

Final Dissertation

**Ensuring access to asylum for refugees and asylum seekers at the
external border of the EU. Case study of the Bulgarian-Turkish
border.**

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Executive summary

The main purpose of this dissertation is to analyse the position of Bulgaria regarding the right to asylum for refugees and protection seekers at its Southern border. In addition, the aim of the research is to outline better policy alternatives on national and European level to readdress the issue and the security concerns. Firstly, the paper aims to present the main theory and to define non-refoulement and collective expulsions. The main discourse among scholars about the scope of these principles is also highlighted. Secondly, this paper seeks to present the specifics about the Bulgarian situation. The final objective is to examine how Bulgarian authorities can improve their position towards asylum seekers and to recommend feasible policies. To conclude, the paper's objective is to analyse if and how the right of asylum is violated by the Bulgarian authorities and how to better safeguard it in the future.

In this study two qualitative research methods were used. Desk research was used for the preliminary findings. The paper mostly relies on academic articles from the Peace Palace library with the biggest collection of law journals and on reports of the biggest human rights organizations such as Amnesty International and Human Rights Watch. Additionally, both Bulgarian and Turkish organizations were examined for relevant information. Also, three interviews were conducted to collect primary data and to elaborate on the findings from the desk research. The interviews were held with representatives from the Bulgarian Centre for Legal Aid 'Voice in Bulgaria', the ECRE and the UNHCR. To sum up, qualitative methods were used for both the primary and secondary data.

My study shows that Bulgaria breaches both the European law as well as the Geneva Convention on Refugees and its Protocol mainly when the national authorities forcibly return or expel asylum seekers. Due to the externalization principle and the ECtHR decisions, the Bulgarian border guards should protect the rights of the asylum seekers even on a Turkish territory. Policy changes should readdress the situation and look at alternatives such as: proper training of the border police in collaboration with Frontex. Additionally, Bulgaria has to ensure legal avenues for refugees to seek protection such as issuing humanitarian visas. Other policy alternatives include intra-EU relocation and resettlement mechanisms although their implementation is difficult to achieve. Finally, although Bulgaria violates the right to asylum by returning refugees back to Turkey, there are several alternatives to be pursued.

Finally, the main recommendation to readdress the issue is to carry out further research. A follow-up report with financial analysis of every alternative should be conducted and the total number of asylum seekers covered by every policy option should be calculated. Finally, methods to overcome the shortcomings of the proposed alternatives also need further examination.

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Acronyms and Abbreviations

| | |
|----------------|---|
| BG | Bulgaria |
| BHC | Bulgarian Helsinki Committee |
| CEAS | Common European Asylum System |
| CJEU | Court of Justice of the European Union |
| EASO | European Asylum Support Office |
| EC | European Commission |
| ECRE | European Council on Refugees and Exiles |
| ECtHR | European Court of Human Rights |
| ERF | European Refugee Fund |
| ERN | European Resettlement Network |
| EU | European Union |
| FRA | European Union Agency for Fundamental Rights |
| HRW | Human Rights Watch |
| LAR | Law on Asylum and Refugees |
| LARB | Law on Aliens in Republic of Bulgaria |
| MS | Member States |
| NGO | Non-governmental organization |
| SAR | State Agency for Refugees in Bulgaria |
| The Convention | The UN Refugee Convention from 1951 |
| The Protocol | The additional Protocol to the Convention from 1967 |
| UNHCR | United Nations High Commissioner for Refugees |

1. Working definitions and Terminology

For the purpose of clarity the main terms in this paper will be explained and reviewed. To begin with, the terms asylum seeker and refugee are not synonymous. A refugee is someone “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country” as defined in Article 1 A (2) of the Convention relating to the Status of Refugees and the protocol from 1967 (Convention and Protocol Relating to the Status of Refugees, 2014, p. 16). On the other hand, there is no universal definition of ‘asylum’ (Boed, 1994). However, according to the UN system asylum seekers are “people who move across borders in search of protection, but who may not fulfill the strict criteria laid down by the 1951 Convention” (Asylum Seeker, 2014, para. 1). Although different states define asylum seekers according to their national laws, the term is generally used to describe someone who has claimed to be a refugee and whose status is yet to be determined. The term illegal/unlawful immigrants will be used in this paper to describe people crossing the Bulgarian/Turkish border without proper travelling and identity documents and through illegal channels, for example with the help of smugglers. However, the representative of the Office of the High Commissioner for Refugees emphasized that such a legal term does not exist and it should be carefully used (personal interview, Boris Cheshirkov, 2015). ‘Unaccompanied child/ minor’ should be understood as a child from a third country of origin who crosses the border of an EU Member State without a person responsible for him, whether this is by law or custom (Unaccompanied Minors, 2011).

Now, moving on to the description of several principles and actions, according to Article 33 (1) from the Refugee Convention from 1951, the principle of ‘non-refoulement’ stipulates that “no Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” (as cited by Stenberg, 1989, p. 173). On the other hand, in line with the definition used by the ECtHR, collective expulsions should be understood as “any measure compelling aliens, as a group, to leave a country, except where a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group” (Andric v. Sweden, 1999, para. 4). Despite the lack of one common international definition for pushbacks, the term is used to describe the activities by the Bulgarian border police that expel asylum seekers already on Bulgarian soil and that forcibly return those trying to reach and cross the border without giving them the opportunity to apply officially for asylum. When pushbacks strategies are

exercised over a group of asylum seekers, they are described as collective expulsions (Human Rights Watch, 2014).

2. Introduction

In the context of the ever-increasing flows of asylum seekers and refugees coming to the EU and particularly to Bulgaria as well as the dreadful events happening at the Southern European border, the question of how to protect both asylum seekers and national security is at the center of a heated debate. One of the most burning problems that occupy the mind of the Bulgarian politicians is the question of how to reduce the number of asylum seekers and refugees who undertake perilous journeys to find safe haven in the EU and Bulgaria. With the ongoing Syrian crisis, most of the asylum seekers come from the region and the surrounding countries, while the Syrian refugees will exceed 4 million by the end of the year (Savova, 2015). Bearing in mind that Turkey is facing a severe crisis by hosting the largest number of Syrian refugees, more than 1.6 millions, larger groups of asylum seekers are trying to escape the inadequate conditions in Turkey by attempting to cross the Bulgarian border illegally (Amnesty International, 2014). In this way Bulgaria became a target country for the large influx of asylum seekers who are driven by the prosperity of the European Union but end up in the poorest member state of the EU. For example, before the year of 2013 Bulgaria was not high on the list of countries receiving refugees with annually 1,000 applications. However, in 2013 the number skyrocketed to more than 11,000 which came as a surprise to the Bulgarian authorities and the general population. In the same year 7 144 official applications were lodged, of which 4,511 came from Syrian nationals (Human Rights Watch, 2014). However, the State Agency for Refugees (SAR) had the capacity to process only 2,816 of those, denying 354 asylum claims. One positive aspect, confirmed by Mr. Cheshirkov from the UNHCR, is that Bulgaria has one of the best rates in the EU for granting refugee and humanitarian statuses (personal interview, 2015). Nevertheless, although this paper acknowledges this achievement, what about those who are not even given the opportunity to seek protection and refuge? This matter deserves attention as the estimated number of refugees expected to arrive in Bulgaria in 2015 surpasses the 11,000 in 2013. In fact, since the beginning of the year until the end of April, 4,500 asylum seekers sought protection from Bulgaria which is higher than during the same period in 2014 (Georgieva, 2015). The data was confirmed by the President of the State Agency for Refugees, Mr. Nikola Kazakov (SAR, 2015). If we are to multiply that number by three to calculate the result for 12 months, the final number will exceed 13,000 by the end of the year.

Unfortunately, as mentioned earlier, Bulgaria is rather unprepared to meet the demands of so many newcomers. Furthermore, asylum seekers are perceived as threats to the national security of the country

and the well-being of the Bulgarian citizens. Hence, the border authorities develop and implement practices whose legality is questionable, leading to short-term results and sometimes to injuries and suffering for those seeking refuge and asylum. In turn, this puts Bulgaria in the spotlight as different European and international actors are carefully observing and assessing Bulgarian policies. Due to allegations of collective expulsions and excessive violence, several NGOs like Amnesty International and the Human Rights Watch have launched campaigns urging Bulgaria to fulfill its obligations under the Geneva Convention and under the CEAS. Bulgarian compliance with international and European law is also examined by the European Commission and the UNHCR (Stevis, 2014). Although so far there have not been any serious consequences for Bulgaria and it seems like Bulgaria is getting away with its shortcomings, Mr. Cheshirkov pointed out that the UNHCR is doing everything possible to bring forward refugees and asylum seekers whose rights have been violated by Bulgaria to testify so a litigation can be started in the ECtHR against Bulgaria (personal interview, Boris Cheshirkov, 2015). This is a measure of last resort but a possible decision against Bulgaria would bring many financial losses as well as another blow to its already poor reputation. Despite the fact that this might be a rather weak incentive, Bulgaria has to use every opportunity to become a regional leader by complying with international standards, by promoting and transposing European law and by seeking innovative solutions. The EU also needs to take an active position and it needs to be reminded of its core values such as solidarity, tolerance and promotion of cultural diversity. Furthermore, the lives of thousands of asylum seekers are put at risk and every country needs to step in and show universal solidarity. Although we hear a lot about the unfortunate destiny of those travelling by sea, asylum seekers die at the Bulgarian border as well (Border Monitoring EU, 2015). In fact, only a few months ago two men died from hypothermia as neither Bulgarian guards nor Turkish wanted to accept them on national territory and they were forced to stay between borders (personal interview, Boris Cheshirkov, 2015). As well as that, asylum seekers and refugees present greater opportunities than risks (Spindler, 2015). Just to give one example, the Bulgarian population is one of the fastest aging in Europe while one fifth of the asylum seekers who arrive in Bulgaria are children (Refugees in Bulgaria, 2015). The average age of those crossing the border is around 30 years old which can help change the demographic situation in Bulgaria if efforts are made to integrate them. Last but not least, the time and the money that Bulgarian authorities invest in finding ways to stop asylum seekers from entering the border could be rather spent in seeking durable and legal solutions to protect them and integrate them in the society.

