is of relevance if the transferred asylum seeker has not applied for asylum in Bulgaria before or wants to submit a consecutive asylum application.

Effective remedy

The decision on the responsible Member State to examine the asylum application can be appealed within a preclusive seven-day period that starts to run from the day of serving the decision to the asylum seeker. The decision provides information on the term for appeal and the competent body to examine the appeal. The appeal is addressed to the Sofia City Administrative Court and is submitted through the State Agency for Refugees.

According to Article 84 (1) LAR, the appeal has no suspensive effect on the execution of the transfer decision unless the court rules otherwise. That is, unless the Court allows the request of the asylum seeker to have the transfer suspended until the court case is pending, the transfer is executable in the meantime. The court does not have the power ex officio to grant suspensive effective of appeal. It must only consider this when requested by the asylum applicant concerned.

The court appoints a court hearing and should stipulate a judgment on the lawfulness of the transfer decision within one month from initiating the court case. This judgment is final and cannot be an object of further appeal.

If the court strikes down the administrative body decision, it cannot make a new decision, but only has the power to resubmit the case back again to the decision making organ at SAR for a new review. Regarding the sovereignty clause, the case law so far has been that the Court cannot order the decision making organ of SAR to use it. The national general administrative law differentiates between imperative provisions (with the verb 'shall') and non-imperative provisions (with the verb 'may). Article 3 (2) of the Dublin Regulation is a non-imperative provision (with 'may'). According to Bulgarian administrative law, the court has the competence to review only

the application of imperative provisions. The application of non-imperative provisions is left to the discretion of the administrative authority and is not subject to judicial review.

In these cases, however, one can argue that the case-law so far is understandable, but incorrect regarding the issue in question. This is because the exercise of the free discretion by the administrative authorities is done within the framework of other binding provisions that have primacy (for example, the framework of Article 3 ECHR). However, so far the Bulgarian court has not taken into account the fact that the authorities have failed to exercise their discretion within the human rights framework.

Access to free legal assistance is not guaranteed by law. At the administrative stage of examining the asylum application the State Agency for Refugees does not provide legal aid and it is up to the asylum seeker to find a lawyer during the Dublin procedure. There are non-governmental organizations that provide legal aid.[20]

Once the case reaches the court (that is, an appeal has been duly submitted on time), the asylum seeker might ask to be appointed a lawyer free of charge for the court hearing. The judge decides on that request taking into account the complexity of the case.

3.6 Reception Conditions & Detention

Reception conditions

The normative regulation of this issue is found in Article 29 (2) LAR.

In the first place, Art.29 (2) LAR states that the rights under the Reception Conditions Directive are also applicable to foreign nationals who find themselves in a procedure for determining the Member State responsible to examine their asylum application.

20 The major source of financing for these services in Bulgaria is the European Refugee Fund operated by the State Agency for Refugees (SAR) at national level.

In the second place, however, the provision further stipulates that foreign nationals, whose Dublin procedure has been initiated in Bulgaria following their *irregular* entry/stay once their asylum application has been forwarded by the Ministry of the Interior to the State Agency for Refugees, have only the following rights:

1. Right to remain on the territory of Bulgaria;

2. Right to receive a registration card (that is, a temporary stay permit);

3. Right to an interpreter (including sign language).

Therefore, persons who have first been caught as irregular migrants by the Ministry of the Interior are not recognized the right to accommodation and related rights under the RCD while they find themselves in a Dublin procedure. Usually these asylum seekers find themselves in immigration detention pending a removal order as irregular immigrants. According to Article 20 (2) of Ordinance 1201 on immigration detention[21], the foreign national is released from detention once his/her asylum application has been admitted for examination by the State Agency for Refugees.

According to Article 47 (2) (1) of the Law on Asylum and Refugees (in Bulgarian: *Закон за убежището и бежанците*), the State Agency for Refugees disposes also of 'transit centres' for processing of asylum applications within the Dublin procedure for determining the Member State responsible to examine an asylum application and within the accelerated procedure for manifestly unfounded applications. The head of SAR has issued an order stating that until such a transit centre is inaugurated in Bulgaria, its role will be played by the immigration detention centres for foreign nationals. The first transit centre in Bulgaria was opened as late as on 03 May 2012 in the village of Patrogor near the Bulgarian-Turkish border. On 04 May 2012 it hosted its first twelve inhabitants who were transferred from the immigration detention centre in Lyubimets.

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21 The Ordinance is issued by the Ministry of the Interior and its official name is 'Ordinance No I-1201 of 1 June 2010 on the order for temporary accommodation of foreign nationals, on the organization and activities of the special homes for temporary accommodation of foreigners' (in Bulgarian: *НАРЕДБА № Із-1201 ОТ 1 ЮНИ 2010 Г. ЗА РЕДА ЗА ВРЕМЕННО НАСТАНЯВАНЕ НА ЧУЖДЕНЦИ, ЗА ОРГАНИЗАЦИЯТА И ДЕЙНОСТТА НА СПЕЦИАЛНИТЕ ДОМОВЕ ЗА ВРЕМЕННО НАСТАНЯВАНЕ НА ЧУЖДЕНЦИ*). Please note that Bulgarian law names immigration detention as 'coercive accommodation'.

The transit centre in Pastrogor has a capacity of 300 spaces, divided in rooms of six beds.

Reception conditions in the responsible Member State 22; reception conditions for asylum seekers returned under Dublin

With regard to pronunciation by the Bulgarian authorities on the reception/living conditions in another Member State within the Dublin system context, attention is to be drawn to the reference for a preliminary ruling to the CJEU made by the Sofia City Administrative Court in the case of *Halaf v. the decision-making body at the State Agency for Refugees.* The case concerns an asylum seeker who following the Dublin Regulation rules shall be transferred to Greece. In the initiated case C-528/11 the national court asked:

- Should Article 3 (2) of the Dublin Regulation be interpreted as allowing a Member State to assume responsibility of an asylum application, even though regarding the applicant in the concrete case there are no circumstances of personal character under Article 15 of the Dublin Regulation, when the responsible Member State under Article 3 (1) of the Dublin Regulation has not communicated its decision under Article 20 (1) of the Dublin Regulation and the Regulation does not contain provisions regarding the principle of solidarity under Article 80 TFEU;

- What is the content of the right to asylum under Article 18 of the EU Charter on Fundamental Rights in relation to Article 53 of the Charter and the definition under Article 2 c and recital 12 of the Dublin regulation;

- Should Article 3 (2) of the Dublin Regulation, in relation to Article 78 (1) TFEU requiring Member States to fulfil their international

22 In this section we are seeking information on whether your government administration, courts or other relevant authorities have pronounced on the reception/living conditions in another Member State within the Dublin system context. We are also seeking information on the reception conditions applicable to those returned to the responsible Member State in a Dublin procedure and what, if any, impact that has on their access to reception conditions.

obligations in the field of asylum, be interpreted as obliging Member States to ask for the opinion of UNHCR in the procedure provided that in the general position documents of UNHCR there are conclusions that the responsible Member State in the case does not fulfil its international obligations in the field of asylum.

Provided that the question is answered in the positive, the national court asks for a reply to the following additional question:

If the opinion of UNHCR has not been taken into account, should that be regarded as a substantial procedural infringement in accordance with Article 41 and 47 of the EU Charter on Fundamental Rights and in relation by analogy with the right of UNHCR under Article 21 of Directive 2005/85/EC.

Otherwise the administrative body in Bulgaria has not made an assessment of the reception/living conditions in another Member State that is found to be responsible to examine the asylum application.

The case law of the Bulgarian court in this regard has been that it cannot oblige the administrative authority to apply Article 3(2) of the Dublin II Regulation. In this relation, one shall bear in mind a clarification regarding the competence of the Bulgarian court to overrule administrative decisions from the point of view of general administrative law. The national law differentiates between imperative provisions (with the verb 'shall') and non-imperative provisions (with the verb 'may). Article 3 (2) is a non-imperative provision (with 'may'). According to general administrative law, the court has the competence to review only the application of imperative provisions. The application of non-imperative provisions is left to the discretion of the administrative authority and is not subject to judicial review.

In these cases, however, one can argue that the conclusion of the court is understandable, but incorrect. This is because the exercise of the free discretion by the administrative authorities has to be done within the framework of other binding provisions that have primacy (for example, the framework of Article 3 ECHR). However, so far the Bulgarian court has not taken that into account. It remains to be seen what the CJEU will say in this ruling.

With regard to receptions conditions for asylum seekers returned under Dublin to Bulgaria, from the wording of Article 29 (2) LAR which clarifies which rights apply to respective categories of persons in a Dublin procedure, it is clear that no rights are explicitly recognized to Dublin returnees until they are admitted in the next phase of the asylum procedure (and issued the corresponding registration card), neither following a procedure for taking back, nor following a procedure for taking charge. In case the asylum procedure has not been discontinued or completed by rejecting the asylum application, the asylum seeker shall be admitted wither in the accelerated or in the general asylum procedure where they are recognized the rights under the RCD.

Notion of absconding

A legal definition of 'risk of absconding' is provided in §1, point 4b of the Law on Foreign Nationals in the Republic of Bulgaria (LFRB). It states that with regard to a foreign national with issued removal or expulsion order there is a risk of absconding when *'with regard to the factual circumstances it is reasonable to expect that the person might try to avoid the implementation of the imposed measure'.* This 'open' definition of the notion of absconding leaves room for an individual approach in each case.

The notion of absconding is **not** present in the LAR in relation with, e.g., the extension of the transfer deadline in case the asylum seeker absconds.

An assessment of the risk of absconding is made in deciding on the immigration detention of an asylum seeker who has entered the country irregularly. Detention might be applied in the period before the registration of his/her asylum application and in the period following its registration during the Dublin procedure until the application is admitted for examination by Bulgaria.

Detention

As pointed out above, asylum seekers who have first been caught as having crossed the border irregularly are usually first placed in immigration detention pending a removal order as irregular immigrants. According to Article 20 (2) of Ordinance 1201 on immigration detention, the foreign national is released from detention once his/her asylum application has been admitted for examination by the State Agency for Refugees.

An explicit provision in the so-called 'Dublin regulation Ordinance'[23] which used to state that, upon irregular entry, asylum seekers are handed over to the Migration Directorate by the Border Police for 'coercive accommodation', was repealed in November 2011. The state authorities interpret this amendment as guaranteeing that asylum seekers who claim asylum before the Border Police will be taken directly by the Refugee Agency. However the ordinance does not stipulate a term within which the asylum seeker is received and registered by the Refugee Agency. In view of the problem of arbitrary access to the asylum procedure in Bulgaria, this amendment is not sufficient to prevent detention and refoulement of asylum seekers.

