



Conseil du Contentieux des Etrangers de Belgique– Raad van  
Vreemdelingenbetwistingen van België

**Association of the Councils of State and the Supreme  
Administrative Jurisdictions of the European Union  
With scientific support of the Council of Alien Litigations  
of Belgium**

**Asylum and immigration law: the  
national judge between national and  
european standards**

**BULGARIA**

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In fulfillment of commitments under international treaties to which Bulgaria is a party, especially in the application of Art. 78 and Art. 79 under the Treaty on functioning of the European Union Asylum and Refugees Act and Foreigners in Republic Bulgaria were issued The Asylum and Refugees Act, published SG. 54 31.05.2002g., . With last amendment from 20.12.2007 determine four types of special protection by the Republic of Bulgaria provides for applicants - asylum , refugee status, humanitarian status and temporary protection. The President of the Republic of Bulgaria shall grant asylum. The Council of Ministers shall grant temporary protection introduced pursuant to a Resolution of the Council of the European Union.

The Chairman of the State Agency for Refugees shall grant refugee status and humanitarian status under the Convention relating to the Status of Refugees of 1951 and the Protocol relating to the Status of Refugees of 1967, the international human rights instruments and this Act. The Asylum and Refugees Act was established State Agency for Refugees, whose chairman is the executive body with special powers, who grant refugee status; refuse refugee status; grant humanitarian status; refuse humanitarian status.

Foreigners in the Republic of Bulgaria Act, adopted on 23.12.1998., Last amended on 17.09.2010g. defines the terms and conditions under which foreigners can enter, stay and leave the territory of Bulgaria. This act introduces the requirement of Directive 2003/110/+C of the Council on assistance in cases of transit for the purposes of removal by air, Directive 2003/109/ EC of the Council concerning the status of third- country nationals who are long-term residents, Directive 2003/86/EC of the Council on the right to family reunification, Directive 2001/51/EC of the Council supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985, Directive 2001/40/EC of the Council on the mutual recognition of decisions on the expulsion of third country nationals.

Bulgarian Asylum and Refugees Act is consistent with international treaties adopted and ratified by the National Assembly and European Union legislation. Grounded on general and specific provisions of the Convention on the Status of Refugees 28.07.1951g. 'Bulgarian law fully transposed the relevant standards of primary and secondary European law. This Act transposes the provisions of Council Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and the measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers, Chapter Five of Council Directive 2003/86/EC on the right of family reunification, Council Directive 2004/83/EC on minimum standards for qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted and Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status.

Administrative proceedings and judicial review of administrative acts issued on the grounds specified in both laws is subject to the procedural rules of the Administrative Procedure Code of 2006.

Although the rules common to all administrative procedures determine jurisdiction of the courts, dealing with cases on appeal from administrative decisions, the both substantive acts contain special rules distributing powers between the administrative courts and the Supreme Administrative Court.

According to Art. 84 Decisions of directors of the transit and registration / accommodation centers for those in transit, registration reception center or other place of shelter from the State Agency for Refugees may be appealed in the Administrative Court of the City of Sofia through the body issuing the decision within seven days after copies of them were delivered.

Within the framework of general administrative proceedings granting of refugee or humanitarian status, refusing to give permission for family reunification when it is withdrawn or terminated status or withdrawal of temporary protection decisions of the Chairman of the State Agency for Refugees shall be subject to appeal before the Supreme Administrative Court within 14 days of being delivered which hear cases against those acts as a the first instance.

Proceedings before the court is applying rules for first instance, governed by the Administrative Procedure Code. The grounds for annulment of the acts of the Chairman of the State Agency for Refugees are: lack of competence; non-compliance with the established form; material breach of administrative procedure rules; conflict with provisions of substantive law; non-conformity with the purpose of the law.

The court considered appeals in chamber of three judges. The decision of the three-member chamber of the court is a subject to cassation appeal before the five-member chamber of Supreme Administrative Court. In cases takes part a prosecutor who gives a reasoned conclusion on the legality of the contested administrative act.

Competence in the provision of protection is fully granted to the administrative authority - Chairman of the State Agency for Refugees. The court has no power to grant protection. The court has powers as a first instance to declare the decision void or annul it in whole or in part or reject the challenge. If the decision of the authority be revoked, the court gives directions for the implementation of substantive or procedural law and sent the case back for reconsideration by the administrative authority.

The court's instructions on the application of substantive law - the existence of grounds for protection, which the court found in the case, are binding on the administrative authority.

In practice on Foreigners in the Republic of Bulgaria Act Supreme Administrative Court acts as a cassation instance of administrative courts, which are the first instance. Only administrative decision to revoke the right of residence, prohibition of entry and deportation in cause of national security, the Supreme Administrative Court acts as a first instance, and its decisions are not subject to further appeal.

In judicial proceedings under both laws, the Court shall collect all evidence which the Administrative Procedure Code allowed - this is the evidence? documents of any kind, questioning of witnesses, expert opinions. They should all be relevant to the subject matter of the case. Administrative Procedure Code precludes only material evidence, as are admissible in criminal proceedings.

