



COLLOQUIUM ORGANISED BY THE SUPREME ADMINISTRATIVE COURT OF FINLAND
IN CO-OPERATION WITH ACA-EUROPE
HELSINKI 25–27 MAY 2025

DIALOGUE WITH THE EUROPEAN COURT OF HUMAN RIGHTS –
ADVISORY OPINIONS UNDER PROTOCOL NO. 16 TO THE CONVENTION AND
THE IMPACT OF THE COURT'S JUDGMENTS AT THE NATIONAL LEVEL

REPUBLIC OF BULGARIA

Questionnaire

The Finnish presidency of ACA-Europe during 2023-25, in close co-operation with Sweden, has focused on the dialogue between the national supreme administrative jurisdictions and the European Courts, i.e., the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR). During the Finnish presidency, seminars have been organised on a variety of issues like the duty of the national courts to make a reference for a preliminary ruling to the CJEU (Stockholm, October 2023), mechanisms of counteracting conflicting rulings from the domestic courts and the CJEU and the ECtHR (Zagreb, February 2024) and the multilevel protection of fundamental and human rights in European administrative courts (Inari, May 2024).

In the upcoming Colloquium, which will be held in Helsinki 25-27 May 2025, the focus will be on the judicial dialogue between the national supreme administrative courts and the ECtHR. In this questionnaire, as well as in the Colloquium, this dialogue is approached from two different perspectives.

The first part of the questionnaire examines the procedure in which a national court can seek an opinion from the ECtHR in a case pending before it, namely the mechanism of advisory opinions under Protocol No. 16 to the European Convention on Human Rights and Fundamental Freedoms (ECHR). The aim is to find answers to such questions as: Is the mechanism of advisory opinions perceived as a useful tool? What are the experiences so far? Can we draw any lessons already at this stage? Having in mind that all the participating countries have not acceded to the advisory opinion system, the questions will be different for those States that have done this and the ones that have not.

The second part of the questionnaire will focus on the impact of the judgments of the ECtHR at the national level. While in certain fields of law the jurisprudence of the ECtHR has been well recognised and embedded in the legal orders of the Contracting States, in some other fields the case law has been more contested and even criticised. This may be the case, for example, when the ECtHR is faced with new topics and uses evolutive interpretation of the Convention and its Protocols, or when the judgments are closely linked to politically sensitive areas such as national security or issues that traditionally have belonged to the field of political deliberation. In this questionnaire, the impact of the ECtHR case law is approached from a point of view of two such distinct but similarly pressing issues, namely climate change litigation and summary return of aliens at the border.





In section A of the second part of the questionnaire, we will explore the extremely topical issue of climate change litigation. Even though the ECHR does not contain any particular provisions on climate change or environmental matters, the ECtHR has been called upon to develop its case law in those issues as the exercise of certain Convention rights may be undermined by the serious adverse effects of climate change and the existence of harm to the environment.

In section B of the second part of the questionnaire, we will explore another contemporary issue linked to immigration law. As is well known, the ECtHR has a rich jurisprudence in this field where a wide variety of questions have been assessed under different Convention articles. In this questionnaire, the intention is to focus on a very specific and highly debated topic of summary returns of aliens at the border or shortly after entry into the territory (so called push-backs)¹. The attention is specifically on those situations in which persons trying to enter a particular state have been denied entry at the border or in its close proximity, be it a land or sea border, and which have been assessed by the ECtHR especially against the prohibition of the collective expulsion of aliens.

In brief, the second part of the questionnaire aims at exploring the impact the case law of the ECtHR in the above-mentioned specific fields has had at the national level, both in terms of legislation and its interpretation by national courts. By looking at the national framework we are able to get a better understanding of how the rights protected by the Convention operate in the legal and political reality of the Contracting States, as the Convention is – as often repeated by the ECtHR – a living instrument anchored to the present-day conditions. Moreover, as novel issues of interpretation linked to changing and evolving challenges are first encountered at the level of the national courts, having a closer look at the national jurisprudence can serve to predict the questions to be raised before the ECtHR. This, for its part, underlines the two-way nature of the dialogue between European and national courts.