In a report of the Committee for Prevention of Torture at the Council of Europe, published on 15 March 2012[24], the CPT describes the material conditions of detention at the Bousmantsi centre:

"*The Home[25] was operating well below its official capacity and no overcrowding was observed; however, the dormitories continued to be crammed with bunk beds, most of them unused and broken, and would become overcrowded if the establishment were to be used to its full*

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23 Ordinance adopted by the Council of Ministers on 28 December 2007 on the 'responsibility and coordination of the state bodies that realize actions on the implementation of Regulation 343/2003 of the Council of 18 February 2003, Regulation 1560/2003 of the Commission of 2 September 2003, Regulation 2725/2000 of the Council of 11 December 2000 and Regulation 407/2002 of the Council of 28 February 2002'.

24 Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 29 October 2010, Strasbourg, 15 March 2012, available at http://www.cpt.coe.int/documents/bgr/2012-09-inf-eng.htm#_Toc317604022 (accessed on 02 April 2012).

25 'Home' is the term used in the Law on Foreign Nationals in the Republic of Bulgaria when referring to an immigration detention centre. In the same way, the law uses the term 'accommodation' instead of 'detention' within the meaning of Directive 2008/115/EC.

capacity[For example, a room measuring 56 m² contained 36 sleeping places.]. Further, some foreign nationals complained about the absence of solid doors to the dormitories, which entailed a lack of privacy, especially in the case of women and married couples who were accommodated together in the women's section.

There was clearly a need of funding for running repairs as well as for providing detained foreign nationals who are destitute with clothing and shoes appropriate for the season and with an adequate range of sanitary items (including for women's monthly needs).

There was no integral sanitation in the dormitories and some detained persons complained that access to the toilet was problematic when the dormitories were locked at night, since it was not easy to summon staff.

On a positive note, access to the showers was unlimited and there was no shortage of hot water. However, the communal toilet and washing areas were rather dilapidated and dirty. Further, there was no laundry and no facilities for drying clothes and bed linen.

Food (the budget for which was said to be 4.93 BGL per person per day) was served three times a day in a spacious dining room, and foreign nationals were allowed to make additional purchases. However, a number of them complained about insufficient quantity and inadequate quality of the food provided at the Home."

On 14 March 2012 the State Agency for Refugees published on its web site the news that from May 2012 onwards there will be repairs at three floors in the building of the reception centre for asylum seekers in Sofia. Because of that, *"for the period of the repairs released from the centre for temporary coercive accommodation of foreigners for accommodation at the reception centre will be only the pressing cases and persons from vulnerable groups. In this relation the State Agency for Refugees will undertake active registration and carrying out of accelerated procedure[26] in situ of foreigners asking for protection'.*[27] Thus the repairs at the reception centre will be used for reinforcing detention of asylum seekers and for encouraging the examination of asylum applications as manifestly unfounded under the accelerated procedure.

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26 The accelerated procedure applied to manifestly unfounded applications and involves less guarantees and remedies.

27 The news is published at http://www.aref.government.bg/?cat=13&newsid=542 (accessed on 19 April 2012). The citation is an informal translation from Bulgarian into English.

Bulgaria has transposed the maximum time limit of detention of 18 months under the EU Return Directive. There is no right to automatic judicial review of the detention order once it is imposed. The right to submit an appeal is precluded within seven days from the day of factual detention and because of the short time frame it is difficult for the foreign nationals to exercise it in practice. The Migration Directorate does not dispose of staff interpreters to communicate with the detainees and to translate the text of the detention order. In cases where appeal was submitted, it has no suspensive effect and during the months of judicial proceedings the person awaits in detention. Article 46a (2) LFRB states that the first instance court pronounces on the appeal within one month from submission. However this provision is not respected in practice and the immigration detention cases are not prioritized within the general workload of the administrative court. Usually it takes three to four months to be decided. The decision of the first instance court can be appealed before the Supreme Court. Article 46a (2) states that the Supreme Court pronounces within two months from the initiation of the case before it, but in practice the procedure takes more time.

There is automatic judicial review *following six months of immigration detention* (not with regard to the initial detention order). The head of the detention centre submits the file of the detainee in the court for pronunciation as to whether detention is extended with six more months or it should be discontinued or substituted by daily reporting. Article 46a (4) LFRB provides that the court takes the decision in a closed session, without the participation of the detainee. However over the last year the courts invoke directly EU law (e.g. the EU Return Directive) and schedule a court hearing at which the detainee has the possibility to be heard and to provide his/her evidence.

There are two immigration detention centres in Bulgaria. One is the Bousmantsi detention centre near the capital Sofia which was opened in 2006. The other one is the Lyubimets detention centre at the Bulgarian-Turkish border, it was opened in March 2011. The formal name of the detention centre under Bulgarian law is 'Special Home for Temporary Accommodation of Foreigners'.

There has also been another reason for detention of *registered* asylum seekers. According to Article 47 (2) (1) of the Law on Asylum and Refugees (in Bulgarian: Закон за убежището и бежанците),

the State Agency for Refugees disposes also of 'transit centres' for processing of asylum applications within the Dublin procedure for determining the Member State responsible to examine an asylum application and within the accelerated procedure for manifestly unfounded applications. The head of SAR has issued an order stating that until such a transit centre is inaugurated in Bulgaria, its role will be played by the immigration detention centres for foreign nationals. The first transit centre in Bulgaria was opened as late as on 03 May 2012 in the village of Patrogor near the Bulgarian-Turkish border. On 04 May 2012 it hosted its first twelve inhabitants who were transferred from the immigration detention centre in Lyubimets. The transit centre in Pastrogor has a capacity of 300 spaces, divided in rooms of six beds.

3.7 Member State Co-operation

Exchange of information

According to the statistics of the State Agency for Refugees, in 2011 the Bulgarian Dublin Unit sent 23 information requests under Article 21 of the Dublin Regulation, out of which all 23 requests were answered within the deadline under Article 21, paragraph 5 of the Dublin Regulation.
There are Administrative Arrangements concluded by Bulgaria with Austria, Hungary and Romania under Article 23 of the Dublin Regulation (see Section 3.7. below).

Neither LAR, nor the Dublin Ordinance, explicitly regulates the issue of exchange of information with other Member States and administrative cooperation in general. The national law refers to the EC regulations.

Administrative practice in cases of outgoing transfers to Greece has often been that the acceptance by the Greek Dublin Unit has been presumed under Article 18, paragraph 7 of the Dublin Regulation. However since August 2011 Bulgaria has stopped sending Dublin requests to Greece.

Co-operation with other Dublin states

There are Administrative Arrangements concluded by Bulgaria with Austria, Hungary and Romania under Article 23 of the Dublin Regulation (see Section 3.7. below).
The Bulgarian Dublin Unit often avails of the possibility under Article 5 (2) of Commission Regulation (EC) No 1560/2003 to ask for re-examination of its request following a negative reply. Many of the decisions for transfer to another Member State reveal that the acceptance of the asylum seeker by the other Dublin State has taken place following a request for re-examination by Bulgaria.

Neither LAR, nor the Dublin Ordinance, explicitly regulates the issue of administrative cooperation with other Dublin States. The national law refers to the EC regulations.

Conciliation mechanisms

The issue is not regulated in law and no administrative practice in this regard has become known to the reporter

Administrative arrangements under Article 23

The following Administrative Arrangements under Article 23 have been concluded by Bulgaria:

- With Romania – *Administrative Agreement between the Ministry of the Interior of the Republic of Bulgaria and the Ministry of Administration and the Interior of Romania regarding the practical ways for facilitated application of Council Regulation (EC) 343/2003*[28]. It is in force since 1 May 2011;
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28 The text in Bulgarian language is found at the following internet link: http://www.citybuild.bg/act/administrativno-sporazumenie/2135726814 (accessed on 14 May 2012).

- With Hungary - *Administrative Agreement between the Government of the Republic of Bulgaria and the Government of the Republic of Hungary regarding the practical ways for facilitated application of Council Regulation (EC) 343/2003*[29]. It is in force since 26 March 2009;

- With Austria - *Administrative Agreement between the Federal Ministry of the Interior of the Republic of Austria and the Ministry of the Interior of the Republic of Bulgaria regarding the practical ways for facilitated application of Council Regulation (EC) 343/2003.*[30]

The content of these agreements relates to:

- The competent authorities in each contracting Party;

- The timeframes within which a reply should be given to requests for taking charge or for taking back (not later than 30 days or one month). Shorter deadlines apply when the requests are based on the Eurodac system (not later than 10 days);

- The possibility for 'urgent requests': while the agreements with Austria and Hungary envisage a seven days deadline for reply, the agreement with Romania envisages a five days deadline. The agreements specify the competent contact persons responsible for the replies;

- The documentary evidence required to process the requests for taking back or taking charge. The agreement with Romania requires the Parties to present a written declaration by the asylum seeker describing the route of travel through Member States;

- Practical arrangements regarding the actual realization of transfers;

- The competent authorities use the Dublinet system for their communication and the working language is English.

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29 The text in Bulgarian language is found at the following internet link: http://dv.parliament.bg/DVWeb/showMaterialDV.jsp;jsessionid=FBCE5F966A5F0B865B146F0B0B20C481?idMat=19737 (accessed on 14 May 2012).

30 The text in Bulgarian language is found at the following internet link: https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2007_III_113/COO_2026_100_2_377067.pdf (accessed on 14 May 2012).

3.8 The Impact of European Jurisprudence at national level

The policy of Bulgaria towards suspension of transfers to Greece following the judgment of the European Court of Human Rights in the case of *MSS v Belgium and Greece* could be differentiated in two phases.

The first phase could be outlined from 21 January 2011 until August 2011 during which period the Bulgarian State Agency for Refugees and the Bulgarian court did not take note of the ECtHR judgment and continued carrying out the Dublin transfers to Greece. Within that period Bulgaria sent 63 outgoing Dublin requests to Greece and carried out 44 Dublin transfers in practice.

At the same time, the State Agency for Refugees had started to refrain from registering or giving access to the asylum system to asylum seekers who have entered Bulgaria irregularly through Greece. The following case is indicative of that:

The registration of an asylum claim from a family of Iraqi nationals, a single mother and her two children, who had entered Bulgaria through Greece, took place only after on 10 May 2011 the European Court of Human Rights[31] indicated as an Interim Measure to the Bulgarian Government to stop the family's removal that was initiated by transporting them from the Sofia immigration detention centre to the border. The explanation provided by the Bulgarian asylum authority for their inaction to register the asylum seekers was that they did not want to interfere in the powers of the Border Police to return irregular immigrants under the readmission agreement between Bulgaria and Greece[32]. The State Agency for Refugees (SAR) stated that their intention had been to "process the case as one under the Schengen agreement", the latter's entry into force for Bulgaria being imminent.

On 15 December 2010 the applicants had been found hidden in a truck which had entered Bulgaria from Greece. The applicants had boarded the truck at an unspecified location outside Greece. On 16 December 2010 the border police issued orders for the applicants'

31 Case of Kerim and Others v. Bulgaria, Application no. 28787/11.

32 Agreement between the Republic of Bulgaria and the Republic of Greece on the Readmission of Illegally Staying Persons, signed in Athens on 15 December 1995.

deportation as irregular immigrants and they were placed in immigration detention in Sofia.

The husband and father of the two children had been killed in Iraq and the other son of the family had been kidnapped there. The mother had also been the victim of violence, traces of which were still visible on her body. She was in a very vulnerable physical and psychological state.

