

NATIONS UNIES

HAUT COMMISSARIAT

POUR LES REFUGIES

*Délégation Régionale
pour le Benelux
et les Institutions Européennes*

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UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES
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VERENIGDE NATIES

HOOG COMMISSARIAAT

VOOR DE VLUCHTELINGEN

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

Domestic Refugee Legislation and Practice

1. The 1991 Bulgarian Constitution provides in Article 27 (2) that “the Republic of Bulgaria shall grant asylum to foreigners persecuted for their opinions or activity in the defence of internationally recognised rights and freedoms”; Article 98 (10) empowers the President to grant asylum and Article 27 (3) provides that the conditions and procedures for the granting of asylum shall be established by law. On 2 December 2002, a new Law on Asylum and Refugees (LAR) entered into force. Chapter 2, Articles 7-11 of the LAR, elaborate the different types of protection: refugee status, humanitarian status and temporary protection. As stipulated by Article 2(1) of the LAR the President shall grant asylum. The LAR also provides for grounds for refusal / cessation / withdrawal of protection, for suspension of the asylum procedure and for discontinuation of status [Chapter 3]; the rights and obligations of aliens who are seeking or who have been granted protection [Chapter 4]; the competent administrative body [Chapter 5]; the refugee status determination procedures [Chapter 6]; and the judicial control of pertinent decisions [Chapter 7].
2. UNHCR acknowledges that compared to the 1999 Refugee Law, the 2002 Law on Asylum and Refugees represents significant progress in aligning Bulgarian law with international and European standards. The primary improvements include the establishment of the State Agency for Refugees as the single central refugee authority deciding on asylum applications on first instance and dealing with all refugee and asylum issues, as well as the introduction of the possibility of judicial review for decisions taken in the accelerated procedure. The LAR stipulates that “any alien may apply for protection in the Republic of Bulgaria in accordance with the provisions of this law” and foresees the possibility of applying for asylum before an official of the State Agency for Refugees, any other State authority or even at a diplomatic or consular authority of the Republic of Bulgaria.
3. UNHCR has¹ the following main comments / concerns regarding the 2002 LAR:
 - (a) Article 13 wrongly equates grounds for rejection of asylum applications as manifestly unfounded with circumstances in which refugee status might be cancelled or withdrawn;
 - (b) Article 15, items 6 to 8 are not in line with the cessation clause of the 1951 Geneva Convention, by allowing for cessation of refugee status on the grounds of a mere wish to move to a third country or return (not re-establishment) to the country where persecution was feared;
 - (c) In Article 16, several of the numerous grounds for rejection of an asylum application, discontinuation of procedure or withdrawal of status are at odds with international refugee law as

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

well as European standards and the provision does not adequately distinguish between rejection, discontinuation of a procedure or withdrawal of status.

Safe Countries of Origin and Third Safe Countries

4. Pursuant to Article 48 (3) of the LAR, the Council of Ministers approved on 11 April 2003 a list of 'safe third countries' and another list of 'safe countries of origin'. Of 28 originally proposed countries for the list of 'safe countries of origin', 15 were finally included, namely the Republic of Albania, Bosnia and Herzegovina, the Republic of Macedonia, Serbia and Montenegro, Republic of Turkey, Ukraine, the Republic of Armenia, the People's Republic of Bangladesh, Republic of Georgia, China; Algeria, Ghana, Ethiopia, Nigeria, and Tanzania. As for the list of 'safe third countries', the approved list was reduced from 72 proposed to 6 countries: Bosnia and Herzegovina, the Republic of Macedonia, Romania, Russian Federation, Serbia and Montenegro and Ukraine.
5. UNHCR continues to be concerned about the inclusion of particular countries on these lists and continues to ask the Government to review them in agreement with related international and European practice and standards.

Statistics

6. From 1 January 1993 until 30 June 2003, a total of 11 935 asylum requests were registered in the Republic of Bulgaria. Some 1 368 persons were recognized as refugees and 2 941 were given humanitarian status. Another 378 individuals obtained prolongation of their humanitarian protection. Furthermore, 5102 applications were terminated or otherwise closed (due to abandoning of the procedure or departure from the territory).

