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Migration, Asylum and Citizenship Policies in Bulgaria

This paper provides an overview of the Bulgarian legal framework in the field of migration, asylum and citizenship policies. It summarizes and updates the information, presented at the Workshop on citizenship, kin-state policy and migration, organized by the Balassi Institute of Bucharest and the Romanian Institute of Research on National Minorities, which took place in Bucharest on 20 and 21 May 2015.

Strategic priorities of Bulgarian policy

In June 2015 the Bulgarian government adopted a new National Strategy on Migration, Asylum and Integration for 2015 – 2020². It merges three previous national strategies adopted in the period 2008–2014 and updates them in the light of the current refugee crisis and the increased number of asylum seekers. The strategy sets a list of priorities for national policy in the field for the years from 2015 to 2020. In the first place, it prioritizes the security of the external borders of the European Union. Bulgaria continues to aspire to join the Schengen Area and the focus on the fight against illegal immigration remains a top priority in its policy. The next group of priorities concerns the establishment of a functioning asylum system that involves a fair and transparent procedure for determining the need for international protection and effective integration support to individuals recognized to be in need of international protection. Thirdly, the strategy establishes priorities for the good management of the legal immigration of third country nationals, as well as the voluntary return of illegally residing migrants. In the fourth place, the strategy addresses the “attraction of highly qualified Bulgarian

citizen emigrants and foreign nationals of Bulgarian origin for the purpose of permanent establishment in the country.”³ The strategy seems to have taken into account the lessons from the past years when Bulgarian citizenship had been granted to a significant proportion of foreign nationals who had never lived in the country and did not establish themselves in Bulgaria after receiving its nationality. This phenomenon will be addressed further below in the paper.

International Protection in Bulgaria

The main reason to adopt the new updated Bulgarian Strategy on Migration, Asylum and Integration has been the changed refugee context. While in 2012 only 1 387 asylum seekers were registered in Bulgaria, in 2014 their number had increased to 11 087 and reached 10 664 new asylum applications in the first eight months of 2015 (from 01 January till 31 August 2015)⁴. The main countries of origin of asylum seekers in Bulgaria are Syria, Afghanistan, Iraq, Pakistan and Iran. The number of recognized protection status holders in Bulgaria (both refugee and subsidiary protection) from 1 January 2013 until 31 July 2015 is 13 222 persons (that is, 2 462 persons in 2013, 7 000 persons in 2014 and 3 760 persons from 1 January until 31 July 2015).⁵ The 2015 Strategy has focused special attention on the issue of integration of refugees and has defined it as a ‘complex and continuous’ process. The integration process shall be implemented by a set of priority measures in the following fields: access to education and Bulgarian language training, employment, recognition of professional qualifications, health care, social assistance, accommodation and integration in the ‘social, cultural and civic life of the society’. According to the new strategy, the implementation of the integration policy towards beneficiaries of international protection will be done in accordance with annual Action Plans on Integration. However, at the time of this report, no such action plan had yet been adopted and therefore no budget had been allotted to refugee integration in Bulgaria. The lack of integration support has been criticized as being the main push factor for many protection status holders to leave Bulgaria.

This peculiarity of the current Bulgarian approach towards refugees deserves a closer look. It is noteworthy that since 2013 to date

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² The Strategy is adopted by Decision No.437 of 12 June 2015 of the Council of Ministers

³ Annual Policy Report 2012 – European Migration Network, pp. 24.