Having explained the relevance of this acute problem, it is important to research what Bulgarian authorities are doing wrong in legal terms and what can be done to correct the mistakes and move forward. Indeed, the central question of this dissertation is:

“Is Bulgaria in breach of European and International obligations by limiting access for asylum seekers and refugees at the Bulgarian-Turkish border and if so, how could the situation be rectified?”

It aims to examine current allegations against Bulgaria and then analyze and assess possible policy alternatives for improvement. The overall intention of this research is to find a innovative solution which protects the right to seek asylum and, hopefully, at the same time ensures that Bulgaria safeguards its Southern border, its citizens and their security. To do so, this thesis will be divided in two parts, where the first one will discuss the practices of the Bulgarian authorities and their legality according to international and European law, while the second part will provide a thorough analysis of what can be ameliorated to ensure that Bulgaria is fulfilling its obligation in a manner that is also consistent with its security needs. Additionally, the proposed alternative solutions will be assessed in terms of their potential to bring durable solutions to the mass influx of asylum seekers. The answers of several sub-questions will systemize the findings in each of the two main parts. The first two sub-questions will form the body of the first chapter of the thesis while the next three will be answered in the second chapter.

- “Is Bulgaria violating the principle of non-refoulement and the prohibition of collective expulsions, and if yes, how so?”
- “Why does Bulgaria recourse to illegal practices to reduce the number of asylum seekers?”
- “What are the alternative policies that Bulgaria could follow in order to redress the issue?”
- “What is the role of the EU in assisting Bulgaria to fulfill its obligations?”
 - Resettlement procedures, Intra-EU relocation and quotas systems.
 - The role of Frontex in assisting the Bulgarian border management in ensuring national security without violating the right to seek asylum.
- “Are there any good-case practices from other countries?”

2.1 Scope

This dissertation examines the violations taking place at the border or near proximity that are closely connected to the principle of non-refoulement and the right to seek asylum. With this clarification in mind, there would be some deliberate omissions of other allegations for infringement of international standards as well as selective description of laws and policies. Only those directly impacting the access to asylum will be discussed. Moreover, the procedures that take place after the asylum seekers enter the Bulgarian territory and are provided with the opportunity to lodge an asylum claim do not fall under the scope of this thesis. These necessary adjustments come from the fact that there are several different stages of the asylum application process, various national agencies and authorities involved that could not be summarized and examined in one paper. Additionally, there are numerous challenges due to the unprecedented numbers of asylum seekers entering Bulgaria which cannot be examined in one paper. Finally, I will try to deal with one issue at a time although at some sections of the dissertation the line is blurred due to the interrelationship of laws, policies and outcomes.

2.2 Methodology

For the writing of this paper two qualitative methods were applied, namely desk research and interviews. They were chosen because qualitative methods are used to research a complex topic, such as this one, where the central question and sub-questions demand extensive research which otherwise would not be conducted in a sufficient manner (O'Leary, 2004). For the preliminary findings, I have mostly relied on desk research. For the purpose of justifying the relevance of my research, quantitative data was presented in the form of statistics and estimated numbers. In order to review the Bulgarian obligations under international and European law, I have consulted the official documents of the relevant conventions, treaties and European directives. Then, to assess the Bulgarian compatibility with them, the paper resorts to the findings of the biggest human rights organization such as Amnesty International and Human Rights Watch. The research also employs the observations of the European Council for Refugees and Exiles, The European Resettlement Network, the International Organization for Migration and the UNHCR. Seeking objectivity, official reports from the EU and the European Commission as well as from the Bulgarian authorities, the State Agency for Refugees and the Helsinki Committee were also examined. Various articles from Turkish, Bulgarian and international sources were examined to boost the reliability of the paper (O'Leary, 2004). All the secondary data was used for the formulation of the interview questions to ensure that any discrepancies or challenges that occurred in the first phase are addressed by the interviewees.

After the preliminary desk research, semi-structured interviews were pursued with officials from the three different levels involved in the issue - national, regional and international. In order to satisfy the research ethics requirements, a form was created which was approved by the supervisor. A consent form was sent to each interviewee with a short description of the project and its aims. They were asked to sign it if they agree to take part and to be recorded. Although a system to achieve anonymity was proposed, they all agree to be cited with their real names and positions.

On average, the interviews lasted approximately one hour to ensure that all issues were extensively covered. Preliminary lists with questions were sent to all participants with specific modifications in relation to the organization they represent to ensure they would provide relevant insights. However, during the interviews I did not limit myself to those questions and asked additional ones for clarification. To collect primary data on Bulgaria and to discover the specifics of the Bulgarian context I have sought the opinion of a representative from a Centre for Legal Aid 'Voice for Bulgaria', involved in the monitoring screening of the asylum process in Bulgaria. The interview helped me discover the relevant Bulgarian laws and the main flaws of the system. An interview was requested with the SAR but the spokesperson for the Agency directed me towards the Ministry of Interior which did not grant me one. On a European level, I have decided to seek the help of the European Council for Refugees and Exiles to examine the role of the EU in finding a promising alternative. Finally, the position of the UN was revised in an interview with the spokesperson for the UN Refugee Agency in Bulgaria. This three-layer approach was chosen to apply in the dissertation the positions of all the relevant actors and ensure credibility. The interviewees also provided me with relevant documents and journal articles which I had not consulted yet for further desk research. In this way I have elaborated on relevant aspects and narrowed down the focus of my thesis. Lastly, as the main aim of the paper is to analyze the pros and cons of several policy alternatives to ensure the right to seek asylum, the application of these descriptive research methods rather than others was evaluated to be reasonable (O'Leary, 2004).

However, it should be acknowledged that academic scholars are underrepresented in the writing of the second chapter of the paper due to the lack of many academic articles about the concrete situation in Bulgaria and Turkey. In addition, the narrow focus of the topic and the relatively new developments reduced even further the chance to use academic literature. Nevertheless, quite a few books and journals on migration, refugee and asylum law from the Peace Palace Library were consulted for the literature review and the formulation of the main concepts such as non-refoulement. The academic results from the desk research were mainly presented in the Legal Provisions Part of the first chapter of

the dissertation. Hence, it could be said that while the first chapter is more academic and scholarly in nature, the second one is more practical. In this way a sustainable balance is achieved between the theory which is then analyzed in practice (O'Leary, 2004).

Finally, I have chosen to use clear and simple structure with no pictures or figures due to two reasons. Firstly, after consulting so many sources, I reached the conclusion that one of the distinctive features of academic writing is simplicity in terms of layout. Secondly, my thesis involves mainly theoretical concepts which could not be put into figures. However, separate quantitative research for each of the proposed policies might shed some more light on their potential.

3. Literature review

Although all scholars, professors and lawyers agree on the fundamentality of the non-refoulement principle and on the fact that it covers both refugees and asylum seekers, there are heated discussions on the range of the principle (Goodwin-Gill & McAdam, 2007). According to Nehemiah Robinson, the director of the Institute of Jewish Affairs, a person who is captured or apprehended by the border control on the frontier is not covered by the principle. To be able to invoke it, the person should be already in the territory of the country where he seeks protection (Robinson, 1997). Others, however, such as C.A. Pompe and P. Weis, have refuted this claim by pointing out the humanitarian goal of the principle in particular and the Refugee Convention in general (as cited in Stenberg, 1989). They have argued that Article 33 covers those at the frontier as well, as otherwise it would be inhumane to leave them relying on smugglers to ensure they will find protection (Weis, 2010). Another side of the argument is dealing with the jurisdiction of states over aliens, as some scholars believe that the principle prohibiting forcible return applies only to those aliens that are already in the territory and thus under the jurisdiction of the country (Abi-Saab, 2000). According to them, persons at the frontier or at the checkpoints are not yet under the state's jurisdiction and thus there is no rule prohibiting states to force them back (Furlanos, 1986). Nevertheless, it could be summarized that nowadays the great majority of academia claims that Article 33 and the principle of non-refoulement cover the people who were involuntary or accidentally apprehended by the border authorities or who voluntarily presented themselves to them. A particular circumstance that tilted the scale, of those opposing the universality of the principle and those supporting it, in favour of the former is the presence of a border fence. Professor Atle Grahl-Madsen, who is also considered one of the founders of the academic discipline of Refugee Law, claims that the principle does not apply for those asylum seekers behind the fence (1966). When it comes to extraditions, there is an agreement between the abovementioned professors that asylum seekers should not be extradited to the country of persecution unless there is a treaty obligation between the two countries (Grahl-Madsen, 1972). Nevertheless, the country can extradite the asylum seekers to a third country. State practices could also be taken into consideration, for instance, the Nordic States generally accept that a refugee at the frontier should be granted protection unless there is another country to which the refugee could be returned which is considered safe enough (Stenberg, 1989). To finalize this paragraph, all of these arguments as well as the newest developments will be examined at depth in the Legal Provisions part of the dissertation.