Appeal

7. The LAR provides for the possibility for asylum applicants and refugees to appeal all decisions and acts taken by the State Agency for Refugees. As per the law, asylum applicants or refugees lodging an appeal should have adequate time to prepare for her/his case, should be duly informed of the time-limits for lodging their appeal, with automatic suspensive effect, and are thus allowed to remain in the territory of Bulgaria until a final decision is reached. Under an accelerated procedure, an appeal should be lodged within seven days while in the regular procedure, there is a time limit of 14 days. UNHCR appreciates that the time-frame for the Supreme Administrative Court to issue a decision has considerably decreased over the last few years. Since the Supreme Administrative Court began to deal with asylum appeals in late 1995, it has received more than 2000 appeal applications. The Sofia City Court has received 343 cases since the new law came into effect six months ago.

Registration / Reception

8. There are two registration / reception centers for asylum seekers in Bulgaria; one within the premises of the State Agency for Refugees in Sofia with the capacity to accommodate about 400 asylum seekers, and the second in the village of Banya near Nova Zagora, with the capacity for accommodating some 80 asylum seekers. Besides, two temporary centers are located at the Turkish/Bulgarian border check point Kapitan Andreevo and in Liubimetz. As asylum seekers can only register in the first two centres, they sometimes face difficulties in reaching these locations. According to the 2001 agreement with the Border Police and the State Agency for Refugees, UNHCR provides logistical support, translation and interpretation assistance in order to increase the reception and protection capacity of responsible authorities.
9. Border authorities have been keeping asylum-seekers in detention-like conditions, particularly at Sofia Airport's Transit Zone. The length of detention varies from a few days to a few weeks under difficult conditions, often lacking basic facilities and with limited outside contact. UNHCR and its

implementing partners such as the Bulgarian Helsinki Committee, monitor closely this situation and have been granted regular access to asylum-seekers at the airport and detention centers in Sofia.

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

Integration

11. Activities to support integration, including vocational training and language classes, take place in an Integration Centre at the State Agency for Refugees (established in 1997 with the support of UNHCR). Integration measures for recognized refugees may also be offered to asylum-seekers, subject to availability of spaces. Recognized refugees may have access to scholarships for higher education under the Bulgarian system or the UNHCR scholarship program (DAFI programme, managed by UNHCR and the Bulgarian Red Cross, with funding from Germany). Whereas the programs for the asylum-seekers are implemented through the Government with financial support of UNHCR, the program for recognised refugees is implemented directly by UNHCR and its implementing NGO-partners. Recognized refugees have the same rights as Bulgarian citizens with regard to employment, education, medical facilities and social assistance.

Freedom of Movement

12. Persons with refugee and humanitarian status crossing the country's border without the permission of the competent authorities at non official crossing points or merely wishing to leave for another country may be penalized as per the LAR. In addition, in October 2002, the Government introduced stricter measures aiming at tightening the control over irregular migration from Bulgaria to other countries. According to the revised Law on Bulgarian Identity Documents, holders of Bulgarian IDs who are readmitted or expelled to Bulgaria because of a criminal offense or violation of visa regime abroad, may be deprived of their passport / travel document for up to two years. UNHCR obtained written confirmation from the Ministry of the Interior that these measures are directed at Bulgarian nationals only. However, as measures are directed at all holders of Bulgarian identity documents, they may, even inadvertently, affect refugees and persons granted humanitarian status.

13. Specific Recommendations

- a. Further revise the LAR to ensure its full conformity with international and European standards;
- b. Revise the list of 'safe countries of origin' and the list of 'safe third countries' to ensure consistency international and European standards and practice;
- c. Continue capacity-building activities with the authorities and the judiciary on international law, standards and best practices;
- d. Continue close monitoring of the state practice which penalizes irregular exit of the country;
- e. Monitor the practice of detention of asylum seekers with a view to ensuring improved living conditions in detention and to limiting the time frame for detention of asylum seekers.

UNHCR
August 2003