

Arbitrariness regarding Access to the Asylum Procedure in Bulgaria

Information Note

02 January 2012, Dr. Valeria Ilareva

The following information note aims to raise awareness about the seriousness of the problem regarding access to the asylum procedure in Bulgaria and the *refoulement* ensuing from the failure to have the right to seek asylum respected.

All case law on which the information is based has taken place during the year 2011, although the problem has been persisting for years on¹. The novelty of this information note concerns the precedent judicial practice in Bulgaria, which has come to document the unlawful inaction of the asylum authority to register submitted asylum applications. The cited case law has been part of the first-hand legal practice of Dr. Valeria Ilareva, a practicing lawyer in Bulgaria² and coordinator of the Legal Clinic for Refugees and Immigrants.

The information note presents the facts in a number of cases that reached the court in 2011 and the court findings. 60 % of the asylum seekers in these cases submitted an asylum application for the first time. They came predominantly from Afghanistan and Iraq and belonged to vulnerable groups (unaccompanied children, single mothers with children, a family with a handicapped child, seriously ill persons). 40% of the cases concerned 'subsequent' applications by asylum seekers from Egypt and Syria, as well as *inter alia* second asylum applications after a period of over eight years following the final ruling on the first application.

In 80 % of the cases the Court sentenced the head of the State Agency for Refugees to register the asylum seekers. In the rest but three of the cases the Court discontinued the procedure as the asylum seekers were registered upon submission of the court claim. Only in two cases the judges dismissed the claims of the asylum seekers by allowing the objection of the State Agency for Refugees that there was a 14-days preclusive term within which the claim could be made. Subsequently the same judges corrected their stance and in similar cases sentenced the asylum authority to register the asylum seekers. One of the cases is still pending - it concerns an asylum seeker in whose case, two months after he submitted his asylum application and while awaiting its registration, his country of origin made a request for his pre-trial detention in view of his extradition after the Bulgarian migration authorities informed the respective authorities of his presence as an irregular immigrant.

In spite of the court judgments in their favour, 20 % of the asylum seekers in these cases were removed from Bulgaria as irregular immigrants before the State Agency for Refugees came to register them.

¹ See, e.g., Ilareva, Valeria, Bulgaria's Treatment of Asylum Seekers, *Froced Migration Review*, Issue 29 (2007), pp.60-61, available online at <http://www.fmreview.org/FMRpdfs/FMR29/60-61.pdf> (accessed on 01 January 2012); Ilareva, Valeria, Bulgaria and UNHCR's Urban Refugee Policy, *Fahamy Refugee Legal Aid Newsletter*, <http://frlan.tumblr.com/post/6068737555/bulgaria-and-unhcrs-urban-refugee-policy> (accessed on 01 January 2012)

² Some of the cases have been dealt with by Dr. Valeria Ilareva *pro bono* as part of the activities of the Legal Clinic for Refugees and Immigrants (LCRI). LCRI receives no funding for the legal aid it gives and it is provided on entirely voluntary basis. For the latter reason in the cases where the asylum seekers have been able to afford the minimum lawyer's fee under the Ordinance on the obligatory minimum threshold of lawyers' remuneration, their cases have been dealt with as part of the private legal practice of Dr. Valeria Ilareva.

Example Case Summaries

Eight unaccompanied asylum seeking children from Afghanistan, who had been placed in immigration detention for about two months from January until March 2011 in Sofia, were registered by the State Agency for Refugees (SAR) only after the submission of a court claim against the inaction of SAR³. The children were detained on the basis of an order for their deportation and were considered as ‘accompanied’ by one of them who was documented as having been born on 01.01.1993.

Similarly, in April 2011 **a detained for deportation asylum seeking girl from Iran** was registered by SAR only after her lawyer submitted a court claim⁴ against the inaction of SAR that had lasted for about two months.

The registration of **a family of Iraqi nationals, a single mother and her two children**, took place only after on 10 May 2011 the European Court of Human Rights⁵ 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. 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' deportation as irregular immigrants and they were placed in immigration detention in Sofia.

The husband of the mother 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.