¹ For the definition and principles drawn from the current case law, see [ECHR-KS Key Theme – Summary returns of migrants and/or asylum-seekers \(“push-backs”\) and related case scenarios \(last updated 31/08/2024\)](#).





BACKGROUND INFORMATION

Please state the formal title of your court and the name of your country.

Supreme Administrative Court of the Republic of Bulgaria (Върховен административен съд)

I THE ADVISORY OPINION MECHANISM

In accordance with Protocol No. 16 to the ECHR, the highest national courts or tribunals may request the ECtHR to give an advisory opinion. These requests concern questions of principle relating to the interpretation or application of the rights and freedoms defined in the ECHR or its protocols. The requesting court or tribunal may seek an advisory opinion only in the context of a case pending before it. It must give reasons for its request and must provide the ECtHR with the relevant legal and factual background to the pending case. Protocol No. 16 came into force on 1 August 2018.

1. Has your country ratified Protocol No. 16?

- Yes. Please elaborate (e.g., the ratification year, which courts can make a request).
 No, our country has not ratified Protocol No. 16. Please continue to Question 11.

The following nine questions are addressed to states that have ratified Protocol No. 16:

2. Has your court or any court in your country requested an advisory opinion from the ECtHR? If yes, what was the case about?

- Yes. Please elaborate.
 No.

3. Has your court considered of its own motion in the context of a pending case whether an advisory opinion from the ECtHR could assist in resolving a particular question?

- Yes.
 A request was made.
 No request was made. Please elaborate on the reasons for deciding not to request an advisory opinion.
 No.

4. Has a party to the proceedings asked your court to request an advisory opinion from the ECtHR?

- Yes. Please elaborate whether the party's request was accepted or rejected and if rejected, did you give reasons for the refusal.
 No.





5. If your court decided to request an advisory opinion, did you give your view on the question(s) posed? If not, for what reasons?

- Yes. Please elaborate.
- No. Please elaborate.
- Not applicable because our court has not requested an advisory opinion.

6. If an advisory opinion was requested and delivered, was it useful when resolving the case?

- Yes. Please elaborate.
- No. Please elaborate.
- Not applicable because our court has not requested an advisory opinion.

7. Was the advisory opinion cited in the decision of your court? Did your court enter into a dialogue with the advisory opinion or did you simply state its findings?

- Yes, the advisory opinion was cited in the decision of our court. Please elaborate.
- No, the advisory opinion was not cited in the decision of our court. Please elaborate.
- Not applicable because our court has not requested an advisory opinion.

Our country has not ratified Protocol No. 16.

8. If an advisory opinion was requested and delivered, did the advisory opinion have any wider impact on the national legal order?

- Yes. Please elaborate.
- No.
- Not applicable because our court has not requested an advisory opinion.

9. Have advisory opinions requested by other courts (in your country or abroad) had an impact on the national legal order?

- Yes. Please elaborate.
- No.

10. The ECtHR is under a duty to give reasons for refusing a request for an advisory opinion. Has such reasoning been useful for your court when deciding whether to request an advisory opinion or when deciding how to formulate it?





- Yes. Please elaborate.
 No.

The following five questions are addressed to states that have not ratified Protocol No. 16:

11. Is it known whether ratification is forthcoming?

- Yes. Please elaborate.
 No, we do not know whether ratification is forthcoming.

12. If it is known that ratification is not forthcoming, do you know the reason(s) for this?

- Yes. Please elaborate.
 No, we do not know the reasons for this.
 Not applicable in the light of the answer to Question 11.

13. After the entry into force of Protocol No. 16 in 2018, has your court dealt with a case in which it might have been useful to be able to request an advisory opinion? If so, what was the nature of the question(s)?

- Yes. Please elaborate.
 No.

14. Does your court make use of advisory opinions requested by courts abroad as sources of case law?

- Yes. Please elaborate.
 No.

15. Have advisory opinions requested by courts abroad had an impact on your national legal order?

- Yes. Please elaborate.
 No.

