

BULGARIA: DEVELOPMENTS IN THE TREATMENT OF ASYLUM CLAIMS FROM AFGHANISTAN

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Bulgaria introduced new policies concerning the treatment of claims from Afghanistan following a riot in the reception centre of Harmanli (<https://bit.ly/2KwZnZV>) on 24 November 2016. Afghan applicants started to be arbitrarily considered as “manifestly unfounded” cases. This was not the first time when the authorities misused the status determination procedure to deter asylum seekers from applying or remaining in Bulgaria. A similar approach was undertaken towards Iraqi asylum seekers in 2010-2011 when the number of applications from that country increased significantly.

While the Harmanli events at the end of 2016 were used as a reason to justify the discriminatory approach towards Afghan nationals, the main driver behind this approach related to the fact that Afghanistan had become the top country of origin (<http://www.aref.government.bg/index.php/en/statistics-and-reports>) of all asylum seekers arriving to Bulgaria from Turkey since 1993.

Afghan asylum seekers were, and still are, issued overwhelmingly negative decisions in the regular procedure (/reports/country/bulgaria/asylum-procedure/procedures/regular-procedure), with the exception of cases where they – unlawfully – had their cases determined in pre-removal detention centres under the accelerated procedure (/reports/country/bulgaria/asylum-procedure/procedures/accelerated-procedure). The poor recognition rate for Afghan asylum seekers dropped from 2.5% in 2016 to 1.5% in 2017. The “striking discrepancy between the Bulgarian and the EU average recognition rate for Afghans” has been raised by the European Commission (<http://bit.ly/2EudWMH>), as well as jurisdictions in other Member States, as a matter of concern. Even evidently credible cases were refused by the State Agency for Refugees (SAR) with blank arguments, which were neither addressed nor redressed by the courts, subject to minor, isolated exceptions.

The following cases represent a few examples illustrating this practice:

Supreme	Administrative	Court,	Case	Nº	9598/2017
(http://www.sac.justice.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/97a65ac7789ca78ec22581980043d86f?OpenDocument)					

The applicant, an ethnic Hazara, together with his wife, both licensed teachers, operated a school in their home town, G., attended by boys, but also girls as students. Accidentally identified by a Taliban guerrilla group, he was kidnapped and kept in captivity for 23 days. During this period, the applicant and the rest of the captives were deprived of food, heavily beaten and humiliated on a daily basis while the Taliban kidnappers were waiting for instructions from their commanders as to whether captives would be traded for ransom or executed. One of the other captives died during the ordeal. The applicant and other surviving captives managed to escape by chance when the area was occasionally attacked by the Afghan army. The applicant managed to reach the nearest district city and has never returned to his hometown since. For several months he underwent medicinal treatment for his severely deteriorated mental and physical condition before deciding to leave the country with his family under the threat of the growing presence of the Taliban both in the district city he lived and surrounding area.

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The Regional Court overturned the refusal of the application by the SAR as contrary to the facts and law, but following an appeal by the SAR, the Supreme Administrative Court found that the applicant did not qualify as a refugee as it could not be proven that his fear of persecution was well-founded on account of Geneva Convention grounds. The Court also found subsidiary protection inapplicable in his case for want of grounds to substantiate an existing risk for the applicant's life or a risk of serious harm from torture, inhuman or degrading treatment.

Supreme Administrative Court, Case № 12667/2017
(<http://www.sac.justice.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/e0c868b1f13cd709c22581d100444d4a?OpenDocument>)

The applicant, an underage girl, left Afghanistan together with her family. In Bulgaria her father died. The applicant was refused protection by the SAR insofar as her application was based solely on her father's story. The first instance decision did not consider her individual situation as an underage girl without male support in Afghanistan, which could fall within the "membership of a particular social group" ground of the Geneva Convention.

The Regional Court overturned the refusal based on the death of the father as a significant circumstance to have radically altered the individual situation of the applicant, which had to be explored and considered. However, the Supreme Administrative Court overturned the Regional Court's decision on the ground that, as the applicant's brother had recently come of age, it could not be sustained that she would not be able to rely on male support if returned to the country of origin. This was concluded without debating or considering whether the brother in question was able or willing to return to Afghanistan or to provide support to his mother and younger sisters.

Supreme Administrative Court, Case № 13377/2017
(<http://www.sac.justice.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/b670f6f7325ab7ddc22581e200475580?OpenDocument>)

The applicant was a former soldier who lost his two hands and one eye in a bomb-related incident in Afghanistan. After living in destitution for several years and under growing Taliban threat on account of his military past, he left Afghanistan to seek medical assistance for prosthetic limb implantation to allow him to work and sustain himself and his family. Both the Regional Court and Supreme Administrative Court found the applicant to be an economic migrant.

In the majority of cases where protection has been granted to Afghan asylum seekers, it has happened following court decisions overturning first instance rejection decisions. Therefore, in the first half of 2018, the recognition rate (<http://www.aref.government.bg/index.php/en/statistics-and-reports>) in Afghan cases rose to 16%, albeit still with a very high refusal rate.

However, as illustrated by the cases above, court decisions granting a protection status are frequently overturned by the Supreme Administrative Court. The effectiveness of the appeal system as the sole avenue for overturning first instance negative decisions concerning Afghan asylum seekers is likely to be further undermined following recent developments. In March 2018, Georgi Cholakov, recently appointed (<https://news.bg/crime/vss-izbra-otnovo-georgi-cholakov-za-shef-na-vas.html>) as Chair of the Supreme Administrative Court, announced (<https://news.lex.bg/%D0%B2%D0%B0%D1%81-%D1%89%D0%B5-%D0%B7%D0%B0%D1%81%D0%B5%D0%B4%D0%B0%D0%B2%D0%B0-%D0%B8%D0%B7%D0%B2%D1%8A%D0%BD%D1%80%D0%B5%D0%B4%D0%BD%D0%BE-%D0%B7%D0%B0%D0%B1%D0%B0%D0%B2%D0%B5%D0%BD/>) to have ordered measures to compensate delays in the appointment of hearings relating to some types of cases, including 146 asylum cases. The Chair reported (<https://news.lex.bg/%D0%B2%D0%B0%D1%81-%D1%89%D0%B5-%D0%B7%D0%B0%D1%81%D0%B5%D0%B4%D0%B0%D0%B2%D0%B0-%D0%B8%D0%B7%D0%B2%D1%8A%D0%BD%D1%80%D0%B5%D0%B4%D0%BD%D0%BE-%D0%B7%D0%B0%D0%B1%D0%B0%D0%B2%D0%B5%D0%BD/>) to have instructed judges to decide these cases prior to 30 June 2018. As a result, 100 asylum cases were moved from the 3rd Section, specialised in asylum and refugee law, to the 4th Section of the Court, which has never ruled on such cases. All 100 cases were re-appointed from their initial dates of hearing in autumn of 2018 to two new dates, 10 and 17 May 2018, and were then heard and decided prior to 30 June 2018 with just one case decided on 2 July 2018. In 94 of the cases, the 4th Section of the Supreme Administrative Court issued negative decisions, including by overruling positive court decisions in 19 cases. The overwhelming majority of the judgments of the Supreme Administrative Court shared similar, if not identical reasoning, and concerned Afghan nationals.

For more information, see:

- AIDA, Country Report Bulgaria, 2017 Update ([/sites/default/files/report-download/aida_bg_2017update.pdf](https://sites/default/files/report-download/aida_bg_2017update.pdf)), February 2018.

ECRE thanks Iliana Savova of the Bulgarian Helsinki Committee, AIDA expert for Bulgaria, for authoring this article.

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