³ Case number 1080/2011 at the Sofia City Administrative Court:
[http://85.91.141.110/bcap/admc/webdata.nsf/ActsByCaseNo/53476D18D6E0CC2257862004D545E/\\$FILE/temp40631.7109027778.pdf](http://85.91.141.110/bcap/admc/webdata.nsf/ActsByCaseNo/53476D18D6E0CC2257862004D545E/$FILE/temp40631.7109027778.pdf) (accessed on 01 January 2012)

⁴ Case number 2575/2011 at the Sofia City Administrative Court:
[http://85.91.141.110/bcap/admc/webdata.nsf/ActsByCaseNo/0C1F6E37517B7BDCC225787E004FEC27/\\$FILE/temp40659.7303935185.pdf](http://85.91.141.110/bcap/admc/webdata.nsf/ActsByCaseNo/0C1F6E37517B7BDCC225787E004FEC27/$FILE/temp40659.7303935185.pdf) (accessed on 01 January 2012)

⁵ Case of Kerim and Others v. Bulgaria, Application no. 28787/11

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 2011⁶ (concerning the 12-year old daughter in the family) and 21 April 2011⁷ (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 2011⁸ (concerning the 12-year old daughter in the family) and 16 November 2011⁹ (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-barred¹⁰. On appeal, on 26 April 2011 this decision was quashed by the Supreme Administrative Court¹¹ 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.

A **Chinese national**, Mr. S.T.Y., waited for an indefinite period of time for the head of the State Agency for Refugees (SAR) to register him as an asylum seeker on a first application. The explanation provided by the asylum authority was that it could not register Chinese asylum seekers as it had no employed interpreters from Chinese language and the procedure for their employment lasted indefinitely. Mr. S.T.Y. spent seventeen months in immigration detention on the basis of a deportation order while waiting for his registration as an asylum seeker. By judgment of 28 February 2011¹² the Sofia City Administrative Court found the inaction of the asylum authority to be unlawful and sentenced the head of SAR to register Mr. S.T.Y. as an asylum seeker.

⁶ Judgment in case No.1078/2011 at the Sofia City Administrative Court. The judgment is uploaded at the web site of the Court at

[http://85.91.141.110/bcap/admc/webdata.nsf/ActsByCaseNo/B18A21695346029BC225786700634467/\\$FILE/temp406368786342593.pdf](http://85.91.141.110/bcap/admc/webdata.nsf/ActsByCaseNo/B18A21695346029BC225786700634467/$FILE/temp406368786342593.pdf) (accessed on 01 January 2012)

⁷ Judgment in case No.1077/2011 at the Sofia City Administrative Court.

⁸ Judgment in case No.6564/2011 at the Supreme Administrative Court:

<http://www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/e2c1ab9a64f4018dc22578940041a495?OpenDocument> (accessed on 01 January 2012)

⁹ Judgment in case No.8299/2011 at the Supreme Administrative Court:

<http://www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/d0bfe8b15694e03c22578bc002dd0af?OpenDocument> (accessed on 01 January 2012)

¹⁰ Ruling in case No.1079/2011 at the Sofia City Administrative Court:

[http://85.91.141.110/bcap/admc/webdata.nsf/ActsByCaseNo/8FF5F40ADF339527C22578460023F62E/\\$FILE/temp40603.356099537.pdf](http://85.91.141.110/bcap/admc/webdata.nsf/ActsByCaseNo/8FF5F40ADF339527C22578460023F62E/$FILE/temp40603.356099537.pdf) (accessed on 01 January 2012)

¹¹ Judgment in case No.3685/2011 at the Supreme Administrative Court:

<http://www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/822af875683839e2c225785600303440?OpenDocument> (accessed on 01 January 2012)

¹² Judgment of 28 February 2011 by the Sofia City Administrative Court (SCAC) in case No.9219/2010

In July 2011 a **single mother**, Mrs.M., **and her three-year old child**, Afghan nationals, who had submitted asylum applications, but had been held in immigration detention on the basis of a deportation order since February 2011, were deported to Greece as irregular immigrants.

Following the inaction by the State Agency for Refugees to register the mother and the child as asylum seekers, on 1 April 2011 their lawyer had submitted a claim against that in the court. On 10 June 2011 the Sofia City Administrative Court issued a judgement¹³ obliging SAR to register them as asylum seekers. At the time of the applicants' removal the judgement had entered into force. Experts, who had visited Mrs.M and her son at detention, had documented the fact that the psychological condition of the mother was very fragile. Her lawyer came to know about the deportation from other detainees only after it had already been taken place – according to these sources, on 15 July 2011 Mrs.M and her son, together with a group of other detainees amounting to nearly 30 persons (many of them minors), were removed to Greece. Following this deportation, Mrs.M's lawyer has been unable to establish her whereabouts and conditions of reception or detention as irregular immigrants in Greece. The UNHCR office in Bulgaria received a request by their colleagues in another EU country who had been called upon by the husband of Mrs.M there. Mrs.M's lawyer provided all the available information to UNHCR along with the request for possible tracing of the mother and the child. No further information has been received by Mrs.M's lawyer in this regard.