Answer:As it is stated in the Reflection paper on the proposal to extend the court's advisory jurisdiction, written by the European court of human rights ([Advisory opinions EN](#)), the extending the Court's advisory jurisdiction so as to allow domestic courts of last instance to obtain an advisory opinion from the ECtHR on





questions concerning the interpretation of the Convention, could serve to create an institutionalised dialogue between these domestic courts and the ECtHR. This may reinforce both the role of the ECtHR and its case-law and that of the domestic courts in protecting human rights. Advisory opinions provide an opportunity to develop the underlying principles of law in a manner that will speak to the legal systems of all the Contracting Parties.

II THE IMPACT OF THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS ON THE NATIONAL LEVEL

A. CLIMATE CHANGE LITIGATION²

The intersection between climate change and human rights law can be regarded as an important theme for future climate litigation. On 9 April 2024, the Grand Chamber of the ECtHR issued three separate rulings on cases relating to climate change. In the case of Verein KlimaSeniorinnen Schweiz and Others v. Switzerland [GC], 2024, the ECtHR found violations of Article 8 and Article 6.1 of the ECHR. Nonetheless, two other cases – Duarte Agostinho and Others v. Portugal and 32 Others and Carême v. France – were declared inadmissible. These cases illustrate the challenging issues for national courts in relation to climate change, e.g. with regard to holding governments accountable for inadequate national climate policies through the perspective of human rights, admissibility criteria, interpretation of locus standi and national courts' competence to scrutinize political decision-makers' decisions and inaction.

16. Are there specific rules concerning standing of individuals in the climate change litigation context before your court?

- Yes. Please elaborate.
 No.

Answer:

1. The Bulgarian Constitution does not contain an explicit legal provision concerning the protection of climate and climate changes.

Article 55 of the Constitution of the Republic of Bulgaria states that citizens have the right to a healthy and favorable environment in accordance with established standards and norms. They are obliged to protect the environment. Since the climate cannot be considered in a context separate from the surrounding environment, the provision of Article 55 of the Constitution gives citizens the right to a favorable and healthy environment and the right to protect the climate.

² The phrase “climate change litigation” usually refers to cases that raise material issues of law or fact relating to climate change mitigation, adaptation or the science of climate change. Such cases are brought before a range of administrative, judicial and other adjudicatory bodies. For more details, see <https://climate.law.columbia.edu/content/climate-change-litigation> and <https://www.unep.org/resources/report/global-climate-litigation-report-2023-status-review>.





2. Following the ratification of the Paris Agreement, the Bulgarian National Assembly amended Article 4 para. 1 (amendment - 14 of 2015, amend. - 58 of 2017, in force since 18.07.2017, amend. - SG 102 of 22 May 2018, in force from 01.01.2023, amend. - 102/23) of the Climate Change Mitigation Act.

To mitigate climate change, the state must implement integrated policies across transport, energy, construction, education and science, finance and EU funds management, labor and social policy, defense, interior and foreign affairs. Measures derived from EU climate legislation have been adopted, reflecting Bulgaria's commitments under the European Emissions Trading Scheme for the energy sector and large industrial installations, as well as national targets to reduce greenhouse gas emissions by 2030 and 2050.

3. Relevant cases:

3.1. The Constitutional Court of the Republic of Bulgaria, by its decision of April 19, 2019 (case No. 12 of 2018, published in State Gazette No. 36 of May 3, 2019), ruled that the "decision on the environmental impact assessment", pursuant to Article 1, item 30 of the Additional Provisions of the Environmental Protection Act, may be challenged by any person, group of persons or organization that proves its legal interest.

According to the Constitutional Court, this interest derives from the need to ensure a healthy environment for human well-being and the implementation of fundamental human rights, including the right to life itself. According to the Constitutional Court, the provision of Article 55 of the Constitution establishes the right of citizens to a healthy and favorable environment in accordance with established standards and regulations as a fundamental human right, and Article 15 obliges the State to ensure the protection and reproduction of the environment, the preservation and diversity of living nature, and the wise use of the country's natural wealth and resources.

According to the Constitutional Court, the criteria for the effectiveness of judicial procedures for appeals against acts and actions affecting the environment should be fair, impartial and timely, without being prohibitively expensive.