From the materials of the applicants' cases before the Sofia City Administrative Court, it is evident that the family's asylum applications reached SAR on 22 December 2010. The asylum authority did not register the applications for protection and did not process them, in spite of the fact that the applicants made repetitive fresh requests on 4, 14 and 25 January 2011 with the help of their lawyer. On 13 January 2011 the mother, Mrs.K., was hospitalised in Sofia, as she had suffered a partial paralysis due to high blood pressure.

On 9 February 2011 each of the applicants, represented by a lawyer, instituted proceedings before the Sofia City Administrative Court, asking the Court to compel SAR to register and process their asylum applications.

By judgments of 1 April 2011 (concerning the 12-year old daughter in the family) and 21 April 2011 (concerning the mother) the Sofia City Administrative Court sentenced the head of SAR to register the applications for asylum. These judgments did not enter into force immediately, as the SAR appealed to the Supreme Administrative Court. By judgments of 7 October 2011 (concerning the 12-year old daughter in the family) and 16 November 2011 (concerning the mother) the Supreme Administrative Court confirmed the judgments of the Sofia City Administrative Court. As regards the third applicant (the son), on 28 February 2011 the Sofia Administrative Court dismissed the claim as time-barred. On appeal, on 26 April 2011 this decision was quashed by the Supreme Administrative Court and the case remitted for examination.

Following the intervention by the European Court of Human Rights, the deportation of the asylum seekers was stopped and on 18 May 2011 they were registered by SAR. Upon examination of their asylum applications on merits, they were granted subsidiary protection. Following that, by decision of 27 March 2012 the European Court

of Human Rights struck the application in the case of Kerim and Others v. Bulgaria out of its list of cases "in so far as it related to the complaint that the applicants' removal to Greece, if realised, would be in breach of Article 3 of the Convention' and declared the remainder of the application inadmissible[33].

The second phase in the Bulgarian policy towards suspension of transfers to Greece is differentiated in the period after August 2011. Since August 2011 Bulgaria ceased sending outgoing Dublin requests to Greece and respectively realizing Dublin transfers. Instead of that, Bulgaria returns asylum seekers who have come through Greece by not registering them as asylum seekers, but as irregular immigrants under the readmission agreement with Greece. An indicator for that is the sharp increase in the number of persons removed under readmission arrangements in the statistics of the Migration Directorate at the Ministry of the Interior: from 79 in 2010 to 230 in 2011. The vast majority of these readmissions are under the agreement with Greece.

All asylum-seekers who are returned to Greece as irregular immigrants are first prosecuted for illegal border crossing. The Bulgarian Penal Code exempts only asylum seekers from criminal liability. In spite of having submitted an asylum application, until the person is registered by the Refugee Agency, he/she has not been regarded as an asylum seeker and therefore is not exempted from criminal punishment. While the criminal proceedings in Bulgaria are pending, returnees to Greece are detained at the Bousmantsi detention centre for some months, from where those of them who are asylum seekers submit their asylum applications. However the examination of the asylum application is conditional on its registration by SAR, which, as stated on several occasions in this report, does not register asylum applications in accordance with the rule of law.

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33 The applicants claimed that Article 3 had already been violated by the Bulgarian authorities in that they detained them, made them live in constant fear of removal to Greece and brought them on 10 May 2011 to a town close to the Greek border before suspending their removal at the last minute. The applicants further alleged violations of Article 5 (1) in that their detention was arbitrary and did not serve a lawful purpose and of Article 5 (4) in that Bulgarian law provides only for a three-day time limit for the lodging of an appeal against detention in cases such as the applicants'.

Conclusion and recommendations 4

Two major problematic areas can be identified from the report:

1) Arbitrary access to the asylum procedure in general (described above[34])

Publicly the Bulgarian State Agency for Refugees usually names as a reason for the 'late' registration problem the insufficient capacity of the reception accommodation centres of SAR. However it is noteworthy that in 44 % of the cases on access that reached the court in 2011 the asylum seekers genuinely declared and upon their registration chose to live at addresses outside the reception facilities of SAR. Furthermore, even if the sole concern of SAR in delaying the asylum seeker's registration is the accommodation, the asylum procedure should be initiated in view of ceasing the actions to execute the applicants' removal from the territory of Bulgaria.

The national expert in this report believes that the main reason for the arbitrary and delayed registration of asylum seekers in Bulgaria is the change made to the Bulgarian Law on Asylum and Refugees in 2007[35] that repealed the provision of Article 58, Paragraph 2 which stated that the asylum procedure is initiated with submission of the application. **Therefore the first step towards solving the problem should be a change in the law to insert back the repealed provision of Article 58 (2) LAR**.

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34 On the problem of access to the asylum procedure, see Information Note on the Arbitrariness regarding Access to the Asylum Procedure in Bulgaria, LCRI, 3 January 2012, available at http://lcrien.wordpress.com/2012/01/03/information-note-on-the-arbitrariness-regarding-access-to-the-asylum-procedure-in-bulgaria/ (accessed on 16 April 2012); ECRE interview with Valeria Ilareva, 14 February 2012, available at http://www.ecre.org/media/news/latest-news/breaking.html#ecre-interview-with-valeria-ilareva-phd-practitioner-and-academic (accessed on 16 April 2012).

35 State Gazette No.52 of 2007.

2) The reluctance of the court to oblige SAR to apply the sovereignty clause

Regarding effective remedies and the competence of the court to review the Dublin decisions of the decision-making organ of SAR, the case law in Bulgaria so far has been that the Court cannot order the decision making organ of SAR to use the sovereignty clause. The national general administrative law differentiates between imperative provisions (with the verb 'shall') and non-imperative provisions (with the verb 'may). Article 3 (2) of the Dublin Regulation is a non-imperative provision (with 'may'). The court so far has reiterated that according to Bulgarian administrative law it has the competence to review only the application of imperative provisions. The application of non-imperative provisions is left to the discretion of the administrative authority and is not subject to judicial review.

In these cases, however, we should recommend the following interpretation of the national law in relation to the obligations of the State under International and European law: **The exercise of the free discretion by the administrative authorities is done within the framework of other binding provisions that have primacy (for example, the framework of Article 3 ECHR)**.

Annexes

A. Bibliography

- Information Note on the Arbitrariness regarding Access to the Asylum Procedure in Bulgaria, LCRI, 3 January 2012, available at http://lcrien.wordpress.com/2012/01/03/information-note-on-the-arbitrariness-regarding-access-to-the-asylum-procedure-in-bulgaria/ (accessed on 16 April 2012).

- Open Society Institute, Independent custody visiting in Special Centres for Temporary Accommodation of Foreigners Operated by the Ministry of Interior between January and June 2011, Sofia, February 2012.

- CPT, Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 29 October 2010, Strasbourg, 15 March 2012.

B. Relevant Statistics

Please find attached Excel Tables with statistics as provided by the State Agency for Refugees (see next pages):

- '2011 Incoming Dublin'
- '2011 Outgoing Dublin'
- 'Incoming for 2010'
- 'Outgoing for 2010']

In the general statistics of the State Agency for Refugees that is published[36], there are the following exhaustive indicators:

- Number of persons who asked for protection;
- Number of persons who received refugee protection;
- Number of persons who received subsidiary protection;
- Number of persons who were refused protection.

There is no separate indicator for Dublin transfer decisions, from which it might be inferred that they are counted as negative asylum decisions.

In Annexes please find attached the Statistical Tables provided by the Dublin Unit at SAR for the years 2010 and 2011.

Since detention of asylum seekers in Bulgaria is realized on the basis of a pending removal order as irregular immigrants (and not on the basis of a separate detention order under refugee law), statistics about it is kept by the Migration Directorate at the Ministry of the Interior as part of the general statistics on immigration detention.

36 http://www.aref.government.bg/?cat=8 (accessed on 21 April 2012).

In 2011 Bulgaria detained 1278 immigrants altogether, out of which 481 were asylum seekers with a first application. In 2010 the number of detainees was 973, of which 580 with a first asylum application; in 2009 there were 832 detainees. As noted in the report, asylum seekers in Bulgaria who have entered the territory irregularly are usually first treated as irregular immigrants until registered by the Refugee Agency.

The official detention capacity of immigration detention facilities in Bulgaria is 700 spaces: 400 spaces in the Bousmantsi detention centre near the capital Sofia and 300 spaces in the Lyubimets detention centre near the Bulgarian-Turkish border.

B. Relevant Statistics - *Statistical data on application of the Dublin*

Submitted by		Total number of transfer	TRANSFERS ON TAKING CHARGE (ART. 16.1.a)			
			Total number of transfer on taking charge	Family reasons	Documentation and entry reasons	Humanitarian reasons
				Art.6, Art.7, Art. 8, Art. 14	Art.9, Art.10, Art. 11, Art. 12	Art.15
				of Regulation 343/2003		
		4.1	4.2	4.2.1	4.2.2	4.2.3
BELGIUM	BE	**2**				
BULGARIA	BG					
CZECH REPUBLIC	CZ					
DENMARK	DK	**1**				
GERMANY	DE	**5**				
ESTONIA	EE					
IRELAND	IE					
GREECE	EL	**1**				
SPAIN	ES					
FRANCE	FR					
ITALY	IT					
CYPRUS	CY					
LETVIA	LV					
LITHUANIA	LT					
LUXEMBOURG	LU					
HUNGARY	HU	**4**				
MALTA	MT					
NETHERLANDS	NL	**9**				
AUSTRIA	AT	**4**	1		1	
POLAND	PL					
PORTUGAL	PT					
ROMANIA	RO	**5**	4		4	
SLOVENIA	SI	**2**				
SLOVAK REPUBLIC	SK					
FINLAND	FI					
SWEDEN	SE					
UNITED KINGDOM	UK	**5**				
ICELAND	IS					
NORWAY	NO	**3**	1		1	
SWITZERLAND	CH	**5**	2		2	
TOTAL		**46**	**8**		**8**	

From 01-01-2011 until 31-12-2011

Regulation: Incoming requests - Transfers

Transfers				
	TRANSFERS ON TAKING BACK			
Total number of transfers on taking back	Art.4.5	Art.16.1.c	Art.16.1.d	Art.16.1.e
	of Regulation 343/2003			
4.3	4.3.1	4.3.2	4.3.3	4.3.4
2		1		1
1				1
5	1		2	2
1				1
4				4
9				9
3		1		2
1		1		
2				2
5	3		1	1
2				2
3		1		2
38	**4**	**4**	**3**	**27**