⁴ Data source: State Agency for Refugees in Bulgaria (this is the decision-making body on applications for international protection in Bulgaria), <http://www.aref.government.bg/?cat=8> Retrieved: 20 September 2015

⁵ Ibid.

in Bulgaria there is *no Integration Plan that provides for integration measures* regarding persons recognized to be in need of international protection. Accordingly, no state budget exists for this purpose. From 2005 until 2013 Bulgaria, through its State Agency for Refugees, implemented a ‘National Programme for Integration of Refugees in Bulgaria’, which has been renewed every three years. The last one expired in December 2013 and a new Programme for the next programme period (2014-2016) had to be adopted by March 2014. However, the draft Programme was not passed by the Council of Ministers. Instead, the government decided to change the approach for the integration of refugees in Bulgaria and to accord this competence to the Ministry of Labour and Social Policy, while the State Agency for Refugees retained the responsibility only for the ‘adaptation’ period during the asylum procedure. For its part, the Ministry of Labour and Social Policy insisted on first adopting a National Strategy on the Integration of Beneficiaries of International Protection, which was adopted in July 2014. However, this further delayed the elaboration and adoption of a concrete plan and budget for its implementation. Up to the present date, no such National Plan or Programme for implementation of the Strategy exists. Instead, in 2015 the government adopted a next Strategy. According to the *Monitoring Report on the Integration of Persons who have Received International Protection in Bulgaria in 2014*⁶:

“In a situation where the number of asylum seekers exceeded 1,000 persons per year – the first such peak since the introduction of the national refugee system – and continued rising throughout 2014, the government and the competent authorities opted for an approach which, instead of being instrumental in meeting the enhanced needs, brought about ceasing the provision of integration help and support and postponing its efficient restart for an indefinite period of time. The government, instead of ensuring the expeditious and adequate drafting of the new National Program for Integration in order to support the integration of a considerable number of individuals granted refugee and humanitarian status in 2014, chose to take a step backward and approved a National Strategy for the Integration of Beneficiaries of International Protection in the Republic of Bulgaria (2014–2020) – a framework document to serve as a basis for drafting the annual program and future integration plans. While the adoption of a strategy itself is a positive initiative, inasmuch as it facilitates long-term planning, this decision proved to be counterproductive in the specific context, and the result therefore was an absolute – either intentional or unintentional – denial of any integration

⁶ Vankova, Zvezda: *Monitoring Report on the Integration of Beneficiaries of International Protection in Bulgaria in 2014*. <https://ec.europa.eu/migrant-integration/librarydoc/bulgaria-2014-unhcr-funded-monitoring-report-on-the-integration-of-beneficiaries-of-international-protection> Retrieved: 20 September 2015

support. Thus, throughout 2014, the beneficiaries of international protection in Bulgaria were put in a situation where they had to ensure their initial and subsequent integration in the Bulgarian society by means of their own efforts, funds and capacity, and the limited assistance from non-governmental and volunteer organizations and initiatives.“

While the Bulgarian government has been slow to dedicate funds to integration support of refugees in Bulgaria, it has been quick to take measures in order to restrict asylum seekers’ access to the country’s territory. In 2013 the Government adopted a ‘Plan for Management of the Crisis Situation that Emerged as Result of the Increased Migration Pressure on the Territory of Bulgaria’. The stated official objectives in the 2013 Plan are ‘order, safety and humane living conditions in the reception centres for asylum seekers in Bulgaria’, ‘decreasing the number of persons seeking asylum on the territory of the country’, ‘quick and effective integration of persons granted refugee or humanitarian status’ and ‘fundraising of external resources to solve the migration and refugee problem’. In January 2014 Bulgaria started the construction of a 30-kilometer long security fence along its border with Turkey in order to cover the least visible section of the border between the Lesovo border checkpoint and the village of Golyam Dervent. The fence stands 3.0 m tall and is fortified with razor wire. In 2015 the government announced extension of the barbed wire border fence in order to completely secure the land border. In September the Bulgarian Parliament adopted amendments to the Criminal Code increasing the punishment for human smuggling into the country.