Any person has the right to appeal against the above-mentioned administrative decisions if his right, obligation or interest may be affected in a particular way by the effects of climate change or its mitigation or adaptation to it.

3.2. The Bulgarian climate case before the Supreme Administrative Court (decision N 8230/31.07.2023, case N239/2021) started in 2019, after the Maritsa-Iztok 2 thermal power plant (TPP) obtained an indefinite extension of its integrated operating permit, allowing the plant to emit mercury and sulphur oxides above set emission limits. The Court of First Instance dismissed the case, finding that there was no violation of the Aarhus Convention, even though the operations of the TPP in question have transboundary effects. The court also found no violation of the national administrative procedure code or European directives on air quality and industrial emissions.

The applicants appealed against the judgment to the Supreme Administrative Court. The SAC requested a preliminary ruling from the Court of Justice of the European Union (CJEU). The SAC found that there was a discrepancy between the update of the air quality management plan for the municipality of Galabovo, prepared for the pollutants: particulate matter (PM10) and sulphur dioxide (SO2) for 2019-2023, and the contested decision of the Executive Director of the Environmental Executive Agency. In particular, the reduced desulphurisation rates authorised by the Executive Director in the contested decision do not comply with the minimum desulphurisation rate of 98%.

Furthermore, the authorised daily and hourly average SO2 emissions are systematically exceeded, which led, inter alia, to the adoption and updating of the above-mentioned plan and to the bringing of an action for failure to fulfil obligations in Case C - 730/19, Commission v. Bulgaria. The Supreme Administrative Court





referred three questions to the CJEU concerning the obligations of competent authorities when considering a request for a derogation from the established emission limit values when reissuing integrated permits. On 9 March 2023, the CJEU delivered its judgment (C - 375/21) on the preliminary ruling. The CJEU found that a derogation from the established emission limit values can only be granted if less stringent emission limit values would not cause "significant pollution" and if a "high level of protection of the environment as a whole" could be achieved despite the derogation.

On 31 July 2023, the Supreme Administrative Court decided the case. SAC concluded that Article 18 of Directive 2010/75/EU requires the determining authority, when issuing and updating complex permits, to assess whether the emission levels specified in the permit will lead to a breach of ambient air quality standards (AQS). Where the AQS apply to concentrations of a pollutant in a given area, it can be concluded that an assessment of the effects of emissions from all sources contributing to the concentrations of the pollutant in question should be made. In this case, the administrative authority has based its assessment on modelling carried out by the operator using the PLUME model. In this case, it is a question of practical application whether the impact on ambient air quality standards of the four thermal power plants in the area, as well as the impact of domestic combustion, were examined as starting points in the impact study under the Municipality's programme.

The court ruled that the proceedings had been marred by significant violations of the rules of court procedure, and thus referred the case back to another division of the Administrative Court of First Instance for further examination.

In March 2024, after the second review of the case by the Stara Zagora Administrative Court, the court issued a ruling annulling the decision to extend the integrated permit for the operation of the TPP. According to the court, the limit values document must be reissued to meet the requirements for mercury and sulphur dioxide. The ruling was appealed before the Supreme Administrative Court, which dismissed the case in October 2024 due to technical errors in the first instance ruling. The TPP, whose integrated permit is in dispute, has received a large amount of state aid, without which it would not be able to continue operating due to a sharp decline in profits in recent years and the growth of renewable energy in the country.

17. Are there specific rules concerning standing of associations in the climate change litigation context before your court?

- Yes. Please elaborate.
 No.

Answer: According to paragraph 1(24) and (25) of the Supplementary Provisions of the Environmental Protection Act, the procedural standing of the affected public, including environmental organizations, is recognized in environmental matters, including proceedings for the approval of plans, programmes, investment proposals and decisions on the issuing or updating of permits, regardless of the existence of an affected legal interest of the legal subject.

18. Have there been any climate related cases before your court during recent years in which Article 8 (right to respect for private and family life) of the ECHR has played a role? Please elaborate and/or provide examples.

- Yes.
 Article 8 has been only a part of the argumentation.





Article 8 has formed an essential part of the court's reasoning.

No.