B. Relevant Statistics - *Statistical data on application of the Dublin*

Submitted by		Total number of transfer	TRANSFERS ON TAKING CHARGE (ART. 16.1.a)			
			Total number of transfer on taking charge	Family reasons	Documentation and entry reasons	Humanitarian reasons
				Art.6, Art.7, Art. 8, Art. 14	Art.9, Art.10, Art. 11, Art. 12	Art.15
				of Regulation 343/2003		
		4.1	4.2	4.2.1	4.2.2	4.2.3
BELGIUM	BE					
BULGARIA	BG					
CZECH REPUBLIC	CZ					
DENMARK	DK					
GERMANY	DE	**5**	5	1	4	
ESTONIA	EE					
IRELAND	IE	**2**				
GREECE	EL	**44**	35		35	
SPAIN	ES					
FRANCE	FR					
ITALY	IT	**1**	1		1	
CYPRUS	CY					
LETVIA	LV					
LITHUANIA	LT					
LUXEMBOURG	LU					
HUNGARY	HU					
MALTA	MT					
NETHERLANDS	NL					
AUSTRIA	AT					
POLAND	PL					
PORTUGAL	PT					
ROMANIA	RO					
SLOVENIA	SI					
SLOVAK REPUBLIC	SK					
FINLAND	FI					
SWEDEN	SE					
UNITED KINGDOM	UK					
ICELAND	IS					
NORWAY	NO					
SWITZERLAND	CH					
TOTAL		**52**	**41**	**1**	**40**	

From 01-01-2011 until 31-12-2011

Regulation: Outgoing requests - Transfers

Transfers				
	TRANSFERS ON TAKING BACK			
Total number of transfers on taking back	Art.4.5	Art.16.1.c	Art.16.1.d	Art.16.1.e
	of Regulation 343/2003			
4.3	4.3.1	4.3.2	4.3.3	4.3.4
2		2		
9		9		
11		**11**		

C. Relevant National Case Law

1

KEY WORDS		Regulation 343/2003/EC
Country of Appeal		Bulgaria
Responsible Member State under Dublin Criteria		Greece
Case name		H.M.M.
Appeal body name i.e. Court/ Tribunal/Appeals Board		Sofia City Administrative Court
Decision number/Neutral citation		Decision № 1629 of 2011, administrative case № 1870 of 2011
Date decision delivered or promulgated: Date of determination		06.04. 2011
Country of applicant/Claimant		Iraq
Summary of the case		
	Facts (brief overview)	The applicant submitted an application for protection in Bulgaria in September 2010 from the detention centre at the Migration Directorate at the Ministry of the Interior. The application was sent to the State Agency for Refugees. During the interview in November he stated that unexplainably for him the Greek authorities had registered him under another name, as citizen of Afganistan, although the applicant had a driving license with him. He claimed that that he didn't make an application for protection in other countries besides Bulgaria. He also claimed that the Greek authorities took his fingerprints and gave him one month to leave the country. Under article 10, par. 1 of Regulation 343/2003/EC the Bulgarian authorities made a request to the Greek authorities for taking responsibility. There was no answer from Greece whithin the deadline provided under article 18, par. 1 of Regulation 343/2003/EC. The Bulgarian authorities issued a decision for non-admission to the asylum procedure in the Republic of Bulgaria and stipulated the foreigner's transfer to the competent country. The applicant appealed the decision before the Sofia City Administrative Court. The applicant invoked the Memorandum of the European Bureau of the Office of the United Nations High Commissioner for Refugees. In the memorandum there was a call on the governments in Europe to stop returning asylum seekers to Greece until second notification and to broaden the application of the humanitarian clause. The applicant also argued that the administrative authorities didn't examine the evidence in his case.

1	KEY WORDS	Regulation 343/2003/EC
	Decision & Reasoning[1]	The court dismissed the appeal. The reasons were that the act was issued by a competent organ of the State and in accordance with the material and procedural rules. The judgement of the administrative court is final and not subject to appeal.
	Relevant extracts from the judgement[2]	"The circumstances under which the material preconditions for seeking and granting protection are determined, including the personal refugee story of the asylum seeker and his considerations to announce different personality and country of origin, are related to the procedure of examining the application in its phase on the substance. In the case there is data that the applicant addressed an application to the Bulgarian authorities with the names Ajub. M., but this circumstance didn't motivate the respondent to doubt the facts presented by the applicant" « Обстоятелствата, въз основа на които се установяват материалноправните предпоставки за търсене и получаване на особена закрила, включително личната бежанска история на кандидата и съображенията му да заявява различна самоличност и държава на произход, са относими към производството по разглеждане на искането в решаващата му фаза. В преписката са налични данни, че с имената Аюб М. оспорващият е адресирал молби и до българските административни органи, но това обстоятелство не е мотивирало ответника да постави под съмнение сочените от жалбоподателя факти. » "The assessment under article 3, paragraph 2 from the Regulation (Dublin II) is only for the administrative organ of the member state, it's not for the court. The lack of such an assessment can't be sanctioned in judicial way when the criteria for determination of the competent country under article 3, paragraph 1 from the Regulation (Dublin II), are fulfilled. " (In this relation, please see the "Observations" at the end of the case summary) « Преценката по чл. 3, ал. 2 от Регламента принадлежи единствено на административния О. на съответната държава – членка, но не и на съда. Липсата на такава преценка не може да бъде санкционирана по съдебен ред П. спазени критерии за определяне на компетентна държава съгласно принципа, заложен в чл. 3, ал. 1 от Регламента. »
	Outcome of proceedings	The court dismissed the appeal.
	Subsequent Proceedings	The judgement of the first level court is not subject to appeal before the Supreme Administrative Court in a Dublin Regulation procedure.

1 KEY WORDS	Regulation 343/2003/EC	
Dublin regulation's legal provisions applicable	Art. 3, par. 1; art. 3 par. 2; art. 5; par. 2; art. 10, par. 1; art. 18 par. 1; art. 18, par. 3	
Legal provisions cited (national & international references)	*Legislation*	*Articles*
	1. Law on Asylum and Refugees (national law)	*1. Art. 58, par.4; art. 67 c, point 2; art. 67 c, par. 1, point. 2*
	2. Administrative Procedure Code (national law)	2. Art. 145 – 178
Case law cited (national & international references)	*Court name*	*Neutral citation*
Case law cited (national & international references)	*Organization*	*Reference*
	1. European Bureau of the Office of the United Nations High Commissioner for Refugees	1.Memorandum № PRL 24 – 02/11.04.2008
Observations/Comments	Regarding the quotation in the case summary where the court said that it cannot oblige the administrative authority to apply Article 3(2) of the Dublin II Regulation, please note the following clarification regarding the competence of the court to overrule national decisions : One can understand this statement of the Court from the point of view of general administrative law. It differentiates between imperative provisions (with the verb 'shall') and non-imperative provisions (with the verb 'may). Article 3 (2) is a non-imperative provision (with 'may'). According to general administrative law, the court has the competence to review only the application of imperative provisions. The application of non-imperative provisions is left to the discretion of the administrative authority and is not subject to judicial review. In the concrete case, one can argue that the conclusion of the court is understandable, but incorrect. This is because the exercise of the free discretion by the administrative authorities is done within the framework of other binding provisions that have primacy. For example, the framework of Article 3 ECHR. However in this concrete case the court did not take that into account.	

1 This should be the most detailed section of the summary.
2 This should be very selective extracts.

2	KEY WORDS		Right to Family life
	Country of Appeal		Bulgaria
	Responsible Member State under Dublin Criteria		Austria
	Case name		I.H.
	Appeal body name i.e. Court/ Tribunal/Appeals Board		Sofia City Administrative Court
	Decision number/Neutral citation		Decision № 2829 of 2010; administrative case № 4595 of 2010
	Date decision delivered or promulgated: Date of determination		20.08. 2010
	Country of applicant/Claimant		Pakistan
	Summary of the case		
		Facts (brief overview)	The applicant submitted an application for refugee status in Bulgaria in January 2010. After a check in the Eurodac system it was revealed that his fingerprints coincided with the fingerprints of a person, who made an application for protection in Austria in November 2006. His fingerprints also coincided with the fingerprints of a person, who made an application for protection in Greece in July 2009. Under article 16, paragraph 1c from Regulation 343/2003/ EC the Bulgarian authorities made a request to Austria for taking back the applicant. At first the Austrian authorities rejected the request, but after they were asked by the Bulgarian authorities to reconsider their reply, they accepted the request for the transfer of the applicant to Austria. Bulgarian authorities issued a decision for non-admission to the asylum procedure in the Republic of Bulgaria and stipulated the foreigner's transfer to the competent country. The applicant appealed the decision before Sofia City Administrative Court. The reasons for appealing were related with the applicant's forthcoming marriage with his girlfriend, who is a Bulgarian citizen. The applicant claimed that his transfer to Austria would violate the principle of family unity, provided both under article 16 of Regulation 343/2003/EC and under article 8 of the European Convention on Human Rights.
		Decision & Reasoning	The court dismissed the appeal. The reasons were that the act was issued by a competent organ and the material and procedural rules regarding its issuance were fulfilled. The court noted that the fact that the applicant was going to get married to a Bulgarian citizen was irrelevant for the application of the Dublin II regulation. Please see the quotation below.

2	KEY WORDS	Right to Family life	
	Relevant extracts from the judgement	"The considerations stated in the appeal that, in view of the forthcoming marriage of the foreigner with a Bulgarian citizen, his transfer to Austria would violate the family principle under article 16 of Regulation 343/2003/EC and under article 8 of the European Convention on Human Rights, are not related to the circumstance that Republic of Bulgaria is not a competent country to examine the application of I.H., considering his application for granting a status that was made in 2006 in Austria and the acceptance of his transfer from the competent country." „Съображенията, изложени в жалбата за предстоящо сключване на брак на чужденеца с българска гражданка,с оглед което прехвърлянето му в Австрия би довело до нарушаване на принципа за разделяне на семейството,предвиден в чл.16 на Регламент /ЕО/ № 343/2003г.,така и на чл.8 от ЕКПЧОС, са неотносими към обстоятелството, че Република Б не е компетентната държава да разгледа молбата на И. Х., предвид подадената през 2006г. от него молба за предоставяне на статут в А и приемането на трансфера му от така компетентната държава."	
Outcome of proceedings		The court dismissed the appeal.	
Subsequent Proceedings		The judgement of the first level court is not subject to appeal before the Supreme Administrative Court in a Dublin Regulation procedure.	
Dublin regulation's legal provisions applicable		Art.3; art16; art. 16, par. 1c; art.20	
Legal provisions cited (national & international references)		*Legislation* 1. Law on Asylum and Refugees (national law)	*Articles* 1. Art. 67a, par. 2, point 1; art 67 c, point 2; art 69 c; art. 84, par. 2;
		2. Administrative Procedure Code (national law)	2. Art. 145 - 178
		3. European Convention on Human Rights	3. Art.8
Case law cited (national & international references)		*Court name*	*Neutral citation*
Other sources cited (NGO reports etc)		*Organization*	*Reference*
Observations/Comments			

3	KEY WORDS	Conditions in Responsible Member State
	Country of Appeal	Bulgaria
	Responsible Member State under Dublin Criteria	Greece
	Case name	I.H.I.
	Appeal body name i.e. Court/ Tribunal/Appeals Board	Sofia City Administrative Court
	Decision number/Neutral citation	Decision № 4421 of 2010; administrative case № 7784 of 2010
	Date decision delivered or promulgated: Date of determination	27.12.2010
	Country of applicant/Claimant	I.[1]
	Summary of the case	
	Facts (brief overview)	The applicant submitted an application for protection in Bulgaria in July 2010. After a check in the Eurodac system it was revealed that his fingerprints coincided with the fingerprints of a person, who made an application for protection in Greece in January 2010. Under article 16, paragraph 1c from Regulation 343/2003/ EC the Bulgarian authorities made a request to Greece for taking back the applicant. In the deadline under article 20, paragraph 1b of Regulation 343/2003/ EC there was no answer from Greece. The Bulgarian authorities issued a decision for non-admission to the asylum procedure in the Republic of Bulgaria and stipulated the foreigner's transfer to the competent country, Greece. The applicant appealed the decision before Sofia City Administrative Court. The reasons for appealing were that the administrative procedure about issuing the decision by the administrative organ was not duly fulfilled and he also invoked the position of the Office of the United Nations High Commissioner for Refugees from 15.04.2008.
	Decision & Reasoning[2]	The court dismissed the appeal. It stated that the act was issued by a competent organ and the material and procedural rules regarding its issuance were fulfilled. The judgment of the administrative court is not subject to appeal before the Supreme Administrative Court. For further details, please see the quotation below.
	Relevant extracts from the judgement[3]	"Indeed in point 7 of the position it is stated that due to the lack of interpreters and legal aid, asylum seekers in Greece are often interviewed in a language that they don't understand and they don't receive information on their rights in the asylum procedure. At the same time, in the same position UNHCR welcomed the steps undertaken by the government of Greece for improving the system of granting asylum according to the requirements of international and European standards.

