

**UNHCR's comments
on the
2002 Law on Asylum and Refugees of Bulgaria**

The 2002 Bulgarian Law on Asylum and Refugees (hereinafter the LAR)¹ was adopted by the Parliament on 16 May 2002. Many of UNHCR's recommendations presented in the drafting and legislative process are reflected in the law. The main purpose of the new LAR is to further harmonize the Bulgarian asylum legislation with the international and European instruments, standards and practices.

1. Inclusion, exclusion and cessation clauses:

1.1 Article 8 of LAR contains the 1951 Convention's inclusion clause in Article 1 A (2) thus fully incorporating the five basic criteria of the refugee definition.

1.2. The **exclusion clauses** of the 1951 Convention (Article 1 F and Article 1 D, E) which stipulate that the rights of the Convention shall not apply to refugees who meet the inclusion criteria, but who do not need or deserve international refugee protection are reflected in Article 12 of LAR. According to Article 12 LAR, persons who are receiving protection or assistance from UN organs or agencies other than the UNHCR (Article 1 D(1)) shall not be recognized as refugees, refugees benefiting from the same rights and obligations as nationals of the country of asylum (Article 1 E); or persons who have committed a war crime or crime against peace and humanity; a serious non-political crime prior to admission to the country of asylum or an act contrary to the purposes and principles of the UN (Article 1 F). However, Article 1D(2) of the 1951 Convention should also be reflected in the future harmonisation process. That provision stipulates that persons for whom protection and assistance received from organs or agencies of the United Nations has ceased for any reason without their position being definitively settled, shall ipso facto be entitled to the benefits of the 1951 Convention.

1.3. Article 15 of LAR incorporates some of the **cessation clauses** in article 1C of the 1951 Convention. Beyond the scope of the 1951 Convention, however, the Bulgarian law provides for additional circumstances in which a refugee shall no longer be considered in need of protection, such as the wish of a refugee to return voluntarily to the country in which he was persecuted or another country (item 5), the withdrawal of an asylum application in accordance with the existing procedure (item 6), failure to appear before the relevant official of the State Agency for Refugees within three months after the suspension of procedure in accordance with article 14 of the LAR (item 7) and death of the applicant (item 8). A couple of observations are required in this connection.

The additional circumstances enumerated in items 6 to 8, which relate to asylum applicants and not refugees, should not be applied to cessation of refugee status.

The provision regarding cessation due to the wish of a refugee to voluntarily return or to depart to a third country is also problematic, since, in line with Article 1 C of the 1951 Convention, refugee status does not cease unless a refugee has voluntarily 're-established' himself in the country where persecution was feared. Moreover, refugee status does not cease in cases in which a refugee expresses the wish or actually moves to a third country. It must be noted that the cessation clauses are exhaustively enumerated in the 1951 Convention, and States Parties are not at liberty to add unilaterally to this enumeration. Furthermore, it would have been desirable that the 'compelling reasons' exception to general cessation as set out in Article 1 C, paras 5 and 6 had been incorporated. This exception for compelling reasons arising out of previous persecution reflects a general humanitarian principle, which is well grounded in State practice. UNHCR hopes that such compelling reasons will nevertheless find reflection in Bulgaria's practice in assessing and implementing cessation clauses.

2. The State Agency for Refugees under the Council of Ministers has become through this LAR the single central refugee authority. According to the relevant provisions of the Bulgarian Law (Chapter Five, Article 58 paras 3, 4, 5, Article 68, 72 of LAR), a specialized body responsible for examining applications for asylum made on the territory of Bulgaria and applying the inclusion, exclusion and cessation clauses, as well as the body responsible for social affairs of asylum applicants and refugees in Bulgaria.

3. Judicial review

¹ Published in the Official Gazette of Bulgaria on 27 May 2002 and entering into force on 2 December 2002 .