Answer:

Decision from 11/04/2011 of the ECtHR (Application N 12853/03), case Ivan Atanasov v. Bulgaria

1. The applicant complained under Article 8 of the Convention that by allowing the second reclamation scheme to proceed, the authorities had put his and his family's health at risk and had prevented him from enjoying his home. They had failed to comply with a number of legal requirements and had not struck a fair balance between the various interests at stake.

2. The applicant complained under Article 1 of Protocol No. 1 that he could not fully enjoy his property, as his agricultural activities had become risky as a result of the pollution around the tailings pond. In addition, the value of his property had declined owing to the widely publicised environmental problems surrounding the pond's reclamation.

3. The applicant complained under Article 6 § 1 of the Convention that the Supreme Administrative Court had refused to consider the merits of his application for judicial review. He submitted that this had been the result of the belated examination of his application, which was entirely attributable to that court. In addition, the Supreme Administrative Court had not addressed a number of decisive arguments raised by him. It had also failed to rule in a timely fashion on the request to stay the implementation of the impugned decision; when it had eventually done so, it had not taken into account a number of arguments adduced by the applicant.

4. The applicant complained under Article 13 of the Convention that he had not had an effective remedy for his complaints under Article 8 of the Convention and Article 1 of Protocol No. 1.

.....

5. The Court considers that there has been no violation of Article 8 of the Convention.

19. Have there been any climate related cases before your court during recent years in which Article 6.1 (right to a fair trial/access to court) of the ECHR has played a role? Please elaborate and/or provide examples.

Yes.

No.

20. Have there been climate related cases before your court during recent years in which there has been a link to the rights of future generations? Please elaborate and/or provide examples.

Yes.

No.

Answer:

Decision N 3310/ 07.03.2019, case N 14904/2018 of the Supreme Administrative Court

The dispute was whether the current plan for updating the management plan of Pirin National Park (a park of national importance), regardless of its content, nature and purpose, is subject to a mandatory environmental impact assessment and whether this is provided for in the provision of Article 85 para. 1 of





the Environmental Protection Act, and whether or not the authority has the discretionary power to carry out an environmental assessment, and the criteria and procedures for carrying out such an assessment.

Pirin National Park (a park of national importance) was inscribed on the list of the World Heritage Sites in Europe by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) in 1983.

The Court held that, on the basis of Article 1 of the Environmental Protection Act, environmental assessment is mandatory for plans and programmes in the fields of agriculture, forestry, fisheries, transport, energy, waste management, water management and industry, including mining, electronic communications, tourism, spatial planning and land use, where these plans and programmes set the framework for the future development of investment proposals under Annexes 1 and 2. The national provision of Article 85(1) of the Environmental Protection Act reproduces Article 3(2a) of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment. On this basis, the SAC revoked the decision of the Minister of Environment and Water No. EC-1 of 1 March 2017 not to carry out an environmental impact assessment of the draft update of the Pirin National Park Management Plan for the period 2014-2023.

21. Have there been any climate or other environmentally related cases before your court during recent years in which your court's competence to scrutinize political decision-makers' decision or inaction has been dealt with?

No

22. Have there been cases before your court during recent years in which the court has examined whether the competent national authorities, be it at legislative, executive or judicial level, have met relevant requirements pursuant to the domestic climate framework?

No

23. Has the *Klimaseniorinnen Schweiz v. Switzerland* case had an impact in your country? For instance, have new cases been brought to your court after that case? Please elaborate.

No

24. Can you identify any major differences between the legal questions raised by climate change, on one hand, and environmental matters, on the other hand, addressed so far in your court? Please elaborate and/or provide examples.

Answer:

1. Environmental Protection Act

The Environmental Protection Act (EPA) has normative significance for climate change as it regulates the strategic process in all areas of environmental matters. The Act sets out the principles for the integration of environmental policies (including climate and biodiversity policies) into other sectors.

According to Article 55 of the Environmental Protection Act, the protection of clean air shall ensure the protection of human health, living nature, natural and cultural values from harmful effects and the prevention of the occurrence of hazards and damage to society in the event of changes in air quality, ozone depletion and climate change resulting from various human activities.