The debate about the detention of unlawful immigrants was also omnipresent during the literature review. While in practice all countries implement it, all human rights organizations and various refugee

associations across the world claim that it is inconsistent with the international law establishing the rights of the asylum seekers (Reilly, 1995). According to the CEAS, detention should be applied only as a matter of last resort and for a short period of time (Common European Asylum System, 2014). Detention of children, however, is never permissible under international law (Taylor, 1994).

The question of allowing mixed mass influxes of people to enter the border is also widely debated. In reference to the Declaration on Territorial Asylum and according to Goodwin-Gill and McAdam, in cases of mass influxes of asylum seekers there could be an exception to the non-refoulement principle (Goodwin-Gill & McAdam, 2007). However, the UNHCR is of the opinion that even in cases of emergency and of massive flows of people, the principle shall be strictly observed (as cited by Islam & Bhuiyan, 2013, p. 121).

Concerning the different allegations against Bulgaria, there is a uniform response from all international and national human rights organizations. All of them claim infringement of customary law, EU Reception directive, European Charter of Human Rights and the Geneva Convention (Stevis, 2014). On the other hand, the Bulgarian authorities have so far denied the allegations of pushbacks and collective expulsions while admitting several other minor breaches of law, mainly concerning the receiving conditions and the delays in the asylum application process (Human Rights Watch, 2014). Unfortunately, the specific issue of the allegations was examined only through official reports from the NGOs, the UNHCR and the EU Commission. No academic articles were found to address the specific situation in Bulgaria.

As to the extent to which it is possible for Bulgaria to provide protection for thousands of asylum seekers while still protecting its national security, a few sources deserve to be mentioned. Since the collapse of the Soviet Union, the growing migration flows were perceived as major concerns which have the potential to jeopardize the Western world and its citizens (Doty, 1998) Thus, it is no surprise that the increase of asylum seekers led to measures for stricter border control. However, in a report produced by the International Centre for Migration Policy Development, it was argued that adequate border management promotes both security needs and human rights. It was also said that “both aspects should not contradict but complement each other” (Pluim & Hofmann, 2015, p. 3). In another article examining the Israeli response to the big waves of African asylum seekers, it was concluded that the confrontation between asylum seekers and national security is deeply rooted in the subconsciousnesses of nationals who perceive foreigners and refugees as other and, therefore, as a threat, although the reality might not reflect that assumption (Kirschenbaum, 2013). What is more, by creating the negative

identity of asylum seekers national authorities create fear among the population which can be then used to justify exclusions such as violence and pushbacks. The author argued that changing the perception of the collective identity of the asylum seekers is the way forward. One such example is to change the mainstream language and stop referring to asylum seekers who cross the borders without proper documents as illegal and as criminals (Kirschenbaum, 2013). Another aspect of discourse is dealing with the concept of the threat to the national security. Some authors believe that a person presents a risk to the national security only if he is engaged in activities that aim to undermine the government of that country or if he is part of a terrorist group, while others argue that even a past conviction is sufficient to refuse entry (Islam & Bhuiyan, 2013). What is more, the former group of scholars insists that the risks need to be substantiated with proofs not mere assumptions.

Finally, during the research a gap was revealed between the unanimous agreement between scholars, activists and officials that new avenues must be found for asylum seekers to pursue international protection, and the lack of concrete proposals not merely vague directions. Thus, this paper will seek to outline the concrete steps that need to be taken at national and European level to achieve protection for asylum seekers and solidarity. Nevertheless, in the last two weeks of May 2015 some progressive developments were made by the European Commission with a very bold proposal which led to even more discourse on the topic (European Commission, 2015). The review of several official websites establishes a dichotomy between several Member State of the EU and the EC supported by the ECRE, Amnesty International and HRW. While countries like Great Britain, Spain and Hungary, to mention a few, strongly oppose any compulsory new obligations to be installed by the EC to meet the needs of the asylum seekers, the EC is currently developing a mechanism to do exactly so through a relocation programme covering the whole EU (Nielsen, 2015).

4. Part One

4.1 Legal provisions

To start with, it should be noted that the principle of non-refoulement is accepted as a customary norm and as a binding rule of the international law (Islam & Bhuiyan, 2013). It is strictly prohibited to return refugees to places where they may face life threats (Convention and Protocol Relating to the Status of Refugees, 2014). The same is also reiterated by the UN Declaration on Territorial Asylum from 1967 which stipulates that “no person entitled to seek asylum shall be subjected to measures such as rejection at the frontier” (Islam & Bhuiyan, 2013, p. 104). By signing and ratifying both the 1951-Convention and the Protocol from 1967, Bulgaria is obliged to comply with the non-refoulement principle. Additionally, the EU Directives on Asylum which need to be incorporated in national law, legally bind the country to fulfill its obligations under the principle (Human Rights Watch, 2014). There is an exception, although, if the refugee presents any threats to the security of the state or its community (Convention and Protocol Relating to the Status of Refugees, 2014). It should be noted that no reservations to the Convention and to the principle are accepted (Grahl-Madsen, 1972). A fact of a particularly importance to the Bulgarian case is that Article 33, defining the principle, applies not only to persons already with a refugee status but also to those who were not formally recognized yet (Goodwin-Gill & McAdam, 2007). As well as that, it can be invoked in circumstances of mass influx (Islam & Bhuiyan, 2013). Additionally, another small detail that plays a turning point here is that a precondition on the legality of entry is nowhere to be found in Article 33 which explains the principle (Stenberg, 1989). According to the author “it was the clear intention of the drafters, based on the paramount importance of Article 33, that the provision should apply in the case of all refugees, whether they were lawfully or unlawfully in the country” (Stenberg, 1989, p. 174). Deducing from this it might be concluded that those who managed to present themselves at the border or who were apprehended by the police already inside the country should not be subject to returns or pushbacks which will constitute an infringement of the principle. Furthermore, Gunnel Stenberg argued throughout his book that there are several fundamental prohibited measures that are inseparable part of the non-refoulement principle (1989). They all deal with the relative location of the people seeking asylum when encountering the official authorities of the host country: before the border, at the border and already inside the borders. According to him, there is no controversy regarding the asylum seekers who are already in the country or at the border as they are recognized to be physically on national territory and therefore, the principle of non-refoulement strictly applies. Furthermore, the Executive Committee of the UN Refugee Agency reached a conclusion back in 1997 which “[r]eaffirms the fundamental importance of the observance of

the principle of nonrefoulement-both at the border and within the territory of a State” (as cited by the Human Rights Watch, 2014, p.35). As well as that, pushback initiatives do not negate this principle. This was also confirmed by the representative of the ECRE (personal interview, Minos Mouzourakis, 2015). From this follows that, those asylum seekers who reached the border should not be rejected access, despite the fact that he or she might not have legal documents (Human Rights Watch, 2014). Instead they should be allowed to submit their claims and only if they are found unsubstantial, it is rightful to bring them back to their country of origin (personal interview, Anna Bazelkova, 2015). Lastly, to expel asylum seekers from the border because of the illegal manner of travelling should be considered unlawful too and in a full violation of the principle of non-refoulement (personal interview, Minos Mouzourakis, 2015).

However, the third option when an asylum seeker is in close proximity to the border yet not at the border itself, in the so called no-man’s-territory, the controversy for the scope of the principle become considerable (Stenberg, 1989). Firstly, to explain the concept of no-man’s-territory, for the purposes of this dissertation it would be understand as that part of land between the official border of Bulgaria and the official border of Turkey, which can extend to a few meters or the land between the official checkpoint of Bulgaria and Turkey. Although legally speaking if they have not reached the other state’s border they are under the jurisdiction of the country of exit which in this particular case will mean Turkey (McLinden, Fanta, Widdowson, & Doyle, 2010). However, there are sometimes tensions between the Turkish and Bulgarian border guards under whose jurisdiction the asylum seekers are once apprehended between borders (Border Monitoring EU, 2015). Here comes the importance of the development of the concept of extraterritoriality of international protection (personal interview, Minos Mouzourakis, 2015). It challenges the notion that non-refoulement does not apply outside the border and at its core it stipulates that if there is involvement of border guards even outside the national border in the territory of another country (Bulgarian border police pushing back asylum seekers before they reach the Bulgarian border) the country which the guards represent has jurisdiction and it is bound by the protection of human rights even beyond its border (personal interview, Minos Mouzourakis, 2015). As put by Cathryn Costello, a professor in EU law at the Worcester College, “European States increasingly extend their border controls beyond their territorial borders and co-operate in order to prevent those seeking protection from reaching their territory. Yet, legal obligations, in particular the principle of non-refoulement, may continue to apply to these activities, as the concept of ‘jurisdiction’ in human rights law develops” (2012, p. 1). Furthermore, other scholars also confirmed the extraterritorial applicability of the principle (Islam & Bhuiyan, 2013). additionally, the argument was developed in the case of *Hirsi Jamaa versus Italy*, where the concept of effective control plays a great