3 Relevant extracts from the judgement[3]	Also it is pointed out that the effective application of the measures under Regulation "Dublin II" is applicable for all Member States of the European Union. In this way the position of UNHCR concerns not only the government of the Republic of Greece in the application of the mentioned measures, but also the governments of all Member States of the European Union" « Действително също така съгласно т. 7 от посочената позиция поради липсата на преводач и правна помощ лицата, търсещи убежище в Република Г често са интервюирани на език, който същите не разбират и без възможността да им бъдат разяснени правата по време на процедурата по предоставяне на убежище. Едновременно с това, обаче в същата тази позиция ВКБООН приветства стъпките, предприети от правителството на Република Г за подобряване на системата за предоставяне на убежище съобразно изискванията на международните и европейски стандарти. Едновременно с това също така се отбелязва, че ефективното прилагане на мерките от регламента от Д е обстоятелство, което се отнася до всички страни – членове на Европейския съюз. По този начин позицията на ВКБООН засяга не само правителството на Република Г по прилагането на посочените мерки, но и правителствата на всички страни – членове на Европейския съюз. »	
Outcome of proceedings	The court dismissed the appeal.	
Subsequent Proceedings	The judgement of the first level court is not subject to appeal before the Supreme Administrative Court in a Dublin Regulation procedure.	
Dublin regulation's legal provisions applicable	Art.16 par.1b; art.16 par. 1a; art20 par. 1b	
Legal provisions cited (national & international references)	*Legislation* *Legislation* 1. Law on Asylum and Refugees (national law)	*Articles* 1. Art. 67c, point1; art84, par. 1
	2. Administrative Procedure Code (national law)	2. Art.145; art. 146, point 3; art. 152, par.1; art. 168 par. 1
Case law cited (national & international references)	*Court name*	*Neutral citation*
Other sources cited (NGO reports etc)	*Organization* United Nations High Commissioner for Refugees	*Reference* Position from 15.04.2008
Observations/Comments		

1 The decision does not reveal the whole name of the country of origin of the applicant, but only its initials.
2 This should be the most detailed section of the summary.
3 This should be very selective extracts.

4	KEY WORDS		Sovereignty clause; Reference for a preliminary ruling
	Country of Appeal		Bulgaria
	Responsible Member State under Dublin Criteria		Greece
	Case name		Halaf
	Appeal body name i.e. Court/ Tribunal/Appeals Board		Sofia City Administrative Court
	Decision number/Neutral citation		Ruling № 5538 of 2011; administrative case № 9129 of 2010
	Date decision delivered or promulgated: Date of determination		12.10.2011
	Country of applicant/Claimant		Iraq
	Summary of the case		
		Facts (brief overview)	The applicant submitted an application for protection before the Bulgarian State Agency for Refugees. During the interview he claimed that in 2008 he left Iraq legally and he came to Syria without a visa, which at that time was not required. In March 2010 he left Syria and went illegally to Turkey, where he stayed for two months. According to the applicant, after that he came in an irregular manner to Bulgaria and immediately applied for protection. A check in the Eurodac system revealed that his fingerprints coincided with the fingerprints of a person, who made an application for protection in Greece on 06.08.2008. Under article 16, paragraph 1 (c) of Regulation №2003/343/EC, a request was made to Greece for taking back the applicant. There was no reply to the request from Greece within the deadline provided in article 20, paragraph 1 (b) of Regulation № 2003/343/EC. So the Bulgarian State Agency made a decision by which it refused to initiate the asylum procedure for examining the asylum application. The administrative organ provided that the asylum seeker should be transferred to Greece. The asylum seeker appealed this decision before the Sofia City Administrative Court. One of the reasons for appealing was a memorandum № PRL 24 – 02/11.04.2008 from bureau Europe of the Office of the United Nations High Commissioner for Refugees. In the memorandum there was a call on the governments in Europe to stop returning asylum seekers to Greece until second notification and to broaden the application of the humanitarian clause.
		Decision & Reasoning	The court made a preliminary reference to the Court of Justice of the European Union under article 267 of the Treaty on the Functioning of the European Union and under article 104a of the Rules of procedure of the Court of Justice of the European Union. The court stopped the legal procedure on administrative case № 9129 for 2010.

4	KEY WORDS	Sovereignty clause; Reference for a preliminary ruling
	Decision & Reasoning	The national court asked: - about the role of UNHCR's position (as of April 2008 and Information Note of June 2010) on the Dublin transfers to Greece - whether the findings of UNHCR have a binding force in applying Article 3 (2) of the Dublin Regulation; - for interpretation on the interrelation between the silent consent by the responsible state under the Dublin regulation and the solidarity principle under Art.80 TFEU; - in view of the exclusive competence of the Court of the European Union under Article 260 TFEU, the national court asked if it is admissible for the national court to rule as to whether Greece fulfills its obligations under the EU law on asylum and the principle of non-refoulement. If yes, the court asked for guidance on the criteria. - what is the content of the right to asylum under the EU Charter on Fundamental Rights in view of the different types of national protection statuses, in relation to the application of the Dublin Regulation; Case C-528/11 before the Court of Justice of the European Union has been initiated. Following the decision of the CJEU of 21 December 2011 on cases NS vs SSHD (C-411/10) and MEea (C-493/10), the Bulgarian national court in Case C-528/11 issued a ruling for amending its first preliminary reference to the CJEU. The Sofia City Administrative Court ruled that it still found a need for the CJEU to give a preliminary ruling on questions 1b, 3 and 5 as stated in the first reference. That is: • Should Article 3 (2) of the Dublin Regulation be interpreted as allowing a Member State to assume responsibility of an asylum application, even though regarding the applicant in the concrete case there are no circumstances of personal character under Article 15 of the Dublin Regulation, when the responsible Member State under Article 3 (1) of the Dublin Regulation has not communicated its decision under Article 20 (1) of the Dublin Regulation and the Regulation does not contain provisions regarding the principle of solidarity under Article 80 TFEU; • What is the content of the right to asylum under Article 18 of the EU Charter on Fundamental Rights in relation to Article 53 of the Charter and the definition under Article 2 c and recital 12 of the Dublin regulation; • Should Article 3 (2) of the Dublin Regulation, in relation to Article 78 (1) TFEU requiring Member States to fulfill their international obligations in the field of asylum, be interpreted as obliging Member States to ask for the opinion of UNHCR in the procedure provided that in the general position documents of UNHCR there are conclusions that the responsible Member State in the case does not fulfill its international obligations in the field of asylum.

4	KEY WORDS	Sovereignty clause; Reference for a preliminary ruling
	Decision & Reasoning	Provided that the question is answered in the positive, the national court asks for a reply to the following additional question: If the opinion of UNHCR has not been taken into account, should that be regarded as a substantial procedural infringement in accordance with Article 41 and 47 of the EU Charter on Fundamental Rights and in relation by analogy with the right of UNHCR under Article 21 of Directive 2005/85/EC.
	Relevant extracts from the judgement	"The court is asked to apply the sovereignty clause on grounds that the request of asylum seekers who are returned to Greece are not examined in accordance with the law of the EU about the procedures and the aims provided in Regulation 343/ 2003/ EC. According to the applicant this constitutes a violation of his right to seek and to be granted international protection. The Commission of the EU has suggested humanitarian and compassionate considerations as common criteria for applying the sovereignty clause. Such criteria are not found in the case of the applicant." – page 17 "Съдът е сезиран с искане да приложи клаузата за суверинитет на основание, че молбите на върнатите в Република Г. не се разглеждат в съответсвие с правото на Съюза относно процедурата и целта на Регламент 343/ 2003, представляващо нарушение на правото да се потърси и получи международна закрила според жалбоподателя. Комисията предлага „хуманитарни и състрадателни съображения" като общи критерии за прилагането на клаузата за суверинитет, каквито не се установяват по фактите по делото по отношение на жалбоподателя." "With regard to the application of article 3, paragraph 2 of the Dublin II Regulation there needs to be an interpretation as to whether the studies of UNHCR on the situation in a Member State about the application of EU law on asylum have binding force for the court, taking into account that the Commission and the Court of Justice of the European Union have not exercised their competence on finding a violation by the Member State. The question relates also to the obligation under article 78 of the Treaty on Functioning of the European Union to respect the UN Convention relating to the status of refugees and its Protocol, from where the supervising functions of UNHCR regarding the State Parties stem" - page 10.