Similarly, a detained **Afghan family with a deaf five-year-old child** that needed an urgent surgery in order to prevent brain damage, was removed from Bulgaria, in spite of the fact that they had submitted asylum applications and the Sofia City Administrative Court sentenced SAR to register them as asylum seekers. Following the inaction by the State Agency for Refugees to register the family as asylum seekers, on 23 August 2011 their lawyer had submitted a claim against that in the court. By judgment of 29 September 2011¹⁴ the Court sentenced SAR to register the mother and the child. By judgment of 21 October 2011¹⁵ the Court sentenced SAR to register the father. However in the meantime the family had already been deported as irregular immigrants.

Another Afghan single mother, Mrs.A., **and her 14-year old child**, who had been placed in immigration detention at the same time and under the same circumstances as Mrs.M and her three-year old child above, were registered by SAR after the submission of a court claim against the inaction of SAR¹⁶.

¹³ Judgment in case No.2597/2011 at the Sofia City Administrative Court:

[http://domino.admncourtsofia.bg/bcap/admc/webdata.nsf/ActsByCaseNo/72118BC17BCD65E3C22578AE003C036A/\\$FILE/temp407075797800926.pdf](http://domino.admncourtsofia.bg/bcap/admc/webdata.nsf/ActsByCaseNo/72118BC17BCD65E3C22578AE003C036A/$FILE/temp407075797800926.pdf) (accessed on 02 January 2012)

¹⁴ Judgment in case No.7392/2011 at the Sofia City Administrative Court:

[http://85.91.141.110/BCAP/ADMC/WebData.nsf/ActsByCaseNo/B9F6E6C574FBC7FFC225791A0040F018/\\$FILE/temp408156158333333674EA31CCBF34CB2C225791A00305D8B.pdf](http://85.91.141.110/BCAP/ADMC/WebData.nsf/ActsByCaseNo/B9F6E6C574FBC7FFC225791A0040F018/$FILE/temp408156158333333674EA31CCBF34CB2C225791A00305D8B.pdf) (accessed on 02 January 2012).

¹⁵ Judgment in case No. 7391/2011 at the Sofia City Administrative Court:

[http://85.91.141.110/BCAP/ADMC/WebData.nsf/ActsByCaseNo/E48592B5FE75D5D5C2257930004A5115/\\$FILE/temp408376849189815944FCE66C67F552DC2257930003AB523.pdf](http://85.91.141.110/BCAP/ADMC/WebData.nsf/ActsByCaseNo/E48592B5FE75D5D5C2257930004A5115/$FILE/temp408376849189815944FCE66C67F552DC2257930003AB523.pdf) (accessed on 02 January 2012).

¹⁶ Case No.2596/2011 at the Sofia City Administrative Court

On 28 September 2011 the **Pakistani national**, Mr.K.I., **presented himself personally at SAR** and submitted directly his asylum application there (shortly before that he had entered Bulgaria irregularly unnoticed by the Border Police). Instead of being registered, he was only given a small piece of paper saying to present himself again on 19 October 2011 ‘for registration’. In the meantime, on 12 October 2011 he was caught by the police as an irregular immigrant, a deportation order was issued against him and he was detained in view of its execution. On appeal, the Blagoevgrad Administrative Court stated that according to a letter by the head of SAR as of 13 October 2011, no asylum procedure was initiated with regard to Mr.K.I. and therefore the immigration law measures against him were lawful.¹⁷ On 31 October 2011 Mr.K.I.’s lawyer submitted an application at SAR informing them that Mr.K.I. was placed at the immigration detention centre in Sofia and asking for his registration as an asylum seeker. No reply was received by SAR and on 29 November 2011 Mr.K.I. submitted a court claim against the inaction to process his asylum application. Following that, SAR registered him while the court case was still pending.¹⁸