Irregular Migration

The public debate in Bulgaria in relation to the increased number of persons in need of international protection, at present does not differentiate between irregular migration and the right to seek asylum. Journalists and politicians use the terms ‘migrants’ and ‘refugees’ interchangeably. Thus, there is little awareness that refugees have no other choice, but to use the ‘services’ of human smugglers and to cross the border illegally in order to exercise their internationally recognized right to seek asylum. Asylum seekers often become the object of state measures to counter irregular migration. In Bulgaria the practice has been that asylum seekers might spend days, weeks or even months in immigration detention before they are given access to the asylum procedure.⁷

⁷ Ilareva, Valeria: *Information Note on the Arbitrariness regarding Access to the Asylum Procedure in Bulgaria*. 2012. <https://lcrien.wordpress.com/2012/01/03/>

The new 2015 “Strategy” declares that Bulgaria will focus on voluntary return of illegally residing immigrants. Up to the present moment the Bulgarian practice with regard to irregular migration has prioritized coercive measures such as forced return and immigration detention for the maximum allowed term under EU law, 18 months. However the effectiveness of this approach has often been called into question. Thus, for example, in the year 2013, according to official statistics, 5 260 third country nationals were ordered to leave Bulgaria, while only 1 249 were actually returned (coercively and voluntarily). The question that naturally emerges is whether or not the remaining 4011 persons are for that year only. The analysis of this data reveals that the number of irregular migrants has cumulatively grown over the years. At the same time, Bulgaria does not dispose of any regularization mechanism to allow irregular migrants to remedy their legal situation. Furthermore, one can hardly find any measures to prevent falling into illegality by lawfully residing migrants. Bulgaria requires a special type of long-term “D-visa” (obtained by a Bulgarian embassy in the country of origin) in order to grant a residence permit under its Law on Foreign Nationals. So far the Bulgarian government does not seem to recognize the national security issues which are raised by the situation of marginalized groups of persons in the country that are *de facto* excluded from access to basic human rights.

Legal Immigration

According to the 2013 census, the population of lawfully residing third country nationals in Bulgaria was 33 439. Access to employment and access to education by newcomers with a so-called ‘continuous’ residence permit (for a renewable period of up to one year) are quite problematic.

With regard to access to employment, Bulgaria applies the so-called ‘labour market test’. It requires the potential employer of a third country national to first apply for a work permit, which could be granted, only if the employer manages to prove that there is no Bulgarian, or other EU national, or permanently residing foreign national, that can and wants to do the job in question. The same rule applies also to candidates for an EU Blue Card as highly qualified workers. Thus, economic immigration for the purposes of highly qualified work in Bulgaria requires passing a number of hurdles and

conditions. Firstly, the third country national must have a work permit by the Employment Agency (the application for it is submitted by the employer). Secondly, the immigrant-to-be must obtain a long-term visa from the Bulgarian consulate in the country of origin. Thirdly, once in Bulgaria, he/she must apply for a single permit for residence and work, the Blue Card, from the Ministry of the Interior.

The restricted access to the labour market in Bulgaria might be one of the explanations for the fact that third country nationals residing in the country are more often than not employers rather than employees. They register companies under the Act on Commerce and hence, operate as Bulgarian employers.⁸

In 2013 Bulgaria passed legislative amendments that aimed to attract more foreign investment to the country. The changes concern, on the one hand, the possibility to acquire permanent residence (for an indefinite period) in Bulgaria, upon investment of significant amounts of funds for specific objectives.⁹ On the other hand, access to Bulgarian citizenship is facilitated for large foreign investors. According to Article 14a of the Law on Bulgarian Citizenship, if a foreign national performs certain precisely described investment activities, he/she is eligible to obtain Bulgarian citizenship under a simplified fast-track procedure. Only two conditions have to be met – he/she is an adult and he/she has not been sentenced for a crime by a Bulgarian court and there is no criminal procedure against him/her or he/she has been cleared of criminal charges.