role (2012). According to the final decision, there needs to be effective control applied by the border policy in order to have jurisdiction (ECtHR - *Hirsi Jamaa and Others v Italy* [GC], 2012). If there is no, no human rights apply. In this case, the presence of the Bulgarian border authorities on Turkish territory would qualify as collective control only if it is proven that there were interactions between them and the asylum seekers and ill-treatment took place. The case with the fence being built at the Bulgarian-Turkish border is interesting as it does not qualify as effective control and in this way the Bulgarian authorities, in fact as their Spanish and Greek counterparts, are playing on the grey areas of international law. However, the situation is again changed if asylum seekers attempt to climb or cut the fence and are prevented from doing so by the Bulgarian border police. (personal interview, Minos Mouzourakis, 2015). To sum up the ongoing discourse about the non-refoulement principle, the details and the specifics of every case play significant role and still a uniform decision is yet to be agreed on. Nevertheless, the shortcomings of the law are slowly being addressed and changed by the caseload of the ECtHR and the CJEU. Finally, protection from refoulement for asylum seekers who do not qualify as refugees by the Convention is safeguarded by the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and by the International Covenant on Civil and Political Rights, both ratified by Bulgaria (Taylor, 1994).

After examining the most controversial and disputed principle, the following conventions and directives prohibit certain activities explicitly and the norms established by them are strict and clear. To begin with, Article 4 from Protocol 4 of the European Convention on Human Rights prohibits collective expulsions (1963). The same prohibition is reiterated in Article 19 of the Charter of Fundamental Rights of the European Union which became binding agreement after the Lisbon Treaty (Weber, 2012). Bulgaria is signatory party to both documents (Council of Europe, 1950). As well as that, the right of asylum is recognized as one of the fundamental freedoms established in the Charter by Article 19 in particular (2000). Apart from that, Bulgaria has also duties under the CEAS and needs to meet some specific standards and procedures in order to ensure immediate and free access to asylum (Common European Asylum System, 2014). For instance, the Schengen Borders Code stipulates that the border police should fully respect and promote human rights and every person who is denied entry should be provided with the opportunity to appeal that decision (Regulation (EC) No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders, 2006). The Return Directive of the EU adds up that no asylum seeker is illegally staying unless a negative decision on his claim has been published (2008). However, according to article 2(2) a) countries can disregard it for unlawful immigrants who cross the border without documents but even then the provisions of article 4 (4) a) apply which hold that any coercive measures to stop the illegal asylum seekers from entering

should be brought to a minimum with respect for their rights and the principle of non-refoulement (Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals, 2008). Nevertheless, the Qualification Directive, establishing the requirements for legal status, and the Reception Conditions Directive, outlining the minimum conditions to be followed when receiving asylum seekers, were revised and changed but these amendments are not transposed in LAR yet which open the door for allegations that Bulgaria is not properly administering the legal procedures and is not complying with the CEAS (Human Rights Watch, 2014). Finally, the proposed draft for the amendment of LAR in 2013 was highly criticized by the Bulgarian Helsinki Committee and by other human rights organizations (BHC: Position on the Law on Asylum and Refugees Draft Amendments, 2013). The main concerns were the proposed detention programme for all asylum seekers who try to cross the border, irrespective of their age and personal characteristics. According to the International Detention Coalition “international refugee law, human rights law and European law clearly provide that the detention of asylum-seekers should only be a measure of last resort, after alternatives to detention (ATD) have first been pursued” (IDC open letter to Bulgarian MPs on draft amendments to Law on Asylum and Refugees, 2015, para. 3). A new draft proposal is pending before the Bulgarian Parliament currently. Finally, Bulgaria is bound by its own Constitution (Article 27 (2)) to provide asylum in line with its international obligations (Constitution of the Republic of Bulgaria, 2007).

The Dublin regulation, with its controversial nature and its relation to the Bulgarian case, also deserves to be discussed in the paper. According to this regulation, the country of primary entry of the refugee is the country solely responsible for him/her, the application procedure, and the benefits to which the refugee is entitled (Dublin Regulation, 2014). In this vein, it can be argued that all southern member states of the EU, among which Bulgaria is included, would find recourse in illicit activities such as push backs in order to escape the financial and administrative burden of being the first state of entry (UNHCR, 2015). Although, it would be inaccurate to suggest that the regulation might be amended, there are other ways to increase its effectiveness such as the discretionary clauses (Art. 17 and Art. 16). These provisions allow MS to process applications although they are not the country of entry due to family reunification reasons or to ensure better protection for unaccompanied children (UNHCR, 2015). The Regulation could be also temporarily suspended for a specific country by a decision of the ECtHR as in the case with Greece (personal interview, Minos Mouzourakis, 2015). In the European Court of Human Rights in Strasbourg it was decided that due to the inhumane conditions in Greece violating the asylum seekers’ basic rights, it would be illegal to deport them back to Greece once they managed to leave the country (Mallia, 2011).

Then there is the importance of the concept of the safe third country and of the analysis of Turkey as such. A safe third country has been described as a “procedural mechanism for shuttling asylum seekers to other States said to have primary responsibility for them, thereby avoiding the necessity to make a decision on the merits because another country is deemed or imagined to be secure” (Lambert, 2012, p. 2). The Refugee Convention allows for States to return asylum seekers to safe countries if their rights would be protected there and if they are accepted by the state (Hathaway, 2005). However, whether Turkey is such a country is questionable due to the fact that Turkey has ratified only the Convention from 1951 but not the Protocol from 1967. This means that only European citizens could be recognized as refugees and granted asylum under Turkish Law as the application of the Convention is geographically limited since it began as a temporary agreement after the war (Kirişçi, 2005) Due to this reason it cannot be considered as a safe country under European and Bulgarian law, as there should be no limitations whatsoever and the asylum seekers should be able to receive a refugee status which could not happen in Turkey until the country ratifies the Protocol as well (Human Rights Watch, 2014). Moreover, in accords to Professor Svitri Taylor “a country that is known to have undermined the obligation of non-refoulement in the past in dealing with certain categories of persons cannot qualify to be safe” which is the case with Turkey (as cited by Islam & Bhuiyan, 2013, p. 108). In this way, if Bulgaria returns asylum seekers to Turkey, it might be considered as an indirect violation of the principle of non-refoulement as Turkish authorities might return those asylum seekers to their countries of origin where they will be subject to great life risks. In other words, if a country “return(s) a refugee to a state from which he will then be returned by the government of that state to a territory where his life or freedom will be threatened will be as much a breach of Article 33 as if the first country had itself returned him there direct” (Hathaway, 2005, p. 326).

4.2 Current situation in Bulgaria

According to all international organizations in the area of human rights protection and specifically refugees and asylum seekers, Bulgaria has violated certain obligations under the Convention and the ECAS and has not reached the minimum standards yet for ensuring protection for those seeking it (Human Rights Watch, 2014).

Several Bulgarian laws and established national practices should be mentioned and critically examined in order to understand the complexity of the problem. To begin with, those arriving in Bulgaria without documents, or in other words, unlawful asylum seekers, are subject to detention. This is due to the fact that asylum seekers are treated in accordance with the LARB not with the LAR (Anna Bazelkova, personal interview, 2015). In this way no difference is made between asylum seekers and economic

migrants, while the latter could be denied access to foreign territory according to law, the former should not be (Human Rights Watch, 2014). If apprehended by the police at the border, the refugees are treated like criminals and detained (personal interview, Anna Bazelkova, 2015). The main problem is the significant delays between the time when the asylum seekers lodge a claim with the guards who apprehended him and the official registration by SAR which could extent to several days or weeks, even months (Human Rights Watch, 2014). Within this timeslot, the asylum seeker is detained and is not considered asylum seeker. This could lead to deportation or serious infringement of his internationally recognized rights (personal interview, Minos Mouzourakis, 2015). The most disturbing fact is that even children are detained which according to the Western human rights traditions is abominable and infringe international norms (Reilly, 1995). Seeking protection and better living conditions does not inaugurate penal proceedings. Moreover, “seeking of asylum can require refugees to breach immigration rules” (Convention and Protocol Relating to the Status of Refugees, 2014, p.5). The majority of EU countries resort to mandatory detention only if extra security conditions apply (Common European Asylum System, 2014).