4	KEY WORDS	Sovereignty clause; Reference for a preliminary ruling	
	Relevant extracts from the judgement	"Следователно подлежи на тълкуване във връзка с прилагането на чл. 3, §2 Регламента Д. въпросът, имат ли обвързваща доказателствена сила за настоящия съд проучванията на ВКБООН по отношение на ситуацията в държавата – членка по прилагането на правото на ЕС в областта на убежището, без Комисията и съответно Съда на ЕС да са упражнили правомощията си за установяване на това право от същата държава – членка. Въпросът за доказателствената тежест на проучванията на ВКБООН, възниква и от въведеното задължение с чл. 78 ДФЕС за спазването на Ж. Конвенция и Протокола от 1951г. към нея, от които произтичат и надзорните функции по въпросите на убежището в договарящите страни, каквито са всички държави – членки (съответно чл. 35 от Конвенцията и чл. II от Протокола). "In order to decide the present case the court shall also answer the question what does the term international protection encompasses in relation with article 53 of the Chapter of fundamental rights of the European Union." – page 15 „ Следователно за да реши казуса по делото настоящият съд следва да отговори и на въпроса какво се включва в понятието международна закрила, в това число и във връзка с чл. 53 от Хартата за правата на ЕС, на което не може да се даде еднозначен отговор."	
	Outcome of proceedings	The decision of the CJEU is expected.	
Subsequent Proceedings			
Dublin regulation's legal provisions applicable		1. Art.16, par. 1 b; art. 20 par. 1b; art. 17 par 1, 1b; art. 4 par. 2; art. 20 par. 1 b; art. 18 par 7; art. 3 par. 1 and par. 2; art. 15; art. 2 a, b, c	
Legal provisions cited (national & international references)		*Legislation*	*Articles*
		1. Treaty on European Union.	1. Art. 4 par. 3; art. 77 par 1 sentence 2 and 3
		2. Treaty on the Functioning of the European Union.	2. Art. 2 par 2, sentence 2; Art. 78 par. 1 and par. 2; art. 80; art. 267 par. 1 and par. 2; Art. 258 – 260; Art. 344
		3. Chapter of Fundamental Rights of the European Union.	3. Art. 4; art. 6; art. 18; art. 19, par. 2; art. 47, art. 53

4	KEY WORDS	Sovereignty clause; Reference for a preliminary ruling	
	Legal provisions cited (national & international references)	4.Commission Regulation (EC) No 1560/ 2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.	4. Art. 10; Art. 18
		5. Council Directive 2005/85/ EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.	5. Art. 21
		6. European Convention on Human Rights.	6. Art. 1; art. 3; art. 8; art. 13
		7. The United Nations Convention relating to the status of refugees.	7. Art. 35
		8. Protocol relating to the status of refugees.	8. Art. 2
		9. Convention on the Reduction of Statelessness[1]	9. Art. 1, par. 1
		10.Law on Asylum and Refugees (national law).	10. Art. 2, par. 2; Art. 67 a par. 1 and par. 2, Art. 67 b, par. 1 and par. 2; par. 67 c; art. 85, par. 4
		11. Administrative Procedure Code (national law)	11. art. 9; art. 127; art. 144; art. 168
	Case law cited (national & international references)	*Court name* 1. Court of Justice of the European union	*Neutral citation* 1. C – 130/08

4	KEY WORDS	Sovereignty clause; Reference for a preliminary ruling	
	Case law cited (national & international references)	*Court name* 2. European Court of Human Rights	*Neutral citation* 2. - T. I. v UK, application No 4384/98, decision from 7 march 2000; - K. R. S. v UK., application No 32733/ 08; - Decision from 30.06. 2005, application No 45036/ 1998; - Decision from 30.01. 1998 United communist party of T. and others v T. - Decision from 21.01. 2011 –M.S.S. v. Belgium and Greece
	Other sources cited (NGO reports etc)	Commission of the European Communities	*Reference* - Report from the Commission to Parliament and the Council on the evaluation of the Dublin system COM (2007) 299 - Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member - States by a third-country national or a stateless person COM (2008) 820;

4	KEY WORDS	Sovereignty clause; Reference for a preliminary ruling	
	Other sources cited (NGO reports etc)	Commission of the European Communities	*Reference* - Report from the Commission to the European Parliament and the Council on the application of directive 2004/83/EC of 29 april 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection – COM/ 2010/ 0314. Communication from the Commission to the European Parliament and the Council: Annual Report on Immigration and Asylum (2010) - COM(2011)0291
	Observations/Comments		

1 The Court invoked the Convention in reaching the conclusion on the basis of the evidence that it had that the applicant was a citizen of Iraq.

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KEY WORDS		Sovereignty clause; Eurodac ; Article 10 (2) of the Dublin II Regulation
Country of Appeal		Bulgaria
Responsible Member State under Dublin Criteria		Greece
Case name		H.A.G.
Appeal body name i.e. Court/ Tribunal/Appeals Board		Sofia City Administrative Court
Decision number/Neutral citation		Decision № 1597 of 2011; administrative case № 1938 of 2011
Date decision delivered or promulgated: Date of determination		05.04. 2011
Country of applicant/Claimant		I.[1]
Summary of the case		
	Facts (brief overview)	The applicant submitted an application for protection in Bulgaria in October 2010. After a check in the Eurodac system it was revealed that his fingerprints coincided with the fingerprints of a person, who had crossed illegally the Greek border on 02.01.2009. During the court hearing he said that he came illegally to Greece on 02.01.2008. His actual aim was to go to Western Europe. The applicant didn't make an application for protection in Greece. The asylum seeker left Greece in July 2009, when he understood that his father had been kidnapped and he went to his country of origin. After the killing of his father on 03.05.2010 the applicant decided to leave again his country, because he was afraid that the same thing could happen to him. He crossed the Bulgarian – Turkish border illegally and came to Bulgaria. Under article 10, paragraph 2 of Regulation 343/2003/ EC Greece was asked to take responsibility. On the same day the receipt of the request was confirmed by Greece and this could be seen from a printout from an automatic answer from the system DubliNET. In the deadline under article 18, paragraph 1 of Regulation 343/2003/ EC there was no answer from Greece. In February 2011 the Bulgarian authorities issued a decision for non-admission to the asylum procedure in the Republic of Bulgaria and stipulated the foreigner's transfer to the competent country. The applicant appealed the decision before Sofia City Administrative Court. The reasons for appealing were that in Greece the asylum seeker's application for protection wouldn't be examined according to the purpose of Regulation 343/2003/EC and this would violate his right to seek and to be given international protection.

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KEY WORDS		Sovereignty clause; Eurodac ; Article 10 (2) of the Dublin II Regulation	
	Decision & Reasoning	The court dismissed the appeal. The reasons were that the act was issued by a competent organ and the material and procedural rules regarding its issuance were fulfilled. The judgement of the administrative court is not subject to appeal before the Supreme Administrative Court. For further details, please see the quotations below.	
	Relevant extracts from the judgement	„In a position of the United Nations High Commissioner for Refugees from 15.04.2008 about returning asylum seekers to Greece under the "Dublin II" Regulation, there is a recommendation for the other Member States to apply article 3, paragraph 2 from the "Dublin II" Regulation in the cases where the competent Member State is Greece. The assessment of this provision lies only with the administrative organ of the member state, but not with the court. The lack of such an assessment cannot be sanctioned in judicial way when the criteria for determination of the competent country under article 3, paragraph 1 from the Regulation Dublin II, are fulfilled. " „В становище на ВКБООН от 15.04.2008г. относно завръщането на търсещи убежище лица в Г по силата на регламента „Д" се отправя препоръка решаващите органи от другите държави да прилагат чл. 3, пар. 2 от Регламента, в случаите, когато компетентна държава е Република Г. Преценката по цитираната разпоредба от Регламента принадлежи единствено на административния О. на съответната държава членка, но не и на съда. Липсата на такава преценка не може да бъде санкционирана по съдебен ред П. спазени критерии за определяне на на компетентна държава, съгласно принципа, заложен в чл. 3, ал. 1 от Регламента."	
	Outcome of proceedings	The Court dismissed the appeal.	
Subsequent Proceedings		The judgement of the first level court is not subject to appeal before the Supreme Administrative Court in a Dublin Regulation procedure.	
Dublin regulation's legal provisions applicable		Art. 3 par. 1; art. 3 par. 2; art. 10 par 2; art. 18 par. 1; art. 18 par 3	
Legal provisions cited (national & international references)		*Legislation* 1. Law on Asylum and Refugees (national law)	*Articles* 1. Art. 67a, par. 1, point 2; art. 67a, par. 2, point 1; art. 84, par. 2;
		2. Administrative Procedure Code (national law)	2. Art. 145 - 178

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KEY WORDS	Sovereignty clause; Eurodac ; Article 10 (2) of the Dublin II Regulation		
Case law cited (national & international references)	*Court name*	*Neutral citation*	
Other sources cited (NGO reports etc)	*Organization* United Nations High Commissioner for Refugees	*Reference* Position from 15.04.2008	
Observations/Comments	Regarding the quotation in the case summary where the court said that it cannot oblige the administrative authority to apply Article 3(2) of the Dublin II Regulation, please note the following clarification regarding the competence of the court to overrule national decisions : One can understand this statement of the Court from the point of view of general administrative law. It differentiates between imperative provisions (with the verb 'shall') and non-imperative provisions (with the verb 'may). Article 3 (2) is a non-imperative provision (with 'may'). According to general administrative law, the court has the competence to review only the application of imperative provisions. The application of non-imperative provisions is left to the discretion of the administrative authority and is not subject to judicial review. In the concrete case, one can argue that the conclusion of the court is understandable, but incorrect. This is because the exercise of the free discretion by the administrative authorities is done within the framework of other binding provisions that have primacy. For example, the framework of Article 3 ECHR. However in this concrete case the court did not take that into account, in spite of the judgment of the European Court of Human Rights of 21 January 2011 in the case of MSS v. Belgium and Greece (Appl. No. 30696/09).		

1 The decision does not reveal the whole name of the country of origin of the applicant, but only its initials. This is usual practice in publishing the decisions of the court online.

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KEY WORDS		Immigration detention of asylum seekers ; Ordinance on the Implementation of the Dublin Regulation
Country of Appeal		Bulgaria
Responsible Member State under Dublin Criteria		Bulgaria
Case name		K.H.H
Appeal body name i.e. Court/ Tribunal/Appeals Board		Sofia City Administrative Court
Decision number/Neutral citation		Decision from 06.08.2009 ; administrative case № 2099/2009[1]
Date decision delivered or promulgated: Date of determination		06.08.2009
Country of applicant/Claimant		Iraq/Iran[2]
Summary of the case		
	Facts (brief overview)	In December 2008 the Bulgarian authorities caught the applicant while crossing illegally the Bulgarian border with Turkey. He was caught without any identity documents. An order for deportation was issued against him. In February 2009 he was also issued an order for immigration detention and placed in the detention centre for an undefined period until the obstacles for his deportation ceased to exist. As he had submitted an asylum application in Bulgaria at an unspecified date, in March 2009 he was registered as asylum seeker by the State Agency for Refugees. The applicant appealed the order by which he was placed in immigration detention before Sofia City Administrative Court. The reasons for appealing were that his detention did not serve a lawful purpose.
	Decision & Reasoning[3]	The court dismissed the appeal, stating that non of the grounds for its appeal under national law were fulfiled, the order was issued by fulfulling the material law criteria for that. Please see the key arguments of the Court in the following section, as well as the Observations on this decision in the last section of the table.
	Relevant extracts from the judgement[4]	« The court finds that has been an interference by the admininistrative organ with the right to liberty of the applicant » « Съдът намира, че е осъществена намеса от страна на ответния административен орган при упражняването на правото на свобода на жалбоподателя. » « The interference was made in the pursuit of a lawful purpose – the implementation of the imposed compulsory administrative measure under the Law on foreigners in Republic of Bulgaria and the imposing of such measure is admissible as the preconditions under article 5, par. 1 (f) of the European convention on Human Rights are present. »