With regard to access to education, in 2014 the Bulgarian judiciary took steps to overcome the obstacles existing for continuous residence permit holders in Bulgaria. According to the Law on Public Education, education is free only for third country foreign nationals who have a *permanent* residence permit, as well as for pupils up to 16 years of age who are children of *long-term* residents in Bulgaria.¹⁰ Therefore, by national law, continuous residence holders, as well as undocumented immigrants, are excluded from the personal scope of free education in Bulgaria. In a landmark judgment¹¹ of 2014, however, the Supreme

⁸ Staykova, Evelina, Tihomira Trifonova: Immigrants in Bulgaria. In *Trends in Cross-border Workforce Migration and the Free Movement of People – Effects for Bulgaria. Report.*, 2010, p.93

⁹ Article 24, Para.1, points 19 and 20, Article 25, Para.1, point 16 and Article 25c of Law on Foreign Nationals in the Republic of Bulgaria

¹⁰ As a rule, permanent and long-term residence in Bulgaria is granted after the immigrants have resided lawfully and uninterruptedly for five consecutive years in Bulgaria as continuous residence holders.

¹¹ Judgment in case No.1158/2013 of the Supreme Administrative Court of the Republic of Bulgaria

Administrative Court repealed as unlawful the Order of the Minister of Education and Science that defined the size of the fees that migrants had to pay to access education in Bulgaria. The Court noted that:

“In this case, from the content of the order in question it is established that the only reason why the applicants should pay a fee for the education is the fact that they are foreign nationals. This undoubtedly constitutes discrimination on “national origin” and violates the applicants’ rights as enshrined in Art. 14 of the European Convention on Human Rights in relation to Art. 2 of Protocol № 1 of the same Convention.”

However, there is still lack of legal certainty on the issue as the provision in question in the Law on Public Education is so far still in force.

Access to Bulgarian Citizenship

Besides employment and education, one of the most often cited indicators of immigrants’ integration, is access to citizenship. According to the Bulgarian Constitution, the President of the Republic is the national institution that grants Bulgarian citizenship, assisted by the Minister of Justice. There is a special Commission on Bulgarian Citizenship at the Ministry of Justice that provides non-binding opinions on each citizenship application. Another Commission, the ‘Commission on Bulgarian Citizenship and Bulgarians Abroad’, assists the work of the President’s Institution. The decision-making power whether to grant Bulgarian citizenship or not, however, belongs exclusively to the President/ Vice-President of the Republic. These powers are derived from the sovereignty of the Head of State and therefore are considered discretionary and not subject to any judicial review. Applicants for Bulgarian citizenship cannot appeal the decisions on their applications. The only ‘remedy’ that they have is to reapply again with another application, without a guarantee for a positive outcome.

The above legal and institutional context underlines the fact that granting of Bulgarian citizenship is usually influenced by the policy and the politics that Bulgaria has chosen to follow. With regard to the granting of citizenship, the Bulgarian policy so far has been prioritizing applicants who claim that they have historical Bulgarian origin and ethnicity. If we look at the latest statistics for 2014,¹² 55% of the positive decisions to grant Bulgarian citizenship concern Bulgarians

¹² Commission on Bulgarian Citizenship and Bulgarians Abroad: *Report on Activities for the Period 01 January 2014 to 31 December 2014*. Administration of the President of the Republic of Bulgaria.

by origin, another 38% of all successful applicants have invoked the ground of having a Bulgarian parent and only 7% have gone through the ‘ordinary procedure’ of general naturalization. The nationalities of most persons who acquired Bulgarian citizenship in 2014 are from the Republic of Macedonia (1874 persons), the Republic of Moldova (1135 persons) and Ukraine (964 persons).

Under the general naturalization procedure for Bulgarian citizenship, the following conditions apply:

1. The applicant has become of age;
2. At least 5 years of residence before he/she has been given a permit for permanent stay in the Republic of Bulgaria¹³;
3. Non-conviction of crimes;
4. The applicant has income or occupation, which enables subsistence in the Republic of Bulgaria;
5. The applicant knows the Bulgarian language, which shall be ascertained according to an Ordinance by the Minister of Education, Youth and Science and
6. The applicant is released from his/her present citizenship or will be released from it at the moment of acquiring Bulgarian citizenship¹⁴.