While the case of the Pakistani national described above concerned a first application for asylum, in the case of the **Egyptian national** Mr.H.H., he presented himself personally before SAR and submitted a **subsequent asylum application on the basis of the new circumstances in his country of origin Egypt** at the beginning of 2011. Instead of being registered, on 18 January 2011 SAR gave him a small piece of paper saying that he presented himself again on 01 February 2011 ‘for defining a period for registration’. In the meantime, on 20 January 2011 at a routine check in the city metro, he was detained as an undocumented immigrant, a deportation order was issued against him and he was placed in immigration detention. On 1 February 2011 both Mr.H.H. from the detention centre and his lawyer at SAR submitted applications that Mr.H.H. was unable to appear before SAR because of his detention and asked SAR to register and process his asylum application. No reply was received by SAR and on 7 March 2011 Mr.H.H. submitted a court claim against the inaction of SAR. By judgment of 6 April 2011, the Sofia City Administrative Court sentenced SAR to register Mr.H.H. as an asylum seeker.¹⁹ This judgment did not enter into force immediately, as the SAR appealed to the Supreme Administrative Court. By judgment of 4 November 2011 the Supreme Administrative Court confirmed the judgment of the Sofia City Administrative Court.²⁰ It was only after the judgment of the Supreme Court that SAR registered Mr.H.H., nearly one year after he had submitted his asylum application.

¹⁷ Judgment of 28 December 2011 in case No. 20117030700820 at the Blagoevgrad Administrative Court: <http://blagoevgradac.judiciary-bg.org/courts/adc/blagoevgrad/wa.nsf/0561aea5f858ab59c225763e006da751/5d7133d41c92c9a1c2257974003b741a?OpenDocument> (accessed on 2 January 2012)

¹⁸ Ruling in case No.10564/2011 at the Sofia City Administrative Court: [http://85.91.141.110/BCAP/ADMC/WebData.nsf/ActsByCaseNo/7FCB207B4B30DF77C225796B00585E8A/\\$FILE/temp408967495138889FB136FA9809420DDC225796B004AF5F4.pdf](http://85.91.141.110/BCAP/ADMC/WebData.nsf/ActsByCaseNo/7FCB207B4B30DF77C225796B00585E8A/$FILE/temp408967495138889FB136FA9809420DDC225796B004AF5F4.pdf) (accessed on 02 January 2012)

¹⁹ Judgment in case No. 1730/2011 at the Sofia City Administrative Court: [http://domino.admincourts Sofia.bg/bcap/admc/webdata.nsf/ActsByCaseNo/83E6896FA68BD3EAC225786C002964B0/\\$FILE/temp40641.4392476852.pdf](http://domino.admincourts Sofia.bg/bcap/admc/webdata.nsf/ActsByCaseNo/83E6896FA68BD3EAC225786C002964B0/$FILE/temp40641.4392476852.pdf) (accessed on 02 January 2012)

²⁰ Judgment in case No.6992/2011 at the Supreme Administrative Court: <http://www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/806de80c0bb9fdf2c22578a00046c8c0?OpenDocument> (accessed on 02 January 2012)

In April 2011 the **Syrian national**, Mr.J.H.A., was received by the Republic of Bulgaria under the Dublin regulation and, as he had been once refused protection in Bulgaria, he was automatically issued a deportation order and detained for its execution. In view of **the new circumstances in his country of origin Syria**, Mr. J.H.A. immediately submitted a subsequent application for asylum. In May 2011 Mr. J.H.A.'s lawyer also submitted his asylum application directly at SAR and asked for its registration. No reply was received by SAR and on 13 June 2011 Mr.J.H.A. submitted a court claim against the inaction. The court hearing in the case was scheduled for 19 September 2011. In the meantime, at their visits at the detention centre SAR officials told Mr. J.H.A. that as he had complained to the court, he was going to wait for the court judgment before being registered. This stance of SAR was confirmed by the SAR representative at the court hearing on 19 September 2011²¹. By judgment²² of 5 October 2011, the Court found the inaction of SAR to be unlawful and sentenced SAR to register Mr.J.H.A. as an asylum seeker in view of the application that he had submitted.

The **Liberian national**, Mr.K.M., submitted an application for protection **on humanitarian grounds due to the progressive disc herniation of his back spine** and the lack of any medical treatment in this regard in his country of origin, Liberia. This was Mr.K.M.'s second asylum application after in 1996 his first asylum application based on the situation in Liberia was rejected.

Mr.K.M. submitted his subsequent application at SAR on 1 February 2011. Instead of being registered, on 14 February 2011 SAR gave him a small piece of paper saying that he presented himself again on 25 February 2011 *'for defining a period for registration'*. When he presented himself at the new date, he was only given a new piece of paper saying the same. In the meantime, due to the rapid progression of his illness, he underwent an urgent first surgery to some of his discs. Mr. K.M. was in pain and could hardly walk, but he appeared personally at SAR as indicated to him also on 11 March and 18 April only to receive a new piece of paper saying that he presented himself again *'for defining a period for registration'*. Following a court claim that he submitted against the inaction of SAR to process his application for protection, by judgment²³ of 28 April 2011 the Sofia City Administrative Court sentenced the head of SAR to register Mr.K.M. on his application. Following that, when Mr.K.M. appeared at SAR on 3 May 2011, the small piece of paper that he received said that he should appear again on 17 May 2011 *'for registration'*. His application for protection was registered and by decision of 20 May 2011 the interviewing organ of SAR rejected it as manifestly unfounded.