The LAR foresees the possibility for an asylum applicant and refugee to appeal all decisions and acts taken by the competent central refugee authority (State Agency for Refugees). When requesting review of the decision, the LAR envisages the asylum applicant/refugee to have adequate time to prepare his/her case, be informed of the time-limits and may remain on the territory of Bulgaria until the final decision is pronounced. Chapter 7 of the LAR on judicial review regulates that the appeal against the decisions on applications in accelerated procedures (Article 84 (1)) and in general procedures (Article 87) stipulating a time limit of 7 days to appeal against first instance decisions in the accelerated procedure and of 14 days in the general (normal procedure). The appeal has, in both procedures, automatic suspensive effect. All these guarantees of due process are welcome.

4. The principle of non-refoulement of Article 33 of the 1951 Convention

This principle is embodied in LAR Article 4 (3) as well as the non-refoulement obligations arising out of Art 3 ECHR and Article 3 of the Convention against Torture (CAT).

Adherence to the principle is foreseen through a mechanism of application (Article 70 (2), Article 75 (5), para 4 and 5 of the Additional Provisions at the end of the LAR). In case of a negative decision, the State Agency for Refugees, which is the first instance refugee status determination procedure decision-maker, shall pronounce on the safety of the country where the asylum applicant is to be returned on a case by case basis. In particular, para 5 of the Additional Provisions requires that three criteria should be met in order for a State to qualify as a "safe third country":

- substantive criteria based on the international human rights instruments, especially the prohibition of torture and inhuman and degrading treatment or punishment,
- formal criteria that the asylum applicant may be admitted to the country in question and claim protection there. With regard to this specific provision UNHCR expresses its concern over the fact that the term 'formal criteria' refers to clear evidence of possible admission, but does not require guarantees of readmission. As a matter of principle, the consent of the third State to re-admit the asylum seeker must be obtained, prior to return, on a case-by-case basis, and
- respect for the fundamental principle of non-refoulement itself, as laid down in the 1951 Convention, which prohibits that a person in need of protection be returned to the territory of a country where his rights would be threatened.

5. Female interviewers and interpreters

A woman seeking protection shall, if she so wishes, be interviewed by a female interviewer in both the accelerated and the normal procedures. In this respect, the relevant LAR Provisions (Article 68 para 3, 73 para 2) meet the requirements of ExCom Conclusion No 64, (iii).

6. Clarification of different forms of protection in Bulgaria (Asylum, Refugee Status, Humanitarian Status and Temporary Protection)

With the adoption of the LAR, several protection regimes have been introduced in Bulgaria. These are:

- (a) Convention refugee status (Article 2 (3) and Article 8 LAR),
- (b) Humanitarian status (Article 9 LAR), also granted to persons in the territory of Bulgaria recognised as refugees under the UNHCR mandate,
- (c) Asylum granted by the President(Article 2, Para 1 and Article 7 LAR and Article 98 para 10 of the Constitution of the Republic of Bulgaria) and
- (d) Temporary protection provided upon a decision by the Council of Ministers (Article 2 (2) and Article 11 LAR).

Articles 8 and 9 of the LAR define who will benefit from refugee status and from humanitarian status in Bulgaria. Humanitarian status is a newly introduced complementary form of protection, based on the provisions of Article 3 ECHR and Article 3 CAT and provides protection to persons fleeing threats to life, security or freedom as a result of armed conflict, except for situations of mass influx. UNHCR welcomes the introduction of a complementary form of protection, however, wishes to reiterate that such status should only be considered if and when there is no link between the risk of threat and any of the five Convention grounds. This is all the more important as the formulation of Article 9 LAR includes grounds which would indicate a strong presumption for Convention refugee status. Article 11 LAR provides for temporary protection in a situation of mass-influx, thereby introducing this concept, reflected in the respective EU Directive of July 2001, into the LAR. UNHCR assumes that those

benefiting from temporary protection can apply for other forms of protection, since there is no provision to the contrary.

7. Manifestly unfounded applications for asylum within the accelerated procedure

Article 13 LAR defines the grounds and provides a basis for the rejection of applications as manifestly unfounded as well as for the withdrawal of refugee status or humanitarian status on the same grounds. The provision covers two distinct situations.