The ‘containment plan’, specifically developed in November 2013 by the government to reduce the number of illegal refugees coming to the country, called for an increase of the border guards with 1500 additional places plus those provided by other EU countries through Frontex (Human Rights Watch, 2014). What is more, according to the Ministry of Interior Act, border police has the right to prevent refugees from entering the country if they are still on foreign territory (personal interview, Anna Bazelkova, 2015). The usual procedure involves calling the Turkish police which apprehend them and drive them back from the Bulgarian border. In the same collaborative manner push backs are implemented (Human Rights Watch, 2014). Reports exposing several illegal acts such as capturing groups of people at the border or even kilometers inside the Bulgarian territory and returning them to Turkish land or beating them until they go back to Turkey voluntary are widespread (Reuters, 2015). These activities constitute a direct violation of the Geneva Convention as in this way their access to asylum is denied or refugees are made to renounce their legal rights. Interviews with refugees in Turkey revealed that the majority were pushed backs by Bulgarian guards in 44 separate cases involving 519 people (Human Rights Watch, 2014). These numbers qualify the pushbacks as collective expulsions. By violently forcing them back to Turkey and without letting them lodge asylum claims, Bulgarian border police violates their rights under the Geneva Convention, the EU Charter for Human Rights, the Universal Declaration of Human Rights, the EU common asylum policy or in other words, all international and European laws on asylum. Nevertheless, my interview with the representative of the Centre for Legal Aid “Voice in Bulgaria”, Anna Bazelkova, brought to the front the question of

deliberateness. According to her, the majority of the security guards and the police deployed on the border come from different small cities and villages across the border and they are not trained to deal with asylum seekers and vulnerable people (personal interview, 2015). Some of them are even not aware of the procedures for asylum seeking.

Here is the right place also to mention the barbed-wire fence that was finished in the beginning of this year between the villages Lesovo and Kraynovo, on the southern border with Turkey. It is 33 kilometers in length while the entire border is 274-kilometers long (Sutcliffe, 2015). There are five border police stations and three checkpoints. The entire fence is digitally monitored during day and night and an alarm is triggered by movement sensors. Although the number of refugees entering Bulgaria dropped significantly in the initial stage, this is no longer the case because of two reasons. Firstly, refugees found a way how to jump over the fence and secondly they found another point of entry to Bulgaria (Sutcliffe, 2015). This supports the argument that fortifying the border is not a lasting and lawful solution for the problem. The example of the Greek fence leads to the same conclusions as the influx of refugees decreased only for a limited time after which alternative routes for entering Greece were established (personal interview, Minos Mouzourakis, 2015). According to a source, the EU has condemned the building of the fence, while the deputy executive director of Frontex, Mr. Gil Arias, highlighted that tightening of the border is not the solution of the problem (as cited in Sutcliffe, 2015). Additionally, from the compatibility perspective and from the standpoint of the UNHCR, continuing the fence would jeopardize the fundamental right to live by forcing asylum seekers to seek hazardous way to climb or cross the fence (Reuters, 2015). It will also increase the role of the smugglers and human traffickers and that is why the policy of the 'open door' is proposed by the UNHCR, instead (personal interview, Boris Cheshirkov, 2015). Therefore, the decision taken in January to continue the fence with 130 more kilometers on the southeastern border does not seem as the right alternative to find balance between security concerns and international law.

Another point that deserves attention is the exact match between the time of the introduction of the plan of containment and the sharp decrease of asylum seekers entering Bulgaria for several months. For instance, there were only 99 in January 2014, while the projections of the Ministry of Interior set the number to 15 000 and while more than 20 000 Syrian asylum seekers made it to Turkey (Human Rights Watch, 2014). At this time allegations of pushbacks tripled. Although official authorities deny any accusation of collective expulsions, they do admit that measures were taken to reduce the influx of unlawful refugees and asylum seekers, sometimes leading to clashes and violence (Savova, 2015). For objectivity purposes, the official position of the Ministry of Interior should be also mentioned and taken

into consideration when examining the policy alternatives. According to the then Minister, by building the fence and deploying more security guards at the border, Bulgaria complies with the Schengen requirements and encourage asylum seekers to use the official border custom points (as cited in Human Rights Watch, 2014). Nevertheless, the limbo that was not mentioned is that in order to get to the Bulgarian check points at the border, one needs to pass through the Turkish ones. Without valid documents no one would be allowed to do so.

Lastly, the abovementioned detention policy also has its negative impact on the right to asylum. Due to the over crowdedness of the detention facilities, the living conditions are very poor from a humanitarian perspective. Some of the irregularities taking place include the use of excessive violence to establish order or the detention of unaccompanied minors together with adults (Human Rights Watch, 2014). As confirmed by the interview with the representative from the Centre for Legal Aid 'Voice for Bulgaria', their basic human rights are jeopardized in these centers, especially those of the most vulnerable persons. For instance, unaccompanied children are left without guardians for long periods of time in breach of the EU Asylum policy as well as the Geneva Convention (personal interview, Anna Bazelkova, 2015). The conditions of the detention centers and the reception camps would not be examined further here but it was important to mention that they lead to delays and, occasionally, failure to comply with the CEAS.

5. Part Two

5.1 Policy Review

Based on thorough research, this paper aims to propose a complete framework for Bulgaria to follow in order to ensure that the customary international as well as European obligations are fulfilled. The first major step in doing so is to acknowledge the fact that there is a breach of these legal provisions as proven by the facts from the previous chapter. All illegal practices and policies should be terminated. In order to commence this process of reform, Bulgaria should engage in constructive dialog with the EC, UNHCR and several other associations such as the ECRE. Furthermore, the Bulgarian authorities should take into account the recommendations from various European and international experts. The Ministry of Interior should also relinquish the idea that push backs, collective expulsions and excessive violence are effective means of preventing asylum seekers from crossing the border (personal interview, Boris Cheshirkov, 2015). The main focus of this section will be the exploration of new strategies, new policy tools, and new avenues of ensuring the protection of the fundamental right to seek asylum in a sustainable way that will also enable Bulgaria to responsibly deal with those asylum seekers who stay in the country. To bolster the development of these alternatives, they need to be incorporated in the Bulgarian law (Human Rights Watch, 2014).

With this research I will try to outline several policy options that Bulgaria could attempt and put on the European agenda. Also included will be the pros and cons as well as the feasibility of each. Additional examination will be noted, relating to the possible tools that could help to rectify the situation, among which are integrated policies with Frontex and the EU, and the implementation of good-case practices from other countries and continents. It should be made clear that only alternatives which have already been used in the past in similar circumstances which are also currently being implemented or have been proposed by at least three different refugee associations will be examined by this paper. To facilitate the process of distinguishing the best policy proposal and to make it more systematic, I have chosen three criteria that will guide me through the research. Firstly and most importantly, all alternatives will be examined for their compatibility with international and European standards. Any disputes about the legality of a policy will result in the dismissal of it as an alternative policy. Secondly, the durability of the solutions will be examined with the policies offering longer-lasting solutions, receiving a more favorable score. Thirdly, the complexity of the implementation process will also influence the final decision. Finally, the opinions of the interviewees will be taken into account due to their expertise.

A major element that has an impact on the choice of a suitable and potential policy solution is the so called mixed migration, consisting of people traveling for different reasons (EUROMED, 2013). Among those mixed flows of people who try to cross the Bulgarian border irregularly, the largest part are undoubtedly asylum seekers, but alongside them there are also economic immigrants and criminals such as members of terrorist groups (Veneff, 2013). Also to be considered is the fact that a certain percent of people from this large influx do not fulfill the criteria for refugee status established in the Refugee Convention from 1951 (Hathaway, 2005). In Bulgaria, the rate of those who do not qualify for a refugee or a humanitarian status is very low - only 6% of the asylum applications were rejected in 2014 (Savova, 2015). Mixed migration flows are perceived to possess great risks not only for states' sovereignty, but also for their security (Loreto, 2014). The fact that many of the asylum seekers travel with illegal documents or with no documents at all makes the situation even more complicated. It is logical, therefore, to develop policies that will improve the process of distinguishing different groups of migrants and thus providing protection for those who need it the most (UNHCR, 2007). Additionally, safeguards need to be established to ensure that tightening of border security will not lead to discriminatory measures which can result in the deportation of asylum seekers to countries where they will face inhumane treatment (Loreto, 2014).

5.2 Reasons for collective expulsions and push backs

Deducing from the science of logic, in order to resolve an issue or a problem, the initial cause of it should be examined (Henle, 1962). The interview with the representative from the Centre "Voice for Bulgaria" clearly outlined some of the main issues that are behind the decision to stop the flow of asylum seekers to Bulgaria at any cost (personal interview, Anna Bazelkova, 2015). Firstly, as a gateway nation of the EU with a close proximity to areas of conflict in the Middle East, Bulgaria is subject to an enormous number of asylum seekers, immigrants and refugees as previously mentioned. This, in combination with being the poorest country of the EU, complicates the picture even further. According to Ms. Bazelkova, Bulgaria is simply incapable of receiving, processing, and accommodating so many asylum and refugee requests (personal interview, Anna Bazelkova, 2015). To add up, opinion polls show that the Bulgarian population has a very negative image of those seeking refuge in the country and generally supports policies limiting their access to the country as well as solutions that will drive the refugees out of Bulgaria again. For instance, the percent of people who support the building of the fence at the border is 82% (Veneff, 2013). The security concerns are critical to the problem due to the mixed migration and the several incidents that took place in Bulgaria involving refugees. Reports of thefts, sexual assaults and even attempts for murders both from and

against refugees have been prevalent (Immigrant stabbed a girl in Sofia 10 times with a knife, 2013). Two of the far-right parties in Bulgaria actively organize rallies and petitions against the acceptance of asylum seekers and refugees in Bulgaria (Veneff, 2013). Relying on populist strategies and political distortion of reality, they create even more tension among the general population. The fear of deadly diseases and exaggerated numbers also incentivize hatred and protests against the asylum seekers. Politicized broadcasts that prioritize Bulgarians' needs occupy all news channels (Veneff, 2013).