²¹ Please see the protocol of the court hearing on 19 September 2011 in case No.5136/2011 at the Sofia City Administrative Court:
[http://85.91.141.110/BCAP/ADMC/WebData.nsf/ActsByCaseNo/844355E5202921E8C2257911004A26D0/\\$FILE/temp408066854861111C764A2A934BCEC30C2257911003FA21C.pdf](http://85.91.141.110/BCAP/ADMC/WebData.nsf/ActsByCaseNo/844355E5202921E8C2257911004A26D0/$FILE/temp408066854861111C764A2A934BCEC30C2257911003FA21C.pdf) (accessed on 2 January 2011)

²² Judgment in case No. 5136/2011 at the Sofia City Administrative Court:
[http://85.91.141.110/BCAP/ADMC/WebData.nsf/ActsByCaseNo/03386068536B59A7C22579200045938D/\\$FILE/temp408216491550926DC442EBAEC4DCE8DC225792000419EFD.pdf](http://85.91.141.110/BCAP/ADMC/WebData.nsf/ActsByCaseNo/03386068536B59A7C22579200045938D/$FILE/temp408216491550926DC442EBAEC4DCE8DC225792000419EFD.pdf) (accessed on 02 January 2012)

²³ Judgment in case No. 1647/2011 at the Sofia City Administrative Court:
[http://85.91.141.110/bcap/admc/webdata.nsf/ActsByCaseNo/1B21CB9253189C66C225788100539F7F/\\$FILE/temp40662.7587615741.pdf](http://85.91.141.110/bcap/admc/webdata.nsf/ActsByCaseNo/1B21CB9253189C66C225788100539F7F/$FILE/temp40662.7587615741.pdf) (accessed on 02 January 2012)

After the Bulgarian migration authorities informed the embassy of the Uzbek national Mr. Sh.D. of his presence in Bulgaria in view of executing his deportation order, in December 2011 Uzbekistan made a request for his pre-trial detention with a view to his extradition. This happened two months after on 14 October 2011 Mr. Sh.D. had submitted his asylum application and while he waited for its registration by SAR. The Bulgarian government respected the request of the Uzbek government and in accordance with the bilateral agreement on extradition between Bulgaria and Uzbekistan, Mr. Sh.D. was transferred from the immigration detention centre to the pre-trial arrest in view of his extradition. Until SAR registers Mr. Sh.D. as an asylum seeker on his application, he is regarded as an irregular immigrant.

The detention conditions of Mr. Sh.D. amount to inhuman and degrading treatment as **he suffers from a serious and life-endangering form of paraproctitis, along with diabetes, high blood pressure and kidney stones.**

On 29 November 2011 Mr.Sh.D.'s lawyer submitted a court claim against the inaction of SAR to register Mr.Sh.D. on his first application for asylum.²⁴ The court hearing in the case is scheduled for 24 January 2012. Unless SAR registers Mr. Sh.D. at the pre-trial arrest facilities where he is currently held, there is a serious risk that he will be extradited to his country of origin before the Court pronounces on his access to the asylum procedure in Bulgaria.

In several repetitive applications to SAR, Mr.Sh.D. presented evidence that he had accommodation in Bulgaria and did not need to be hosted at the reception centre of SAR – that evidence included a rental contract and a notary declaration by a Bulgarian citizen that he took care of all costs for Mr.Sh.D. living in Bulgaria.

The above case summaries have been selected as ‘example’ ones since they represent and document some of the typical and repetitive administrative practices in hindering access to the asylum procedure in Bulgaria. Publicly SAR 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 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 author of this information note believes that the main reason for the arbitrary and delayed registration of asylum seekers in Bulgaria is the amendment made to the Bulgarian *Law on Asylum and Refugees* in 2007²⁵ that repealed the provision of *Article 58, Paragraph 2* which stated that the asylum procedure is initiated with submission of the application.

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²⁴ Case No.10565/2011 at the Sofia City Administrative Court

²⁵ State Gazette No.52 of 2007