Article 93(4)(f) of the Environmental Protection Act assesses the need for an Environmental Impact Assessment (EIA), based on the risk of major accidents and/or disasters associated with the investment proposal, including those caused by climate change, in accordance with scientific knowledge.

Article 95(4)(3) of the EPA requires that the EIA shall identify, describe and assess in an appropriate manner the direct and indirect significant impacts of the investment proposal on the subsoil, soil, water, air and climate.

Although Regulation (EU) 2021/1119 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (European Climate Act) (ECA), has direct effect in EU Member States, it requires them to take the necessary measures to contribute to the collective achievement of the climate neutrality objective, but without prescribing specific policies or measures, allowing flexibility to Member States and taking into account the regulatory framework for achieving the emission reduction until 2030.

With the amendment of the Environmental Protection Act in 2022, for the purpose of determining the significance of the impact of the plan/programme for the assessment of the competent authority to carry out an environmental assessment, point 4 has been added to the selective criteria under Article 85(4), which assesses both the impact and the vulnerability of the plan or programme to climate change.

2. Climate Change Mitigation Act

The Climate Change Mitigation Act (CCMA) is a framework law regulating public relations and climate policy in Bulgaria. It was adopted on March 11, 2014 and its latest amendment as of November 2023 was published in State Gazette No. 84 of 6 October 2023.

Art. 1 outlines the normative scope of the law, which regulates the following public relations:

- the implementation of public policy on climate change mitigation]
- the implementation of the mechanisms for the fulfilment of the obligations of the Republic of Bulgaria under the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol to the United Nations Framework Convention on Climate Change (Kyoto Protocol) and the Paris Agreement to the United Nations Framework Convention on Climate Change, hereinafter referred to as the "Paris Agreement";
- the functioning of the National Green Investment Scheme (NGIS);
- the operation of the National Inventory System for Emissions of Pollutants and Green House Gases into the Atmosphere;
- The implementation of the European Emissions Trading Scheme (ETS);
- the administration of the National Greenhouse Gas Emission Trading Scheme (NGGETS);
- measures to reduce greenhouse gas emissions from liquid fuels and energy used in transport;
- the implementation of obligations arising from EU legal acts and the Paris Agreement.

The framework of the CECA also covers the adoption of regulations as subordinate legislation for the implementation of its individual provisions, delegating their adoption to the Council of Ministers. These should be seen as part of the regulatory framework for climate policy.

At the strategic level, the CECA provides for the adoption of two main strategic documents in the field of climate policy.

The Integrated National Energy and Climate Plan (INPEC) is prepared by the Minister of Energy with the participation of the Minister of Environment and Water and other relevant ministers (Article 8 of the EIA).





The first INPEC for the period 2021-2030, adopted by the Council of Ministers on 27.02.2020, was prepared in accordance with the provision of Article 3 of Regulation (EU) 2018/1999 on the governance of the Energy Union and climate protection, within the inter-ministerial working group with representatives of twelve ministries and departments.

The Council of Ministers is obliged to review the RMP in the section on energy decarbonisation measures by the Decision of the National Assembly of 12 January 2023 (SG 6/2023).

In October 2019, the National Climate Change Adaptation Strategy and Action Plan 2030 was adopted. Another important strategy is the Long-term Climate Change Mitigation Strategy of the Republic of Bulgaria 2050, adopted on 21.10.2022. The strategy presents Bulgaria's position and priorities for a low-carbon economy and achieving climate neutrality by 2050, and outlines the main conclusions of the assessment of Bulgaria's potential based on energy and climate modelling based on the IPCC and including the period beyond 2030.

A coherent and well-connected network of protected areas is needed to increase nature's resilience to climate change. Europe's Natura 2000 network of protected areas is an important foundation for the conservation of species and habitats. These protected areas need to be 'climate-proofed' in order to continue to fulfil their functions (Decision N 4185/ 13.04.2020, case N11501/2019 of the Supreme Administrative Court).

