



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Information Note on the Court's case-law 253

July 2021

D v. Bulgaria - 29447/17

Judgment 20.7.2021 [Section IV]

Article 3

Expulsion

Return to Turkey of a Turkish journalist who had expressed his fear of ill-treatment in the context of the *coup d'état* to the border police, without prior assessment of the risks incurred by him: *violation*

Article 13

Effective remedy

Hasty return to Turkey of a journalist 24 hours after his arrest at the border, rendering the available remedies ineffective in practice and therefore inaccessible: *violation*

Facts – The applicant is a former journalist for a Turkish daily newspaper, who entered Bulgaria illegally and was arrested on 14 October 2016 by the Bulgarian border police. He alleged that the Bulgarian authorities had exposed him to risks of ill-treatment when returning him to Turkey, in view of his personal circumstances against the background of the prevailing conditions in the aftermath of the attempted coup, and in particular the measures taken against journalists in connection with the state of emergency.

Law – Article 3 and Article 13 in conjunction with Article 3: Bulgarian law explicitly provided that the authorities responsible for border controls were under an obligation to accept asylum requests submitted at the border. Where the border police detected signs that a person being detained wished to apply for international protection, they were required to provide the person with information about the relevant procedures, together with a translation. The request and all documents drawn up during the detention were forwarded directly, by any available means of communication, to the State Agency for Refugees. The law did not allow the border police to refuse an application for protection or to determine whether the application should be examined on the merits. Only the State Agency for Refugees could take such a decision.

1. *Whether the applicant had made the Bulgarian authorities aware of his fears of being subjected to ill-treatment in breach of Article 3 if returned to Turkey*

The applicant had been part of a group of people wishing to transit via Bulgaria and head towards Germany. He had therefore not initially intended to seek asylum in Bulgaria. However, he appeared to have adopted a change of strategy in announcing, upon his arrest by the Bulgarian police and his detention at the border police station, that he wished to apply for protection in Bulgaria. He stated that he had subsequently reiterated that wish orally on each occasion when a new team of police officers took over, and also on his arrival at the reception centre for foreigners. He added that he had formalised his

asylum request in a written document he had handed to the border police, without being given a copy of it. The Government's account contradicted all these allegations.

No decisive weight should be attached to the absence of an explicit application for protection to the relevant authorities in the written record of the applicant's statements to the Bulgarian authorities, bearing in mind that no interpreter had been present to ensure that all his statements were properly noted down. During the applicant's detention, several documents had been drawn up in a fairly brief period, and the Court was not satisfied that he had understood their contents or had been given the time to familiarise himself with them, even with the help of officers who spoke Turkish or English. The assistance of an interpreter in such circumstances would have been essential, in particular for the applicant to be able to understand the contents of the documents he had been required to sign, as well as for the record of all his statements to the domestic authorities. Moreover, the internal inquiry conducted by a panel appointed by the Ministry of Internal Affairs did not appear to have uncovered any evidence in line with the statements given by the police officers involved in the applicant's removal. The removal had thus taken place in an extremely short space of time, in breach of domestic law. However, the Court did not find it necessary to determine whether there had been a written document in which the applicant had made an explicit application for protection. The applicant could have been in a state of distress when giving his explanations to the Bulgarian authorities, having spent many hours travelling inside a trailer attached to a heavy goods vehicle. In any event, however, the documents submitted by the Government were sufficient for the analysis outlined below.

The applicant's account dated 14 October 2016 and written in Bulgarian contained the following passage: "I was working as a journalist in the town of Bozova. After the attempted coup, I was dismissed from the newspaper. I changed address and found out that the police had been looking for me at my former address." Irrespective of whether the applicant had submitted a formal application for protection, and in view of the linguistic obstacles and the lack of involvement of a lawyer during the events in issue, the question arose as to whether the Bulgarian authorities could have interpreted those statements as reflecting the fears which the applicant claimed to have conveyed to them. A wish to apply for asylum did not have to be expressed in any particular form. The decisive factor was the fear expressed at the prospect of returning to a country. Similarly, the Committee of Ministers of the Council of Europe had recommended that member States provide border officers with training to enable them to detect and understand asylum requests, even in cases where asylum seekers were not in a position to clearly communicate their intention to seek asylum.

In the light of the above factors, although the explanations given by the applicant, as noted in the document produced, did not contain the word "asylum", they stated that he was a Turkish journalist who had been dismissed from his job in the context of the state of emergency introduced in Turkey following the coup attempt, and made it clear that he was afraid of being sought by the prosecuting authorities.