The evidence duly collected in the proceeding before the administrative authority shall have force before the court as well. The court may question as witnesses the persons who have provided information to the administrative authority and the experts solely if the court finds it necessary to hear the said persons directly. On a motion by the parties, the court may collect new evidence as well which are admissible under the Code of Civil Procedure. The court may also act on its own initiative when it appoints experts and orders inspection and certification. The parties shall be obligated to cooperate for establishment of the truth. The court shall be obligated to cooperate with the parties for rectification of any errors in form and any ambiguities in the statements of the parties and to instruct the said parties that certain circumstances relevant to the case do not furnish evidence. The court shall pronounce on the motions for evidence in closed session. Any such motions may furthermore be granted at the first hearing of the case, should the court find it necessary to hear also the oral explanations of the parties on the evidence adduced thereby.

According to Art. 75 Asylum and Refugees Act in ruling on the status application the administrative authority shall take into account all relevant facts concerning the applicant's personal situation, his/her country of origin or third countries. When the applicant's statements are not supported by evidence, they shall be deemed reliable if the individual has made an effort to justify the application and has given a satisfactory explanation of the lack of evidence. The lack of sufficient data of persecution including lack thereof due to the failure to perform an interview under article 63a (5) may not form the sole reason for a refusal to grant status. Where the information gathered on a specific case is insufficient, the Chairman of the State Agency for Refugees may extend the time limit 1 to up to three months. The alien shall be informed thereof by means of a recorded delivery message.

Such a presumption is not contained in Foreigners in the Republic of Bulgaria Act. The extension of the administrative procedure is not permitted.

Translators language comprehensible to foreigners must take part In administrative and judicial proceedings on both laws. For applicants to both law there is an opportunity to seek legal aid, which is common in cases. In this case, the foreigners shall be appointed a lawyer as a representative before the court designated by the Office for Legal Assistance to the Ministry of Justice. Court proceedings under the Law on Asylum and Refugees are exempt from paying state fee and are free for applicants.

According to the Administrative Procedure Code in the cassation proceedings is permitted only written evidence, they are presented to support the cassation grounds for annulment of the court Judgment . Before the cassation instance shall not examine witnesses, are not allowed expertise will not be made other procedural actions such as viewing, such as possible before an administrative authority and before the first court.

Comparing the rules of evidence and admissible evidence it is possible to conclude that there is no restriction, nor providing any further procedural opportunities as well as between the applicants in both law and between them and other applicants in common administrative proceedings. The difference between the common administrative proceedings and those on Asylum and Refugees Act is the legal presumption in favour the aliens.

Because of special nature of social relations and the need for a special kind of protection for the applicants seeking asylum there is a legal presumption of credibility, if not substantiated, but the person has made efforts to justify its request and has given a satisfactory explanation for the lack of evidence. In ruling on an application for protection administrative authority has an obligation to make additional justification and comment on the personal circumstances of the applicant, the situation in the country of origin and situation relating to third parties. This failure violates the procedural rules and lead to the annulment of the administrative decision.

Parties, both in administrative and judicial proceedings have procedural opportunity to present evidence they deem acceptable and relevant to the case, to ask the administrative authority alone to gather evidence before the court the parties may challenge presented by the opposing party evidence. These are procedural opportunities that are all available in the administrative process and they are regulated by the Administrative Code. There is no limitation of the legitimate procedural rights of the parties. Applicants have procedural opportunity to overpass all evidence presented by the other party and the presumption of security of the country of origin or third safe country included in the list adopted by the Council of Ministers.

In the judicial proceedings, the court first make an assessment of the admissibility of evidence - whether they are among those provided in the APC, then whether they are relevant to the particular case . Finally, the court made a thorough assessment of the content of the evidence in what extent they prove the existence of grounds for issuing a positive for applicant the administrative act, satisfying his or her request.

As the party has the opportunity to present evidence within the entire administrative and judicial process up to resolving the case, the judicial discretion including the admissibility and relevance of evidence is done by the time of their presentation until the end of the case. Detailed evaluation of evidence is carried out by the court in the period between hearing the parties and the judgment. Court ruled on the under circumstances of the case and the law. Court takes into account the facts that occurred after the applying that are relevant to the case.

The decision and the motivation are written and the court issues it not later than one month after the hearing, which was completed proceedings. Pronounces the decision is in the Register of Judgments, which is public and everyone has free access to it. Court has the opportunity to announce the decision immediately after collecting all the evidence and hearing the opinions of the parties, but that would deprive him of the opportunity to make a detailed assessment of all the evidence, so that in practice this is not done. Within one month period provided by law, the court made detailed and careful assessment of all evidence, they are discussed by three first-, respectively, five-member Chamber of Cassation. The reasons for the decision the court gives its view on what the evidence base its decision, which ones motivate him to accept a request for reasonable or unreasonable.

