

Protecting asylum seekers in mixed flows: lessons from Bulgaria

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In the context of a large number of arrivals, states may introduce blanket measures aimed at preventing irregular migration. These, however, may curtail the rights of asylum seekers.

In countries where irregular entry is a criminal offence, persons in need of international protection arriving as part of mixed flows are at risk of being prosecuted. Under Bulgarian law, foreigners may be sanctioned for crossing the border illegally by imprisonment for up to five years plus a fine. The possibility of criminalisation for irregular border crossing underscores the need to identify asylum seekers in order to ensure that they benefit from their right not to be penalised.

In November 2013, in the face of increasing migratory flows, Bulgaria introduced measures aimed at strengthening border control. Such measures have the effect of preventing persons in need of international protection from reaching Bulgarian territory and requesting asylum. Reports have also documented allegations about persons in need of international protection being physically prevented from entering Bulgarian territory, including being subjected to ill-treatment and being summarily expelled from Bulgaria without having the opportunity to apply for asylum.

Bulgaria has an ordinance which stipulates, in accordance with amendments introduced in 2011, that persons who apply for asylum with the Border Police after their arrest following an irregular entry should have their request recorded and should be referred to the State Agency for Refugees (SAR); they should then be accommodated in open reception centres. Despite this, persons applying for asylum with the Border Police after crossing the border irregularly are transferred to a detention centre set up in 2013 as part of the measures to deal with increased number of arrivals. Such detention – a

consequence of the asylum seekers being treated as irregular migrants – is unlawful under both EU and Bulgarian law.

Over the past five years Bulgaria has made significant efforts to improve access to the territory and its procedures. For example, information brochures about the asylum procedure in various languages are now provided at all border crossing points. At the same time, one of the most significant problems facing the Border Police in identifying persons in need of international protection and recording their requests is the lack of interpreters, which detracts from the impact of other positive developments.

While Bulgarian legislation specifies that an asylum request can be expressed in oral, written or “any other form”, a reluctance to assume a more active role in identifying asylum requests is especially problematic in the case of vulnerable asylum seekers. For reasons relating to age, gender, sexual orientation or disability or as a consequence of torture or sexual violence, they may be unable to articulate their need to apply for international protection. Training on identifying asylum applicants, including those with special needs, would help. Additional guidance specifying the Border Police’s obligation to inform people – those arriving at the border or detained following an irregular entry – of the possibility to apply for asylum and how and where to do so would facilitate access to the procedure for asylum seekers arriving in mixed flows. This would also help mitigate the risk that they may be removed before being able to make an asylum claim or before their claim has been examined.

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