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KEY WORDS		Immigration detention of asylum seekers ; Ordinance on the Implementation of the Dublin Regulation	
	Relevant extracts from the judgement[4]	« Намесата е осъществена в преследване на законова цел - за изпълнение на наложена ПАМ по ЗЧРБ, както и че налагането на такава мярка е допустимо при наличие на предпоставките по чл. 5, § 1, т. f от КЗПЧОС. » « The restriction to the rights of the applicant and the application of the more severe measure – accomodation in a special home for temporary accommodation of foreigners (the detenton center)... are reasoned with the applicant's behaviour : breaking the law when crossing the state border and his social status – lack of means of livelihood, such are not provided by a third person either» « Ограничението на правата на жалбоподателя и прилагането на по-строгата мярка - настаняване в СДВНЧ с обжалваната заповед, вместо подписка по чл. 44, ал. 5 от ЗЧРБ, се основават на причини, свързани с поведението му: извършено закононарушение при преминаване на държавната граница и социалният му статус -липсата на средства за издръжка, такива не са осигурени и от трето лице. »	
	Outcome of proceedings		
Subsequent Proceedings			
Dublin regulation's legal provisions applicable			
Legal provisions cited (national & international references)		*Legislation*	*Articles*
		1. Constitution of the Republic of Bulgaria	Art. 120; par. 2; art. 26, par. 2
		2.Administrative Procedure Code (national law)	Art. 2, par. 1; art. 3; art. 6; art. 21 par. 5; art. 44 par. 6; art. 127, par. 1; art.144;art. 146Art. 229; art. 267; art. 268; art. 297; art. 59; par. 1; art. 59 par. 2 point 4; art. 60 par. 1; art. 294 – 298;
		3. Law on Foreigners in Republic of Bulgaria	3. Art. 2 par. 1; Art. 41, point 1; art. 42; art. 44 par. 4, par. 5, par. 6, par.8; art. 44 b; art. 46 a; 39a
		4. Law on the Ministry of Interior	Art. 85, par. 1, point 10
		5. Law on the Asylum and Refugees	Art. 29 par. 4; art. 59 par. 1; art. 67 par. 1 and art. 67 par. 3
		6. Civil Procedure Code	Art. 179; par. 1

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KEY WORDS	Immigration detention of asylum seekers ; Ordinance on the Implementation of the Dublin Regulation	
Legal provisions cited (national & international references)	7. Rules on the Application of the Law on the Ministry of Interior	Art. 101
	8. Rules on the Application of the Law on Foreigners in Republic of Bulgaria	Art. 49 par. 1;
	9. Ordinance № I13 from 29 January 2004 on the Order of Temporary Accommodation of Foreigners, of the Organization and Activity of the Special Homes for Temporary Accommodation of Foreigners	Art. 15; art. 16;
	10. Ordinance on the coordination in implementing the Dublin regulation	Art. 16 par. 3
	11. European Convention on Human Rights	Art. 1; art. 5. par. 4; art. 5 par. 1b; art. 13; art. 56
Case law cited (national & international references)	*Court name*	*Neutral citation*
	1. Constitutional Court of the Republic of Bulgaria	*1. Decision* № 3 constitutional case № 1/94
	2. Supreme Administrative Court	2. Decision № 4/22.04.2004
Other sources cited (NGO reports etc)	*Organization*	*Reference*
Observations/Comments	This judicial decision was strictu sensu in line with the then existing provision of the Ordinance on the implementation of the Dublin regulation, which stated that upon irregular entry asylum seekers are handed over to the Migration Directorate by the Border Police for 'coercive accommodation', i.e. detention. The detention order is issued with a view to implementing the deportation order. That is, until registered by the Refugee Agency, asylum seekers are treated as irregular immigrants, in spite of the fact that they have submitted an asylum application.	

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	KEY WORDS	Immigration detention of asylum seekers ; Ordinance on the Implementation of the Dublin Regulation
	Observations/Comments	This explicit provision from the Ordinance on the Implementation of the Dublin Regulation was repealed in November 2011. The state authorities interpret this amendment as guaranteeing that asylum seekers who claim asylum before the Border Police will be taken directly by the Refugee Agency. However the ordinance does not stipulate a term within which the asylum seeker is received and registered by the Refugee Agency. On the problem of arbitrary access to the asylum procedure in Bulgaria and the ensuing treatment of asylum seekers as irregular immigrants, please see the interview by ECRE from 17 February 2012 at http://www.ecre.org/media/news/latest-news/breaking.html#ecre-interview-with-valeria-ilareva-phd-practitioner-and-academic

1 In the same way another case was decided – Decision No.2158 of 29.06.2009 in case No.2100/2009.
2 At first the applicant was considered a citizen of Iraq, then a citizen of Iran.
3 This should be the most detailed section of the summary.
4 This should be very selective extracts.

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KEY WORDS		Immigration detention of asylum seekers ; Ordinance on the Implementation of the Dublin Regulation
Country of Appeal		Bulgaria
Responsible Member State under Dublin Criteria		Bulgaria
Case name		Said Shamilovich Kadzoev (Huchbarov)
Appeal body name i.e. Court/ Tribunal/Appeals Board		Sofia City Administrative Court
Decision number/Neutral citation		Ruling № 3629 of 2009 ; administrative case № 3629 of 2009
Date decision delivered or promulgated: Date of determination		03.08.2009
Country of applicant/Claimant		Russian Federation - Chechnya
Summary of the case		
	Facts (brief overview)	In October 2006 the applicant was detained as he was walking close to the border with Turkey and didn't have any identity documents. He immediately told the Border Police that he was asking for asylum and pleaded that the embassy of the Russian Federation be not informed of his presence in Bulgaria. He was imposed the following coercive administrative measures: compulsory taking to the border of Bulgaria, prohibition to enter the Republic of Bulgaria for three years and immigration detention. The applicant appealed the orders for the imposition of the coercive administrative measures, including the order for his placement in an immigration detention centre for irregular immigrants. All his appeals were dismissed at two judicial levels. In spite of his immediate submission of an application for asylum and several repetitive applications submitted from the detention centre, including with the help of a lawyer, his asylum application was registered by the State Agency for Refugees as late as at the end of May 2007. As the Russian embassy had been contacted with a view to executing his deportation order, he suffered from retraumatization as he had been subjected to torture by the secret security services in his country of origin. He was placed in solitary confinement for indefinitely prolonged periods at the immigration detention centre. The authorities claimed that he was aggressive and this led to his solitary confinement. There were reports from Amnesty International and from other organizations dealing with persons that were subjected to torture in Russia, that Mr. Kadzoev's story was credible. In spite of that, once his asylum application was registered, only one interview was carried out with him at the solitary confinement premises and his asylum application was rejected as manifestly unfounded.

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KEY WORDS		Immigration detention of asylum seekers ; Ordinance on the Implementation of the Dublin Regulation
	Facts (brief overview)	The case in the present case summary concerned the issue whether Mr. Kadzoev's immigration detention should be prolonged for a period longer than 18 months on the basis that his identity had not yet been officially confirmed by the Russian authorities and he was considered 'aggressive' by the Bulgarian authorities. In view of the time limit of 18 months set in the EU Returns Directive, the national court made a reference for a preliminary ruling to the European Court of Justice (case C-357/09) asking whether the immigration detention in this case could last for a period longer than 18 months. One of the considerations of the national court was that the period in which Mr. Kadzoev was asylum seeker should be excluded from the calculation of the immigration detention under the Returns Directive.
	Decision & Reasoning[1]	In case C-357/09 the Sofia City Administrative Court made reference for a preliminary ruling with the following questions : 1. Must Article 15(5) and (6) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals be interpreted as meaning that a) where the national law of the Member State did not provide for a maximum period of detention or grounds for extending such detention before the transposition of the requirements of that Directive and, on transposition of the Directive, no provision was made for conferring retroactive effect on the new provisions, the requirements of the Directive only apply and cause the period to start to run from their transposition into the national law of the Member State? b) within the periods laid down for detention in a specialised facility with a view to removal within the meaning of the Directive, no account is to be taken of the period during which the implementation of a removal decision from the Member State under an express provision was suspended owing to a pending request for asylum by a third-country national, where during that procedure he continued to remain in that specialised detention facility if the national law of the Member State so permits?

7	KEY WORDS	Immigration detention of asylum seekers ; Ordinance on the Implementation of the Dublin Regulation
	Decision & Reasoning[1]	1. Must Article 15 (5) and (6) of Directive 2008/115/EC [...] be interpreted as meaning that within the periods laid down for detention in a specialised facility with a view to removal within the meaning of that Directive no account is to be taken of the period during which implementation of a removal decision from the Member State was suspended under an express provision on the ground that an appeal against that decision is pending, even though during the period of that procedure the third-country national has continued to stay in that specialised detention facility, where he did not have valid identity documents and there is therefore some doubt as to his identity or where he does not have any means of supporting himself or where he has demonstrated aggressive conduct? 2. Must Article 15 (4) of Directive 2008/115/EC [...] be interpreted as meaning that removal is not reasonably possible where: (a) at the time when a judicial review of the detention is conducted, the State of which the person is a national has refused to issue him with a travel document for his return and until then there was no agreement with a third country in order to secure the person's entry there even though the administrative bodies of the Member State are continuing to make endeavours to that end? b) at the time when a judicial review of the detention is conducted there was an agreement for readmission between the European Union and the State of which the person is a national, but, owing to the existence of new evidence, namely the person's birth certificate, the Member State did not refer to the provisions of that agreement, if the person concerned does not wish to return? c) the possibilities of extending the detention periods provided for in Article 15(6) of the Directive have been exhausted in the situation where no agreement for readmission has been reached with the third country at the time when a judicial review of his detention is conducted, regard being had to Article 15(6)(b) of the Directive? 3. Must Article 15(4) and (6) of Directive 2008/115/EC be interpreted as meaning that if at the time when the detention with a view to removal of the person concerned to a third country is reviewed there is found to be no reasonable ground for removing him and the grounds for extending his detention have been exhausted, in such a case:

7	KEY WORDS		Immigration detention of asylum seekers ; Ordinance on the Implementation of the Dublin Regulation
		Decision & Reasoning[1]	a) it is none the less not appropriate to order his immediate release if the following conditions are all met: the person concerned does not have valid identity documents, whatever the duration of their validity, with the result that there is a doubt as to his identity, he is aggressive in his conduct, he has no means of supporting himself and there is no third person who has undertaken to provide for his subsistence? b) with a view to the decision on release it must be assessed whether, under the provisions of the national law of the Member State, the third-country national has the resources necessary to stay in the Member State as well as an address at which he may reside?
		Relevant extracts from the judgement[2]	The Grand Chamber of the CJEU ruled as follows: " A period during which a person has been held in a detention centre on the basis of a decision taken pursuant to the provisions of national and Community law concerning asylum seekers may not be regarded as detention for the purpose of removal within the meaning of Article 15 of Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals. Detention for the purpose of removal governed by Directive 2008/115 and detention of an asylum seeker, in particular under Directive 2003/9 laying down minimum standards for the reception of asylum seekers, Directive 2005/85 on minimum standards on procedures in Member States for granting and withdrawing refugee status, and the applicable national provisions, fall under different legal rules. However, if an asylum seeker remains in detention for the purpose of removal while asylum procedures opened following his applications for asylum are under way, the period of detention corresponding to the period during which those asylum procedures were under way must be taken into account in calculating the period of detention for the purpose of removal mentioned in Article 15(5) and (6) of Directive 2008/115. (see paras 45, 47-48, operative part 2)"
		Outcome of proceedings	Following the Decision of the European Court of Justice, Mr. Kadzoev was immediately released from detention.
	Subsequent Proceedings		
	Dublin regulation's legal provisions applicable		The Regulation as a whole as transposed in the Ordinance on the Implementation of the Dublin Regulation