- a) In case any of the grounds under the relevant items is established while the Refugee Status Determination Procedure is in process, the application is considered as manifestly unfounded and rejected,
- b) If any of the above grounds is established after refugee or humanitarian status has been granted, the status is withdrawn.

As adopted, this provision allows for the withdrawal of refugee and humanitarian status on grounds that seem incompatible with the 1951 Convention, as it wrongly equates grounds for rejection of asylum applications as manifestly unfounded with circumstances in which refugee status might be canceled or withdrawn. In UNHCR's view, this provision should not be applied to 'withdraw' status, and will probably need to be re-drafted during any further harmonisation process, in order to be fully in line with international refugee law.

With regard to the grounds outlined in Article 13 LAR, to determine the manifestly unfounded character of applications, UNHCR has serious concerns and recommendations:

Article 13, items 2 and 3: The failure to provide a detailed description of circumstances should as such not lead to a rejection of a claim as manifestly unfounded, especially if the applicant is cooperative.

Article 13, item 7: Similarly the destruction or disposal of documents or tickets by asylum-seekers without acting in bad faith, should not in itself lead to refusal of refugee status.

Article 13, item 8: The 1951 Convention does not preclude that more than one State Party recognize a person as a refugee. Therefore, recognition of refugee status or being in the refugee status determination procedure in a third country may constitute grounds for inadmissibility (subject to the ability of the refugee to be readmitted and enjoy effective protection in such a third country) but not refusal or revocation of refugee status .

Article 13, item 9: The filing of an asylum application to prevent coercive administrative measures can in itself not be a reason for rejection of a claim as manifestly unfounded, particularly in 'sur place' circumstances.

Article 13, item 10: Non-compliance with obligations during refugee status determination does, in itself, not provide sufficient ground for considering an asylum application as manifestly unfounded.

Article 13, item 11: Mere rejection by another state party to the 1951 Convention should not suffice for rejection of an asylum claim as manifestly unfounded, let alone for revocation of status.

8. Grounds for rejection of asylum applications, discontinuation of the asylum procedure and discontinuation of refugee status

Article 16 of LAR provides grounds on the basis of which it would be possible (not imperative) to examine whether an individual (including persons recognised as refugees or granted humanitarian status) does not (or no longer) need protection.

Similar to Article 13 LAR, this provision sets out numerous (altogether thirteen) grounds for decisions with significantly different consequences. They can lead to (1) the rejection of an asylum application (2) the discontinuation of the asylum procedure as well as (3) withdrawal of refugee or humanitarian status. This makes the provision prone to misinterpretation and, insofar as it is applied to withdrawal of status, it is the UNHCR position that it is not compatible with international refugee law. This incompatibility should be taken into account during the further asylum harmonisation process in Bulgaria.

With regard to specific grounds contained in Article 16, UNHCR's comments and concerns are the following:

Article 16, items 5 and 6 – UNHCR must point out that residence permits granted on other grounds than the recognition as a refugee do not entitle the holder to the specific protection and rights granted under the 1951 Convention (for example, Articles 27 and 28).

Article 16, item 10: The wording of this provision is identical to the one of article 13, item 8 and UNHCR's comments similarly apply.

Article 16, item 11: In applying this provision, the competent Bulgarian authorities have to establish whether the refugee definition under Article 8 applies with regard to the applicant, otherwise refugee status would be denied to persons in need of protection. Marriage to a third country national or possibility to reunite with him/her does not automatically entitle a foreigner to the same standard of protection as the one granted under 1951 Convention.