On the other hand, the international community insists on Bulgaria providing reasonable conditions, accommodation, food, and other social services to those applying for different humanitarian or refugee statuses (personal interview, Boris Cheshirkov, 2015). All these are drying out the Bulgarian treasury which leads to even more clashes between the population and the government. It is no surprise that the easiest and most popular way for Bulgarian authorities to escape these additional expenses is to simply block or obstruct the access of refugees and asylum seekers to Bulgaria (Stavis, 2014). It might be cynical to say, but the reality is that the constituencies of the Bulgarian politicians consist of Bulgarians, not foreigners and Europeans, after all.

5.3 Alternative policies

Based on the premises mentioned in the previous two pages, there is a plan developed by the UN Refugee Agency and the UN High Commissioner for Refugees for the southern and eastern members of the EU on how to deal with mixed migration flows (UNHCR, 2007). It is essentially about improving the response capacity to people in need of protection and ensuring that the principle of non-refoulement is strictly observed. Although the plan was created a few years before the increased flow of people crossing the EU border, there are some points that indicate the right course of action. The plan proposes beneficial policies that are divided into 10 areas, but the efforts are mainly concentrated in ensuring early response and differentiated procedures by increasing the cooperation between different units of national and European security through the maintenance of analytical databases and the improvement of the entry and the reception systems. The plan is based on comprehensive, cooperative, and regional approach, recognizing the fact that a good asylum strategy needs to be "incorporated within a broader migration strategy," equally implemented by all stakeholders involved and developed through a collective effort of all states in the region or involved in the transit route (UNHCR, 2007, p. 1).

To begin with, the first policy alternative to deal with is the proposal of ensuring legal entries to Bulgaria. The significant potential of this idea will be shown by exploring the consequences of not

having such entries as it is the case so far in Bulgaria. Since there is a lack of universal agreement on how states should treat the asylum seekers crossing the border through irregular pathways, the Bulgarian authorities were able to use this loophole in the asylum law to prevent entries of asylum seekers. To elaborate a little further, it is an accepted right of every state to protect its borders and refuse entry to persons that might pose any health or security risks to the population of that country (personal interview, Minos Mouzourakis, 2015). The security guards and the policemen at the border often excuse their actions by simply stating that it is their right to refuse entry to people with no documents, for example. What is more, as already been made clear, all the people who try to cross the border are treated according to Law on Aliens in Republic of Bulgaria and not according to the Law on Asylum and Refugees (personal interview, Anna Bazelkova, 2015). Thus, the former law makes it completely legal to refuse them entry or to put them in detention, as according to the Bulgarian authorities they are not asylum seekers yet although this might be disputed (personal interview, Boris Cheshirkov, 2015). Once they file an official application, only then they are recognized as asylum seekers and the LAR comes into power (personal interview, Anna Bazelkova, 2015). However, according to Minos Mouzourakis, this is a “legal limbo” as the person does not become an asylum seeker once they start the procedure; he or she was already one when escaped from the country of origin (personal interview, 2015). Another factor is that asylum seekers mostly rely on shady practices such as smuggling, running during the middle of the night, hiding, and so on, leading to casualties and run-ins with the Bulgarian security forces. Due to these numerous reasons, the border guards were able to get away with push-backs and collective expulsions so far (Bulgaria: New Evidence Syrians Forced Back to Turkey, 2014).

In this spirit, the need for the development of new legal channels for persons in need of international protection to seek asylum becomes evident in order to overcome the shortcomings of the law and the discrepancies between theory and reality (Spindler, 2015). Now, to examine them through the lens of the set criteria for this thesis, the development of the legal avenues is not legally contested but rather it is accepted worldwide. The conditions and the whole process of application will be strictly described erasing the uncertainties that take place at the border nowadays. International law even encourages the creation of such legal procedures that will ensure the right to seek protection from third countries (Hathaway, 2005). It would be also a durable solution as once transposed into domestic law, it can be evoked in cases of other humanitarian crisis and emergencies in the future. However, when it comes to the implementation of these policies, they entirely depend on the political will of the Bulgarian authorities which will be unlike to change. This is the main concern and the main obstacle in front of

the development of these options. Nevertheless, the potential of this policy alternative was positively assessed by all the interviewees.

In a report produced by the FRA with the assistance of the Italian Presidency of the Council of the EU, different options were examined and assessed. Among those are resettlement procedures (which will be examined in the following part), humanitarian or collective admissions, and mobility schemes (FRA , 2015).

One way to legally reach Bulgaria, in particular, would be if asylum seekers are allowed to lodge asylum claims through the Bulgarian Consulates in Turkey or to apply for humanitarian visas (Spindler, 2015). From the interview with Boris Cheshirkov, it became clear that currently this is not possible in the two Consulates that Bulgaria has in Turkey (personal interview, 2015). Apart from that, Bulgaria does not issue any student or low-skilled working visas for Syrian nationals at the moment. Another legal way to accept asylum seekers is through humanitarian admissions, something from which Bulgaria has so far restrained itself (personal interview, Boris Cheshirkov, 2015). When “countries admit groups from vulnerable refugee populations in third-world countries so as to provide temporary protection on humanitarian grounds”, this activity is recognized as a humanitarian admission (ERN, 2014, para. 4). However, this is not the same as the humanitarian status given after an asylum claim is lodged or as denoted by the humanitarian visas. The main characteristics of this measure is that asylum seekers and refugees resettled through humanitarian admission are given short-term protection which can be extended if needed. Admissions are usually applied to larger groups of refugees from one country where it is urgent to move them quickly due to the greater risks of their lives and health(ERN, 2014). Those programs allow for the prioritization of the vulnerable groups. For instance, Germany regularly admits large number of Syrians from Lebanon through the opportunity of humanitarian admissions. The other EU country which applies this measure is Sweden (ERN, 2014). Bulgaria should follow their example by admitting vulnerable asylum seekers from Turkey as it is currently the country with the largest refugee population in the world (personal interview, Boris Cheshirkov, 2015). In this way asylum seekers in Turkey would be provided with the legal opportunity to lodge claims in Bulgaria without relying on smugglers (Spindler, 2015). So, from a legal perspective there would be no room left for Bulgarian authorities to decide whether they accept or reject that person. They will be obliged by law to examine his claim and then decide on its merits but not before that as it is the case now. This will immediately reduce the number of those crossing the border through illegal channels and will make it impossible for Bulgarian authorities to reject asylum seekers without first examining their claims (personal interview, Boris Cheshirkov, 2015). Lastly, close collaboration with Turkey is

essential as asylum seekers would be on Turkish ground when officially applying for asylum in Bulgaria. Bulgarian officials have to work with the Turkish authorities in order to facilitate the process by sharing data for asylum seekers as well as addressing potential threats. Only in this manner can a complete scheme of legal channels for those seeking international protection be developed (FRA, 2015). In this view, the 2013 readmission agreement between the EU and Turkey could be welcomed as it would ensure that there would be no more stand-offs at the Bulgarian-Turkish border. A stand-off occurs when the Bulgarian authorities push back asylum seekers who are then not accepted by their Turkish counterparts (Human Rights Watch, 2014). According to the agreement which will come into force three years after ratification, Turkey is legally obliged to accept all illegal immigrants returned by any EU country if they used Turkey as a transition country (Konstantinova, 2014). However, concerns were voiced by several human rights organizations that this would force the Turkish authorities to implement pushbacks on their southeastern border to reduce the number of asylum seekers entering Turkey (Mebusevleri, 2014).

Moving forward to another alternative, I have decided to examine the potential of the idea for collective examination of asylum applications due to two reasons. Firstly, during informal discussions with representatives from the Swiss Embassy in the Hague, this option was suggested for closer examination. Secondly, during the interview with Anna Bazelkova, the representative of the Centre for Legal Aid 'Voice in Bulgaria', it was mentioned that Bulgaria is close to implementing this approach due to the growing pile of asylum applications (personal interview, 2015). Collective examinations in this report should be understood as collectively examining the asylum claims of a group of people based on their country of origin and deciding for the whole group as a whole. In fact, by considering all Syrian asylum applications as "manifestly founded", SAR is able to process them faster (Savova, 2015, p. 10). However, during the desk research no other sources examining collective investigation of claims as a potential solution were found. Furthermore, it is not consistent with legal criterion as both Boris Cheshirkov, the spokesperson of the UNHCR, and Minos Mouzourakis, the asylum data collection coordinator from the ECRE, refuted this as a feasible solution as it is established by the Refugee Convention that asylum claims must be handled individually (personal interviews, 2015). As it would be not legally rightful to conduct collective examinations, its durability potential was not analyzed. For these reasons, this option could be no longer considered unless the law is changed allowing collective examination of claims for persons from a specific country. For now, this remains highly unlikely to happen.

5.4 European and International solutions

5.4.1 Resettlement procedures, Intra-EU relocation and refugee quotas. The EUREMA project

The alternatives that would be examined in this part are resettlement, relocation and humanitarian admissions. Firstly, the concepts will be explained and their relevance for Bulgaria, then examples from countries where these alternatives have been implemented will be presented and lastly, they will be analyzed whether they fulfill the mentioned criteria.