1 This should be the most detailed section of the summary.
2 This should be very selective extracts.

7 KEY WORDS	Immigration detention of asylum seekers ; Ordinance on the Implementation of the Dublin Regulation	
Legal provisions cited	*Legislation* European Convention on Human Rights	*Articles* Art. 3; art. 5; art. 8; art. 13;
		Art. 3; art. 15, par. 4, par, 5, par, 6
	Convention on the Reduction of Statelessness	Art. 1, par. 1
	Agreement between the Russian Federation and the European Union on the readmission L 29 – 17.05. 2009	Art. 9, par. 1
	Law on Asylum and Refugees	Art. 13 par.1, point 5; Art. 67 par. 1;
	Law on Foreigners in Republic of Bulgaria	Art. 1; art. 2: art. 19; Art. 11 par.5; Art. 46 a, par. 3; art. 42 a par. 2 and par. 3; art. 41, point 1; art. 46 par 6; art. 46 par. 8; art. 44 par. 3, 5, 6, 7, 8; art. 46 a, par. 4, par. 5
	Law on Ministry of Interior	Art. 85
	Law on Bulgarian Identity documents	Art. 55, par. 1; art. 56; art. 57 par. 1;
	Rules on the Application of Law on Ministry of Interior	Art. 101, par. 1
	Ordinance on the Implementation of the Dublin Regulation	Art. 16, par. 1, points – 1 – 4; art. 16, par. 2
Case law cited (national & international references)	Court name European Court of Justice	Neutral citation Chahal v. UK
Other sources cited (NGO reports etc)	Organization	Reference
Observations/Comments	At the time of deciding the case the Ordinance on the implementation of the Dublin regulation stated that upon irregular entry asylum seekers are handed over to the Migration Directorate by the Border Police for 'coercive accommodation', i.e. detention. The detention order is issued with a view to implementing the deportation order. That is, until registered by the Refugee Agency, asylum seekers are treated as irregular immigrants, in spite of the fact that they have submitted an asylum application.	

7	KEY WORDS	Immigration detention of asylum seekers ; Ordinance on the Implementation of the Dublin Regulation
	Observations/Comments	This explicit provision from the Ordinance on the Implementation of the Dublin Regulation was repealed in November 2011. The state authorities interpret this amendment as guaranteeing that asylum seekers who claim asylum before the Border Police will be taken directly by the Refugee Agency. However the ordinance does not stipulate a term within which the asylum seeker is received and registered by the Refugee Agency. On the problem of arbitrary access to the asylum procedure in Bulgaria and the ensuing treatment of asylum seekers as irregular immigrants, please see the interview by ECRE from 17 Fenruary 2012 at http://www.ecre.org/media/news/latest-news/breaking.html#ecre-interview-with-valeria-ilareva-phd-practitioner-and-academic

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KEY WORDS		EURODAC
Country of Appeal		Bulgaria
Responsible Member State under Dublin Criteria		Sweden
Case name		M. Y. Sh. (М.Ю.Ш.)
Appeal body name i.e. Court/ Tribunal/Appeals Board		Sofia City Administrative Court
Decision number/Neutral citation		Decision № 79 of 2009; administrative case № 7450 of 2009
Date decision delivered or promulgated: Date of determination		30. 11. 2009
Country of applicant/Claimant		Iraq
Summary of the case		
	Facts (brief overview)	The applicant submitted an application for refugee status in Bulgaria in 2009. A check in the Eurodac system revealed that his fingerprints coincided with the fingerprints of a person, who made an application for protection in Sweden in 2007. During an interview the applicant said that he applied for protection in Sweden in 2007 and he stayed legally in Sweden until May 2009, when he received a negative decision on his application for protection. In July 2009 he came to Bulgaria, in Plovdiv, by plane, using a false passport. After that the applicant went to Sofia and submitted his application for protection. In August 2009 under article 16, paragraph 1 c of Regulation № 2003/343/ EC the Bulgarian authorities made a request to Sweden to take back the applicant. The Swedish authorities accepted the request for the transfer and specified the documents and the deadlines for the transfer. The Bulgarian authorities issued a decision for non-admission to the asylum procedure in the Republic of Bulgaria and stipulated the foreigner's transfer to the competent country. The applicant appealed this decision before the Sofia City Administrative Court. One of the reasons for appealing was that the authorities in Sweden had refused to grant him protection. He also presented a copy of a ruling from the court of appeal in Sweden confirming the decision of the court of first instance for refusal for granting protection in Sweden. The applicant claimed that since 2009 there has been a change in the politics of Sweden towards asylum seekers. The applicant also claimed that the situation in his country of origin was not stable.
	Decision & Reasoning	The court dismissed the appeal. It stated that the act was issued by a competent organ and the material and procedural rules regarding its issuance were fulfilled. For further details, please see the quotations below.

8	KEY WORDS	EURODAC	
	Relevant extracts from the judgement	"The considerations in the appeal about the situation in Iraq and about the policy of Sweden towards refugees are not related to the circumstance that Republic of Bulgaria is not a competent country to examine the application of M. Y. Sh., because of his application submitted in Sweden in 2007 and because of the acceptance of his transfer by the competent country. " "Съображенията, изложени в жалбата за обстановката в Ирак и за политиката на Швеция по отношение на бежанците, са неотносими към обстоятелството, че Република България не е компетентната държава да разгледа молбата на М.Ю.Ш, предвид подадената през 2007г. от него молба за предоставяне на статут в Кралство Швеция и приемането на трансфера му от така компетентната държава. " "With regard to the decision presented by the applicant, it does not change the fact of lack of competence of Republic of Bulgaria for examining the application. The competent country is Sweden and its organs have the powers to decide on the asylum requests in the procedures before them and they have the powers to complete that procedure. " "Що се отнася до представеното от жалбоподателя решение, то също не променя факта на липса на компетентост на Република България за разглеждане на молбата. Компетентната държава е Швеция и нейните органи имат правомощията да се произнасят по исканията на жалбоподателя за предоставяне на статут в съответните производства пред тях и да приключат разглеждането на подадената първо пред тях молба за убежище."	
	Outcome of proceedings		
Subsequent Proceedings		Under article 85, paragraph 4 of Bulgarian Law on Asylum and Refugees, the judgement of the first level court is not subject to appeal before the Supreme Administrative Court in a Dublin Regulation procedure.	
Dublin regulation's legal provisions applicable		Art. 3; art. 16, par. 1 c; art. 20, par. 1 b;	
Legal provisions cited (national & international references)		**Legislation** 1. Law on Asylum and Refugees (national law)	*Articles* 1. Art. 58, par. 7; art. 67 a, par. 2 point 1; art. 67 a, par. 3; art. 67 c point 2; art. 84, par. 4;
		2. Administrative Procedure Code (national law)	2. Art. 145 – 178;

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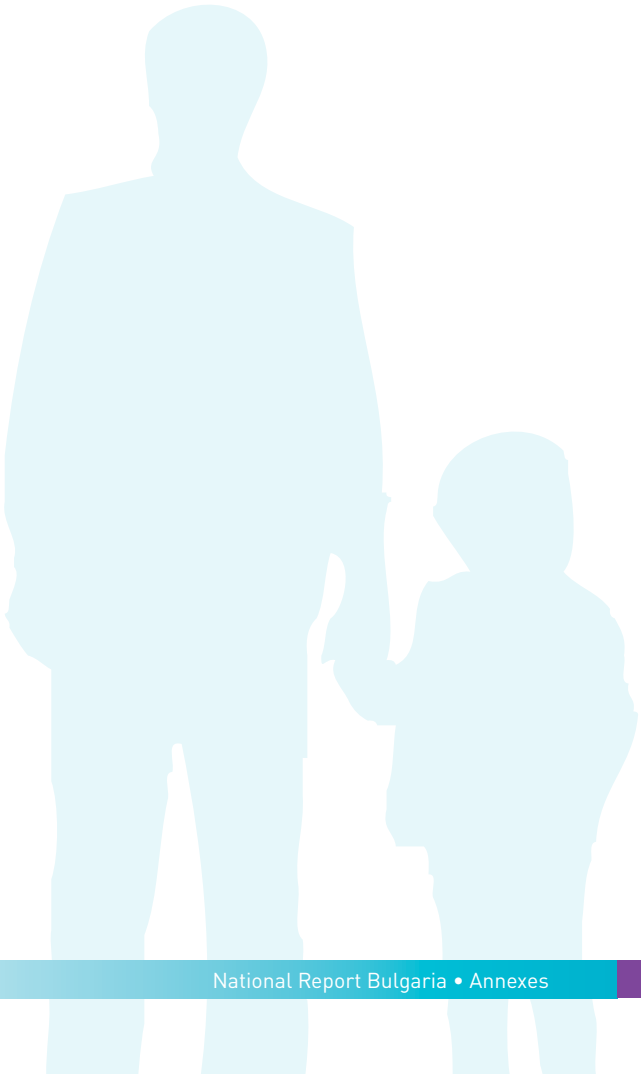
KEY WORDS	EURODAC	
Case law cited (national & international references)	*Court name*	*Neutral citation*
Other sources cited (NGO reports etc)	*Organization*	*Reference*
Observations/Comments		



NOTES

European network for technical cooperation on the application of the Dublin II Regulation

By creating a European-wide network of NGOs assisting and counselling asylum seekers subject to a Dublin procedure, the aim of the network is to promote knowledge and the exchange of experience between stakeholders at national and European level. This strengthens the ability of these organisations to provide accurate and appropriate information to asylum seekers subject to a Dublin procedure.

This goal is achieved through research activities intended to improve knowledge of national legislation, practice and jurisprudence related to the technical application of the Dublin II Regulation. The project also aims to identify and promote best practice and the most effective case law on difficult issues related to the application of the Dublin II Regulation including family unity, vulnerable persons, detention.

During the course of the project, national reports were produced as well as a European comparative report. This European comparative report provides a comparative overview of the application of the Dublin II Regulation based on the findings of the national reports. In addition, in order to further enhance the knowledge, we created information brochures on different Member States, an asylum seekers' monitoring tool and a training module, aimed at legal practitioners and civil society organisations. They are available on the project website.

The Dublin II Regulation aims to promptly identify the Member State responsible for the examination of an asylum application. The core of the Regulation is the stipulation that *the Member State responsible for examining the asylum claim of an asylum seeker is the one where the asylum seeker first entered.*

www.dublin-project.eu

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