Article 16, item 12: This provision foresees that asylum claims of persons who have been deported in execution of coercive administrative measures may be rejected. Such a previous expulsion or forcible removal from Bulgaria does not, however, necessarily entail that the individual concerned does not fall under the refugee definition. This is evident from the fact that the 1951 Convention itself stipulates circumstances in which a refugee can be subject to expulsion or even refoulement (Articles 32 and 33 (2) of the 1951 Convention)

Article 16, item 13 This provision foresees that refugee status may be denied in cases in which an asylum applicant (and given its applicability to those granted, a refugee) has attempted to illegally leave Bulgaria to another country. While the potential discontinuation of refugee status determination procedures or withdrawal of status is optional and subject to the possibility of judicial review, the provision might leave persons in need of protection without such protection in Bulgaria

9. Access to legal advice

Under Article 23 (2) LAR, asylum applicants have the right to legal aid to assist them during refugee status determination. However no state sponsored legal aid is foreseen. The legal aid for asylum applicants and refugees is provided free of charge by human rights NGOs which are-for the time being-mainly funded by UNHCR.

10. Rights of asylum applicants and recognized refugees

The rights of asylum applicants and refugees stipulated in Chapter 4 LAR ('Rights and obligations of aliens seeking or having received protection') are generally in compliance with international and regional instruments and provide for the special needs of separated asylum seeking and refugee children and other vulnerable persons in need of protection.

Article 32 para 2 of LAR institutes the right of recognized refugees and individuals granted humanitarian protection to social assistance for housing for a period of up to 6 months according to special conditions and procedure laid down by the Chairman of the State Agency for Refugees in coordination with the Minister of Finance. This provision was introduced to address the difficulties faced by newly recognised refugees who had to leave the registration/accommodation centres in which they stayed during the procedure immediately after recognition without as yet having remunerated employment or housing.

11. Identity Documents

The provisions of Article 40 - 45 of LAR in conjunction with the relevant provisions of the 1998 Law on Bulgarian Identity Documents provide the legal basis for identity documents being issued to aliens seeking or having received protection in accordance with Articles 27 and 28 of the 1951 Convention.

12. Right to family reunification

Under Article 34 the recognized refugees have the right to reunite with their family on the territory of Bulgaria. The LAR defines family members entitled to family reunification as comprising husband, wife and unmarried minor children. Elderly parents of each spouse could qualify for family reunification (Para 2 of Additional provisions). The responsibilities of the institutions involved in family reunification procedures (in particular the State Agency for Refugees and Ministry of Foreign Affairs) are clearly defined.

13. UNHCR's Role

Article 3, Para 2 in conjunction with Article 53, Para 8. LAR explicitly stipulate UNHCR's role in monitoring the application of the 1951 Convention the 1967 Protocol in Bulgaria. UNHCR has a right to information, as well as

access to each and every case at any stage of the procedure for the determination of refugee status, and for granting humanitarian status or temporary protection.

14. Interpretation

Article 29 (1) LAR provides for the right of asylum applicants to interpretation if s/he does command the Bulgarian language. This is the rule in the cases at borders where the accelerated procedure usually takes place. Practical problems may arise from the lack of qualified interpreters for languages not common in Bulgaria and especially at borders. This may negatively impact on the possibility for an asylum applicant to effectively pursue his or her asylum application and, in particular, appreciate the importance of observing the time-limits set out in the law within the context of accelerated procedures.

15. Judicial Review

The LAR introduces judicial appeal in the accelerated procedure correcting the provision and practice of the 1999 Law on Refugees (initial decisions were produced by the National Service Border Police, appeals against it were decided by the Agency for Refugees). The competent courts are the district courts, in accordance with the general rules of administrative law (Article 36(1) of the Law on Administrative Procedure). These courts were not previously involved in any manner whatsoever in matters of asylum law. Therefore, an initial period of transition may take place after the LAR enters into force and the beginning of its practical implementation.

16. Detention

The LAR does not contain any provision on the detention of asylum applicants. However under the accelerated procedure, newly arrived aliens who seek protection have to undergo medical check and examinations and remain in quarantine until the results are available (Article 69(2)). In practice, this provision might result in a measure amounting to detention of asylum applicants especially in cases where (s) he finds him/herself accommodated in a transit center under imposed medical supervision measure. It could happen that the medical results are available before the asylum application is decided. In situations amounting to detention, the detention period should be the shortest possible, proportionate to the ends to be achieved and detention related living conditions should take into account special needs of female, children and elderly asylum-seekers.

UNHCR, 19 November 2002