To begin with, the difference between resettlement and relocation should be explained. The term resettlement was introduced by the office of the UNHCR and is described as “the selection and transfer of refugees from a state in which they have sought protection to a third country that admits them – as refugees – with a permanent residence status” (ERN, 2014, para. 2). In a European context that would mean a facilitated relocation of refugees from a country like Turkey, for example, to a member state of the EU like Germany. The resettlement procedures are considered a mechanism to protect refugees who are already recognized. Resettlement is also described as an alternative to express solidarity with the countries receiving the biggest influx of refugees (UNHCR, 2013). It is relevant for Bulgaria and it could be considered as an alternative solution as it would reduce the number of people trying to cross the Bulgarian-Turkish border with the help of smugglers (Patterson, 2015). It is mainly the case that refugees and asylum seekers offered temporary protection in Turkey escape the overcrowded Turkish camps and undertake illegal and dangerous journeys to Bulgaria in hope for better conditions. These people are then pushed back or beaten at our border, facing life-threatening risks inconsistent with their right to international protection. If all or at least the majority of the EU countries take part in resettlement procedures, a greater number of refugees will be accommodated in countries with better conditions where their rights would be protected (FRA, 2015). Resettlements are also established in the Asylum Policy of the EU, however, only 13 member states together with Iceland and Norway resettled refugees in 2014, which is below 10% of the world resettlement share (ERN, 2014). Countries themselves decide whether they want to participate annually or on an ad-hoc basis, and what status they are going to provide for the refugees. Considering the criteria chosen for this paper to assess the feasibility of the alternatives proposed, this policy is in full compatibility with the international law as “the status provided to resettled refugees ensures protection against refoulement” (UNHCR, 2013, p. 1). Lastly, since it has been introduced 50 years ago, it can be argued to be a durable solution. Additionally, resettlement schemes has been developed and improved by the UNHCR during the years (personal interview, Boris Cheshirkov, 2015). What is more, the Joint EU Resettlement Programme was launched in 2012 which also made it easier for EU countries to

participate by prioritizing vulnerable people, by developing cooperation mechanisms and ensuring funds from the European Refugee Fund (ERF) for the countries which resettle refugees. Additionally, the Programme envisaged the creation of Emergency Transit Centers (ETC) in Romania and Slovakia for people going through the application for resettlement (UNHCR, 2013). Finally, however, it comes once again to the most critical part of the analysis, concerned with the implementation. There is no international body or a mechanism obliging member states to participate in resettlement schemes; it is a matter of national choice. As long as it stays that way, it is unlikely that other countries will express a desire to resettle more refugees within its borders. What is more even if Bulgaria pushes for an international mandatory mechanism, this means that Bulgaria will be also obliged to resettle refugees and would not depend only on the others to resettle. When looking for a solution, the UN SC Resolutions might be one way to impose such a mandatory scheme although there would be many political and legal complications. The other option is for an additional protocol to the Refugee Convention to be proposed, establishing the resettlement as an obligation for states. However, this situation could be described as Catch-22 as no one can oblige countries to sign and ratify such a protocol.

On the other hand, relocation is a process within the EU, where MS agree to share the burden with countries on the EU external border receiving the largest influx of refugees (UNHCR, 2012). By accepting to host a proportion of those people, MS would help countries like Italy, Greece and Bulgaria provide better protection and better quality of conditions for those staying in these three countries as the pressure on them would be reduced (European Commission, 2015). For instance, the hostility of the Bulgarian authorities towards the asylum seekers and their attempts to force them back, could be explained with the administrative incapability of receiving so many people in need of protection. The establishment of a facilitated process, distributing asylum seekers evenly among MS based on quota numbers, would reduce the number of refugees in the Bulgarian integration centers. In this way, the country would be able to accept new groups of asylum seekers.

However, so far relocation procedures took place only once in the case of Malta, under the EUREMA project in 2010 and 2011, endorsed by the European Council in a Conclusion in June 2009 (EASO, 2012). The situation was similar to the Bulgarian case where the number of refugees sharply increased while the Maltese government was incapable of providing acceptable reception conditions or sufficient level of integration (EASO, 2012). Additionally, there was a detention policy put in practice for those coming illegally as in the case of Bulgaria. The project objectives were to implement the solidarity principle and to improve the protection of rights of those remaining in Malta. As a result, 10 EU

countries participated and accommodated 228 (227 according to the EASO report) refugees with a budget of 2 000 0000 euros (UNHCR, 2012). France and Germany relocated more than 80% of the people (EASO, 2012). Overall, the project was assessed positively and its impact was recognized. It would be false to say, however, that there were not any challenges and things to be ironed out. For example, the questions about fairness and effectiveness were again re-introduced as only small proportion of countries took part in the project and it was completely voluntary (UNHCR, 2012). Therefore, a mechanism that includes equal participation of all EU countries should be developed but yet again the major challenge would be how to overcome the reluctance among some national leaders (personal interview, Minos Mouzourakis, 2015). At the end, it is for member states to decide where EU solidarity stands among their national priorities. Another questionable aspect was the efficiency of the project since only a rather small number of people were relocated at the cost of two millions (personal interview, Minos Mouzourakis, 2015). The challenges of a similar project in the future would be how to broaden its scope and how to target specifically future waves of asylum seekers (UNHCR, 2012). In addition to that, there were delays in the EU funding for EUREMA II and as a result some of the relocations were conducted through bilateral agreements (EASO, 2012).

It is of a particular interest to mention that the number of countries in the second phase increased to 15 and Bulgaria was one of them with 4 pledged places (EASO, 2012). A clarification needs to be provided as this was the time exactly before the steady increase of refugees coming to Bulgaria and the country was still in a good position to offer assistance. Nevertheless, Bulgaria's participation should be recognized as a positive aspect for the development of a similar relocation project for Bulgaria as the Justice and Home Affairs Ministry already had a chance to introduce itself to the relocation mechanism. However, in order for such a project to be developed, Bulgaria should have the leading role and take as an example the persistence of the Maltese government and its Home Affairs Ministry in particular. They were responsible for conducting preliminary consultations with all interested parties, member states as well as international organizations such as IOM. Their efforts were finalized in the creation of a Project Proposal with concrete steps to be undertaken and all the costs involved (EASO, 2012). Bulgarian officials should be duly prepared for incessant work before and after the completion of the Proposal. According to the evaluation report of the EUREMA, the work consisted of "different phases, including the identification of potential candidates for relocation, counselling, referral, selection by host country, pre-departure preparations, and departure and integration in the host country" (EASO, 2012, p. 8). It should be also taken into a consideration that Bulgaria does not have the administrative capacity to develop and implement a similar project alone. The cooperation of various international NGOs, such as IOM, UNHCR, European Council on Refugees and Exiles, the Agency for the Welfare

of Asylum Seekers (AWAS), is from a crucial importance for its success. Another valuable partner for the Bulgarian authorities to rely on would be the EU Home Affairs Commissioner. According to the assessment of EUREMA project some of the participating countries disclosed that their decision to take action was inspired by the Commissioner's appeal for solidarity (EASO, 2012). Bilateral agreements are another tool to facilitate a relocation mechanism. Countries could establish specific arrangements between themselves and accept asylum seekers. In this way, the process will not depend on the realization of a specific project and on EU funds.

The policy of relocation is also advocated by the UNHCR and has been proposed as a solution to the EU in dealing with the increasing numbers of mixed migration to the EU (Spindler, 2015). Intra-EU relocation would facilitate better distribution of refugees which would also reduce the number of illegal crossings and the role of smugglers (personal interview, Boris Cheshirkov, 2015). It is also here the place to mention that the European Commission came out with a similar proposal on the 13th of May, called a European Agenda on Migration (2015). As these are very recent developments, they were not taken into account for the analysis of the relocation option. However, as the EC proposal completely reflects the results from the research so far, it only supports the credibility of the arguments made so far and proves that the policy alternatives mentioned in this chapter are valid ones. In fact, the Commission proposed a temporary distribution mechanism within the EU with the mandatory participation of all member states. The current proposal is targeting Syrian asylum seekers entering the borders of Greece and Italy but once established it could cover Bulgaria as well. The criteria on which the quotas for every country will be based is the GDP and population, the unemployment rate, and the past history of resettlements and asylum applications (European Commission, 2015). By the end of the year it is expected that the complete legislative proposal would be put on the table for voting in the EU as there are still issues to be resolved and challenges to be addressed (personal interview, Minos Mouzourakis, 2015). The proposal was positively evaluated by the SAR in Bulgaria, claiming that this will be an effective way to reduce the pressure on Bulgaria (as cited by Georgieva, 2015). The UNHCR has urged the MS to implement every measure discussed by the Commission (personal interview, Boris Cheshirkov, 2015).

Finally to evaluate and analyze this option, legally speaking, it is consistent with the Refugee Convention but it is not with the Dublin Regulation. So, it should either replace the Regulation or suspended it temporarily. This may give rise to confusion and legal uncertainties. As well as that states may use this to excuse their violations because when there are many laws it can happen that they contradict each other in certain aspects. All these may reduce the efficiency of the relocation

mechanism. However, it is certainly a durable solution as it will introduce a complete framework to deal with the disproportionate distribution of asylum seekers across the EU. In terms of implementation, the same shortcomings as in the case with the resettlement apply here. However, in the European context, this actually might have a real solution, especially with the proposed mandatory scheme by the EC. If the EC and the EP join efforts, with a wide support from the EU citizens increased by popular campaigns aimed at improving the image of the asylum seekers, they might be able to influence positively the decision on the proposal. However, the Commission should address all challenges that might occur in terms of the still different reception conditions in member states and the fact that asylum seekers should be able to choose the receiving country to a certain extent before presenting the proposal in front of the Council (personal interview, Minos Mouzourakis, 2015).