Procedure Act does not confer a different burden of proof. All evidence is considered together and separately, each of them equally could contribute to the formation of a final court decision.

Procedure Act provides an opportunity to challenge the authenticity of documentary evidence before the court. It is about as authenticity, ie the attribution of the document and correct reflection of the facts mentioned therein. This contest takes place in the judicial proceedings before the first instance court. In cassation Supreme Administrative Court only

accept evidence from parties that support cassation complaints against the decision of first instance.

In the course of the proceedings at any time up to closing the case parties may raise issues relating to the admissibility of the case.

When the administrative authority in proceedings on Foreigners in the Republic of Bulgaria Act committed a preliminary implementation of the administrative act, which option is generally admissible on the grounds referred to in Art. 60 of Administrative Procedure Code

- to ensure the life or health of citizens, to protect crucial state or public interests or risk of obstruction or hindering the implementation of the act, the disposition of the administrative body may be appealed individually, separate from the main administrative act in a short time. Because of the transposition the provisions of Community law by national law are applicable in the country, case law does not refer to the direct application of the rules of art. 18 and Art. 47 of the Charter of Fundamental Rights of the European Union. Court on its own initiative had not applied them directly in cases. As well so far, the parties had not relied on these regulations in cases. In case law no contradiction in applying the standards for recognition of refugee status. Disputes before the courts in most cases are available on the grounds for granting subsidiary protection -humanitarian status, whose minimum standards set out in Art. 15 of Directive 2004/83 EU of 29.04.2004.

Transposition of the provision of Art. 15 b. of Directive 2004/83 - serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict Bulgarian law - art. 9, par. 1 item 3 of has dropped the word Indiscriminate in term violence.

Therefore, the applicants' lawyers ask whether the provision of Art. 15 b. Of Directive 2004/83 was transposed exactly. They asks the Court to accept incorrect transposition of Community rules, and also establish the fact that the provision of Art. 15 b. Directive 2004/83 contains a clear rule of conduct and creating more rights than the national norm of Art. 9, paragraph 1 b, and expands the scope of protection. Based on these circumstances, refer to the direct effect of Community law, the parties wish the court to apply the provisions of art. 15 b of Directive 2004/83 EU of 29.04.2004. in relation to asylum seekers and national norm will not be applied.

The practice of the court under these circumstances is the regulation of national law - art. 9, paragraph 1 b. Asylum and Refugees Act to be interpreted as being in accordance with European legislation. The Court held that Community provision of Art. 15 b. Directive 2004/83 was transposed exactly, even dropping the word indiscriminate in legal regulation indiscriminate violence and that the national norm does not provide more limited scope of protection.

Administrative authority in its common practice refuse asylum and humanitarian status, with motivation, that there is lack of proof of the legal grounds. In most cases, however, the authority has not complied with the procedural rule of Art. 75, para. 2 and 3 of the Asylum and Refugees Act, ignoring overlooked in favor of the applicant legal presumption

It is noted that after a judgement of European Court of 17 February 2009 in Case C-

465/2007 interpretation of the provision of Art. 15 b. Directive 2004/83 EU, the practice of the Supreme Administrative Court and the administrative body is becoming equalized.

To cases of applicants from Iraq, the court is a constant in the application of Community rules. For example there is a decision № 4291 from 1 04.2009 of Cassation Chamber of the SAC, in which the interpretation of art. 15, paragraph 1 b. Of Directive 2004/83 EC is committed to the principle of uniform interpretation of Community law and decision on the case C-465/2007.

The Asylum and Refugees Act fully transpose the rules of Directive 2004/83 Directive 2003/86 and 2005/85, there are no cases of direct interpretation and application of the Refugee Convention of 1951.

Provision of Art. 8 / 1 / of Directive 2004/83 was transposed and reproduced exactly by the norm of Art. 8, paragraph 8 and art. 9, paragraph 5 of Asylum and Refugees Act governing both types of protection refugee status and subsidiary protection. Article 17 / 3 / of Directive 2004/83 was transposed into art. 12 para 1 item 2 and 2 of Asylum and Refugees Act - as a limit on refusal to grant subsidiary protection in the event of a crime is the fact that the prosecution threatment is inhuman or degrading the life of the applicant.

In determining the security of the country of origin and security of third countries, Asylum and Refugees Act accept the principle for such countries to be considered included in general list adopted by the EU Council Which is subject to change. Made a national list of safe countries of origin and safe third countries. The Council of Ministers shall make a proposal to the European Commission concerning any amendments in the minimum common list of safe countries of origin and safe third countries.

He is adopted by the Council of Ministers upon proposal of the Chairman of the State Agency for Refugees and Foreign Minister, taking into account the extent to which the state offers protection from persecution on the basis of decisions taken in this area and how to offer manner in which the rights and freedoms, way respecting the prohibition of refoulement under the Convention on the Status of Refugees of 1951. and a system of effective sanctions against violations of these rights and freedoms.

As indicated, the presumption of security of the country of origin or safe third country may be rebutted by the applicant with all permissible evidence.