B. SUMMARY RETURNS OF ALIENS AT THE BORDER OR SHORTLY AFTER ENTRY INTO THE TERRITORY (“PUSH-BACKS”)

In this questionnaire, the focus is particularly on the cases that have been assessed by the ECtHR primarily under Article 4 of Protocol No. 4 to the ECHR. Consequently, the focal question has been whether there has been a violation of the prohibition of the collective expulsion of aliens. The ECtHR cases in point are, in particular, N.D. and N.T. v. Spain [GC], 2020, and Shahzad v. Hungary, 2021. In addition, the existence of a sufficient remedy, in particular whether individuals were afforded an effective possibility of submitting arguments against their removal, has been assessed under Article 13 in conjunction with Article 4 of Protocol No. 4 for example in Khlaifia and Others v. Italy [GC], 2016. In Hirsi Jamaa and Others v. Italy [GC], 2012, the extraterritorial scope of Article 4 of Protocol No. 4 was confirmed with respect to State's action on the high seas aiming at preventing migrants from reaching the borders of the State or even to push them back to another State. Furthermore, there are several cases pending at the ECtHR, and three cases concerning alleged summary returns of individuals to Belarus from neighbouring states have been grouped to be heard together on 12 February 2025 by the Grand Chamber.

25. Is there specific national legislation applicable to returns of aliens at the border within the meaning of the ECtHR case law above? In particular, are there any specific national provisions intended to cover situations where entry is attempted by aliens *en masse* and/or where migratory flows are deemed to result from actions of a third country with the aim of destabilizing the receiving state (“instrumentalized migration”)³? Please briefly explain the main points of the national provisions.

³ The term “instrumentalised migration” is used, *inter alia*, in Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147.





Answer:

1. Asylum and Refugees Act

According to the Asylum and Refugees Act (Article 4), any alien may apply for protection in Bulgaria in accordance with the provisions of this Act. An alien who has entered the Republic of Bulgaria to seek protection or who has been granted protection may not be returned to the territory of a country where his or her life or freedom are threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion, or where he or she would be subject of torture or other cruel, inhuman or degrading treatment or punishment. These rights may not be exercised by an alien who has been granted protection, who is reasonably believed to be a danger to national security or who, if convicted of a serious crime, is a danger to society.

Pursuant to Article 8 of the Asylum and Refugee Act, refugee status in the Republic of Bulgaria is granted to an alien who, owing to a well-founded fear or persecution for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside his or her country of origin and for this reason is unable or unwilling to avail himself or herself of the protection of that country or to return to it.

Persecution within the meaning of this provision is a violation of fundamental human rights, or a series of acts resulting in a violation of fundamental human rights, which is sufficiently severe in its nature or recurrence. Stalking can be defined as a series of deliberate and unwanted acts directed towards an individual, which may include:

1. Physical or psychological violence, including sexual violence;
2. Legal, administrative, police or judicial measures that are discriminatory in nature or are applied in a discriminatory manner;
3. Prosecution or punishment that is disproportionate or discriminatory;
- 4 5. Denial of judicial protection resulting in disproportionate or discriminatory punishment.
6. Prosecution or punishment for refusal to be drafted in the event of hostilities.

The fear of persecution may be based on events that occurred after the alien left their country of origin or on activities carried out by the alien after their departure. This is particularly the case if it can be demonstrated that such activities represent an expression or continuation of the beliefs or orientation expressed in the country of origin. However, this does not apply where the activities were carried out solely for the purpose of obtaining international protection for the alien under this Act.

The granting of protection against persecution may be undertaken by the state, parties or organisations, including international organisations, which control the state or a substantial part of its territory. This is provided that they are willing and able to offer effective protection to which the alien has access and which is not of a temporary nature.

In accordance with Article 9 of the aforementioned legislation, an alien who does not meet the criteria for refugee status and who is unable or unwilling to obtain protection from their country of origin may be granted humanitarian status if they face a significant risk of harm. This could include situations where the alien is:





The following circumstances may be grounds for granting humanitarian status:

1. the death penalty or execution, or
2. torture, inhuman or degrading treatment or punishment, or
3. grave threats against the life or person of a civilian due to indiscriminate violence in the event of armed international or internal conflict.