According to the Law on Bulgarian Citizenship, applicants with a Bulgarian origin or with a Bulgarian parent enjoy preferential treatment. They are exempted from the obligation to meet most of the requirements from the general naturalization regime. The table below shows how the above list of conditions looks under the preferential regime.

Table 1. *Bulgarian Citizenship by Bulgarian Origin/ Bulgarian Parent*

<ol style="list-style-type: none"> 1. The applicant has become of age; 2. At least 5 years of residence before he/she has been given a permit for permanent stay in the Republic of Bulgaria; 3. Non-conviction of crimes; 4. The applicant has income or occupation which enables subsistence in the Republic of Bulgaria; 5. The applicant knows the Bulgarian language which shall be ascertained according to an Ordinance by the Minister of Education, Youth and Science and 6. The applicant is released from his present citizenship or will be released from it at the moment of acquiring Bulgarian citizenship. <p>(Art.15 (1) of the Bulgarian Citizenship Law)</p>

¹³ There are few exceptions to that rule: for example, only 3 years of permanent residence is required by spouses of Bulgarian nationals and holders of refugee status

¹⁴ In 2013 some exceptions to this requirement were introduced for spouses of Bulgarian citizens and for EU citizens.

It is noteworthy that applicants with a Bulgarian origin or with a Bulgarian parent are not required to have resided in Bulgaria or to know the Bulgarian language. They are also not required to reside in Bulgaria following the acquisition of Bulgarian citizenship. There is no formal follow-up or assessment by the Bulgarian institutions of the impact of this policy. According to MIPEX 2015: “Bulgaria has the most restrictive naturalisation policies, out-of-touch with integration processes, and out-of-reach for non-EU residents without ethnic Bulgarian roots.”¹⁵ It seems that in the new National Strategy on Migration, Asylum and Integration for 2015–2020, there has been some reconsidering of the current approach. The strategy sets as priority attraction of highly qualified Bulgarian citizen emigrants and foreign nationals of Bulgarian origin “*for the purpose of permanent establishment in the country*”.

Emigration from Bulgaria

Bulgaria’s strategic vision of itself develops from a country of origin, through a transit country, towards a country that attracts immigration¹⁶. Yet emigrants still outnumber immigrants. According to the 2011 Census, 2,1 million Bulgarian citizens live abroad (mainly in Turkey, USA, Greece and Spain). Around 20 000 citizens emigrate annually from Bulgaria. Now Bulgarian citizens enjoy freedom of movement as EU citizens. They can exit and return to Bulgaria freely (unlike the exit visa regime and the ‘non-returnees’ phenomenon during the ‘communist’ government). The population decrease of Bulgaria is further intensified by the natural decrease (deaths exceed births). Along these lines, the existence of an Agency for Bulgarians Abroad is logical. In 2014 Bulgaria adopted a National Strategy on the Bulgarians and the Historic Bulgarian Communities Abroad. It targets both contemporary ‘young’ emigrants and the historical emigrant communities. The Strategy sets the strategic aims of the Bulgarian State in the field, namely, inclusion of Bulgarian citizens – temporarily or permanently residing abroad – in the public and political life in Bulgaria, preservation of the Bulgarian ‘ethno-cultural space’ abroad, improvement of the migration balance of the country, spreading ‘the positive image of Bulgaria in the world’ and building and maintaining a Bulgarian lobby abroad.

¹⁵ MIPEX (Migrant Integration Policy Index): *Bulgaria*. 2015. <http://www.mipex.eu/bulgaria> Retrieved: 20 September 2015

¹⁶ National Strategy on Migration, Asylum and Integration (2011-2020)

Conclusion

‘New’ destination countries of immigration like Bulgaria need to keep in mind that migration is a global phenomenon, as old as history itself. It is governed mainly by economic factors that influence the efforts to manage migration flows. The unprecedented high number of refugees globally, in the Balkan region and in the European Union has provided new challenges to the institutional and conceptual framework of migration and asylum policies. Let’s hope that decision-makers will be wise enough to reconsider the human Society in a way that will foster its development.