Moreover, the Turkish consulate had indicated that the applicant and his Turkish fellow passengers were thought to have been involved in the coup attempt. Press releases and opinions issued by international observers, including comments by the Council of Europe Commissioner for Human Rights, in the three months leading up to the events in the applicant's case had raised serious concerns about the implementation of the measures adopted in connection with the state of emergency, including those targeting journalists. Various reports had criticised the use of violence, reprisals and arbitrary imprisonment against journalists. However, during the detention and subsequent removal of the applicant and his fellow citizens, the authorities had not made any effort to examine the relevant aspects of the personal account given by the applicant on 14 October 2016 in the light of the situation as outlined above.

In that respect, the record of the applicant's explanations drawn up on 14 October 2016, read in the light of the other aspects described above, were sufficient, for the purposes of Article 3, to conclude that he had expressed his fears in substance to the Bulgarian border police authorities before being returned to Turkey.

2. Whether the authorities properly examined the fears expressed by the applicant that he would be subjected to treatment in breach of Article 3 if returned to Turkey

Neither the border police officers who had obtained the above-mentioned account from the applicant and noted it down in Bulgarian before reporting the matter to their superiors, nor the regional director of the border police, who had imposed the coercive measure of "forcible return to the border of the Republic of Bulgaria", nor the National Centre for Combating Illegal Migration, nor the director of the Migration Department of the Ministry of Internal Affairs, who had ordered the applicant's removal, had found that the explanations provided by the applicant amounted to an application for protection. No proceedings had been instituted with the authorities responsible for international protection.

Given that, as shown above, the Bulgarian authorities had had sufficient information to indicate that the applicant could have had genuine concerns from the standpoint of Article 3, the Court was surprised at the blatant failure to examine his particular situation.

It also had to be acknowledged that, as far as procedural guarantees were concerned, the applicant had neither been provided with the assistance of an interpreter or translator, nor with information about his rights as an asylum seeker, including the relevant procedures. The Court was therefore unable to conclude that in the present case the Bulgarian authorities had fulfilled their requisite duty of cooperation in protection procedures.

Likewise, the applicant had not been granted access to a lawyer or a representative of specialist organisations that would have helped him assess whether his circumstances entitled him to international protection. The material in the case file also indicated that the Bulgarian Ombudsman had not been consulted for the purpose of supervising the removal of the foreign nationals in question, contrary to the express legal requirement to that effect. Moreover, there had been other failings in the conduct of the domestic proceedings: for example, two versions of the declaration on the information about the applicant's rights had been drawn up, and the order for the applicant's admission to the reception centre for foreign nationals had been issued belatedly and had been sent by email to the centre while the applicant's transfer to the border was already under way. The Government had not explained why the order contained an annotation to the effect that the applicant had refused to sign it, whereas, contrary to the explanations provided, it was apparent that the document could not physically have been handed to him. Such failings, in the Court's view, reflected the extreme haste with which the applicant had been removed, besides the fact that his removal had been in breach of the rules of domestic law. As a result of such haste and the failure to comply with the relevant domestic procedures, which had nevertheless been designed to offer protection against the prospect of rapid removal without an examination of individual circumstances, the applicant had been deprived in practice of an assessment of the risk he allegedly faced in the event of his return.

Similarly, the removal order had been implemented immediately without the applicant being given the chance to understand its contents, and as a result he had been deprived of the opportunity available under domestic law to apply to the courts for a stay of execution of the order. Accordingly, the haste with which the removal order had been implemented – within 24 hours of the applicant's arrest at the border between Bulgaria

and Romania – had had the consequence of rendering the available remedies ineffective in practice and therefore inaccessible.

That being so, the applicant had been removed to Turkey, his country of origin from which he had fled, without a prior examination of the risks he faced from the standpoint of Article 3 of the Convention and hence of his application for international protection.

In the light of the foregoing, the applicant could not be held responsible for failing to have recourse to the relevant procedures. Despite the fact that he had expressed fears about the ill-treatment he risked facing in the event of being returned to Turkey, the Bulgarian authorities had not examined his application for international protection.

Conclusion: violation (unanimously).

Article 41: EUR 15,000 in respect of non-pecuniary damage.

(See also *M.S.S. v. Belgium and Greece* [GC], 30696/09, 21 January 2011, [Legal summary](#); *Hirsi Jamaa and Others v. Italy* [GC], 27765/09, 23 February 2012, [Legal summary](#); *De Souza Ribeiro v. France* [GC], 22689/07, 13 December 2012, [Legal summary](#); and *M.A. and Others v. Lithuania*, 59793/17, 11 December 2018, [Legal summary](#))

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