The risk of significant harm may be attributed to occurrences that transpired after the alien's departure from their country of origin or to actions perpetrated by the alien subsequent to their departure. This is particularly the case if it is proven that such actions represent an expression or continuation of the beliefs or orientations espoused in the country of origin, unless it can be demonstrated that they were undertaken solely for the purpose of obtaining international protection under the provisions of this Act.

A determination of humanitarian status may not be made in instances where there is no substantial risk of the alien being subjected to severe harm in a region of the country of origin where the alien is able to safely and legally travel to and gain access to that region, and where it is reasonable to expect the alien to settle.

2. Act of the Aliens in the Republic of Bulgaria

Article 44(6) of the Aliens in the Republic of Bulgaria Act stipulates that in cases where an alien is subject to a compulsory administrative measure under Article in the event that the order is impeded by circumstances set forth in paragraphs 1(2) and (3), or in the event that there is a risk of absconding, the authorities may issue an order for the compulsory placement of the alien in a special temporary accommodation facility for aliens for the purpose of organising the return or expulsion. Furthermore, compulsory accommodation shall also be ordered in cases where the alien does not comply with the conditions of the precautionary measures imposed under paragraph 5.

Article 26b of the Aliens in the Republic of Bulgaria Act (new - SG 67/2023) states that when examining an application for a residence permit, an extension of the period of residence or a long-stay visa from an alien for whom another Member State has entered an alert for return or an alert for refusal of entry and residence in the Schengen Information System (SIS), the services responsible for the administrative control of aliens shall carry out preliminary consultations with the Member State concerned in accordance with Article 9 of Regulation (EU) No 2018/1860 of the European Parliament and of the Council on the use of the Schengen Information System for the return of illegally staying third-country nationals.

Following the Article 28a (4) of the Aliens in the Republic of Bulgaria Act, the Director of the Migration Directorate, or an official duly authorised by him/her, shall be responsible for authorising the prolonged stay of aliens falling within the scope of paragraph. (1) and (2), following an assessment of the possibility of returning the aliens to a member of their family, to a designated guardian, or to appropriate reception centres in their country of origin, to a third country willing to accept them, or to a country obliged to accept them under a surrender and readmission agreement with the Republic of Bulgaria, the following conditions must be met: firstly, that their life and liberty are not threatened in the country to which they are returned; and secondly, that they are not in danger of persecution, torture or inhuman or degrading treatment. The assessment shall be conducted in accordance with the procedure set forth in the implementing rules. Aliens in the Republic of Bulgaria Act.





26. Does your court have jurisdiction in the field of immigration law? If so, has your court dealt with cases involving alleged summary returns of aliens? In particular, have there been cases where the notion of collective expulsion as defined in Article 4 of Protocol No. 4 has been invoked and/or applied? If yes, please briefly explain the main points of the national jurisprudence.

Answer:

The Supreme Administrative Court of Bulgaria has jurisdiction in the field of immigration law. There have not been any cases involving returns of aliens or cases where the notion of collective expulsion of aliens would have been invoked or applied.

27. Has the case law of the ECtHR in the field of summary returns of aliens and specifically the Court's interpretation of the scope of Article 4 of Protocol No. 4 had an impact on the content of the national legislation and/or on its interpretation by the national courts? If yes, please briefly explain the main developments.

Answer:

The aforementioned cases, involving returns of aliens, are important for the better interpretation of the meaning of 'collective expulsion'. It is defined as any measure that compels a group of aliens to leave the country, unless the measure is taken on the basis of a reasonable and objective consideration of the individual case of each particular alien in the group. It is important to note that the fact that multiple aliens receive similar decisions does not necessarily indicate that collective expulsion has occurred, provided that each affected person has had the opportunity to present their arguments against expulsion to the competent authorities on an individual basis.

28. Have any cases been brought against your state in the ECtHR alleging that there has been a violation of Article 4 of Protocol No. 4 (alone or in conjunction with Article 13 of the ECHR) in the field of immigration law? If yes, please briefly explain the main features of these cases.

Answer:

To our knowledge, no cases have been brought against Bulgaria in the ECtHR alleging a violation of Article 4 of Protocol No. 4.