5.4.2 The role of Frontex in assisting the Bulgarian border management to ensure national security without violating the right of asylum

I would like to begin with this part by saying that border management does not automatically mean tighter border control but rather a better management. According to the International Centre for Migration Policy Development, a sustainable border management “improve(s) the recognition of rights of the persons crossing a border, the regulation and inspection of passengers and the management of migration” (Pluim & Hofmann, 2015, p. 3). It has the potential to reduce security risks while at the same time encourage and improve human rights protection. Although Bulgaria is legally entitled to protect its borders through different means, the research suggests that by developing sound and comprehensive policies, better results would be achieved not only for the country and the EU but also for the asylum seekers (Wagner & Kraler, 2014).

Frontex is the European Agency which was created in 2004 with coordination functions to assist all EU member states with the management of the external borders (Papastavridis, 2010). Its field of activity is closely connected to matters of security concern though not particularly with ensuring protection for asylum seekers (personal interview, Minos Mouzourakis, 2015). However, this paper takes the view that additional cooperation between Bulgaria and Frontex is a valuable tool for improving the management of the Bulgarian-Turkish border and it will be explained below. A warmly welcomed idea among the Bulgarian officials is the prospects of training seminars organized by Frontex (personal interview, Anna Bazelkova, 2015). However, training workshops were also organized in the past without any significant results. Hence, they should be modified in a way that they involve as many stakeholders as possible and strictly aim at capacity building of the Bulgarian border control agency as advocated by the UNHCR (2007). It should be ensured that all actors involved are

well aware of the international standards and requirements for dealing with asylum seekers and this could happen “through a range of targeted training activities, training of trainers’ schemes, study visits, exchange of best practices and sensitization campaigns” (UNHCR, 2007, p. 4). To ensure a wide forum for fruitful discussions, personnel from Europol and other custom agency should participate. The example of other international organizations should be followed, already implementing efficacious and fruitful capacity building activities for border management. Although it might feel distinct from the refugee issue, the OPCW carries out such kind of workshops to fight illegal transportation of toxic chemicals where the participants include national custom agencies and police, anti-terrorism groups, OPCW experts, etc. Only in this way they ensure that all relevant actors are on the same page and everybody is provided with the latest developments in the field (United Nations Counter-Terrorism Implementation Task Force, 2011). This example is followed in Lebanon where, after the Syrian Crisis started, two similar projects took place with the participation of various actors and agencies in search for sound practices to identify vulnerable asylum seekers (EUROMED, 2013). Another proposal, next to the creation of The Task Force Mediterranean established by the EU Commission to tackle irregular migration and smuggling, is that similar task force should be created to find ways of distinguishing people in need for protection from irregular economic migrants crossing the EU borders by land (with the worsening of the conflict in Ukraine more refugees are expected on the eastern borders too)(EUROMED, 2013).

As discussed above, the Bulgarian politicians are often pressurized by the general public to tighten the security at the border even more due to terrorist threats. Strategies like collective expulsions are even welcomed by a great fraction of the society(Veneff, 2013). That is why, if the security hazards are brought to the lowest minimum it will certainly eradicate the main root cause for those practices. What is more, developing a better system able to identify terrorist threats, as well as specific individuals and the countries where they reside, would also improve the process of distinguishing vulnerable people and asylum seekers(FRA , 2015). Interaction with Europol and collaborative work with the Turkish custom agency to create specific profiles of people will limit the terrorist threats by early distinguishing of suspicious persons, criminals and supporters of different terrorist groups. This is essential as according to the USA intelligence, extremists from Hezbollah, Al Qaeda, Ansar al-Islam and other groups from Chechnya are active on Bulgarian territory or use it as a transit country to the rest of the EU by mixing with asylum seekers (Veneff, 2013). Addressing these issues, will increase the confidence of the general public and eventually change its negative perception of asylum seekers and refugees(Loreto, 2014). If the Bulgarian citizens are ensured that there are no risks for them, they will be more critical to activities that might threaten the lives of innocent people such as pushbacks

(Kirschenbaum, 2013). But to do so, data collection, as well as information exchange between the different stakeholders, needs to improve. A thorough analysis of the asylum seekers and the irregular immigrants that enter Turkey should be conducted in order to set the right preparations at the Bulgarian border and to establish migration patterns. Smugglers and traffickers need to be tackled by joint efforts with the support of the Working Group on the Smuggling of Migrants (EUROMED, 2013). Concerns that “there is a lack of harmonization and consolidation of statistical data both between State agencies and amongst other stakeholders” need to be addressed by Bulgaria, Turkey and Frontex together (UNHCR, 2007, p. 3). These limitations and fears so far have negatively affected the response rate to asylum seekers and security risks. Finally, to promote the full implementation of the non-refoulement principle, extensive and independent monitoring on the border by the European Commission and by other human rights organizations needs to be applied (EUROMED, 2013).

Frontex could positively affect the situation by assisting Bulgaria in the identification of vulnerable asylum seekers, among who are unaccompanied minors, victims of sexual violence and people with psychological problems due to traumatizing events (EUROMED, 2013). Those people are in a great need of assistance before, during and after the application process as they might not be able to fully comprehend the situation around them and the risks they are imposed to. By deploying experts to Bulgaria from countries where similar policies has been implemented, the Bulgarian authorities and security guards can learn from the best case practices and implement already proven policies. Assistance could be also sought by the UNHCR Central Europe under the project “Response to Vulnerability in Asylum” (RVA) (Szandelszky, 2015). The project, co-funded by the EU, is addressed to several countries, one of each is Bulgaria. Together with Frontex, gaps in legislation and in practice could be identified and then corrected by trainings on the ground and by developing strict procedures. Frontex role in coordinating activities between MS is valuable for the Bulgarian capacity building due to the opportunity to share already existing tools to identify different groups within the mixed migration flows (UNHCR, 2007).

In order to practice law, one has to pass an exam; hence it is logical that the persons who apply the law in practice at the border have to be trained at least for basic standards. It is a long-lasting solution as once the border policemen and security guards gain knowledge about asylum seekers and their rights, they will be able to use it for the rest of their careers. Then, looking at the implementation prospects of this alternative, it would be easier to develop trainings and introduce mechanisms for distinguishing vulnerable asylum seekers than to establish mandatory schemes for relocation and resettlement.

Therefore, this policy might be considered as the most promising in terms of prospects for implementation.

5.5 Australia and the Australian Refugee Council

The case of Australia and its Refugee Council is relevant for this paper and Bulgaria because of the similarities in the applied practices when dealing with asylum seekers, on the one hand, and, on the other hand, the positive developments that take place in Australia. Additionally, to overcome regional bias, examples from other continents should be incorporated as well.

Both Bulgaria and Australia are signatories to the UN Refugee Convention. Although Australia detains unlawful asylum seekers as Bulgaria does, there are a few positive developments that deserve attention. The Australian Refugee Council has been advocating that the recognition of the right of asylum seekers and refugees to enter Australia without proper documents is indeed a symptom of the full implementation of the Refugee Convention. According to it, the manner of arriving or the lack of travel documents, even identity ones, does not prevent authorities from recognizing the right of asylum and protection (Refugee Council of Australia, 2010). Moreover, they should not be referred to as illegal immigrants and be subject to detention. No restrictions and fines should apply to them as it is their fundamental right to seek asylum. Thus, Australia, and Bulgaria in this manner, should fully recognize the state of emergency of the asylum seekers and allow entries without official documents. Due to the severity of the situation in their countries, refugees and asylum seekers are leaving without preparation and without the safe possibility to obtain visas or other permissions. The Refugee Council of Australia emphasized that they are often persecuted; therefore, applying for documents will only put them at a greater risk (2010). An example by the Council that I would like to borrow states the following: “Permitting asylum seekers to enter a country without travel documents is similar to allowing ambulance drivers to exceed the speed limit in an emergency – the action would ordinarily be considered illegal, but the circumstances warrant an exception” (Refugee Council of Australia, 2010, p. 1). Still doing the exact opposite, the Bulgarian border police should recognize the civilized manner of dealing with refugees and stop treating asylum seekers as illegal immigrants and criminals who can be simply pushed away from the border. In the same way, once accepted they should not be put into detention centers or there should not be any fines imposed on them. Due to the efforts of the Australian Council, a detention system in the community without supervision was introduced by the Australian government in 2005 (Refugee Council of Australia, 2010). It was proven that asylum seekers do not try to escape or harm the citizens in any way whatsoever.

Secondly, and on a deeply related note, the Australian explanation of onshore and offshore asylum seeking is worthy describing. Onshore should be translated as applying for asylum at the border or after entering, while offshore means through a diplomatic representation of the country on a foreign ground such as Consulate(Refugee Council of Australia, 2010). According to the UN Refugee Convention a refugee by definition is someone outside their own country and thus the onshore application is the standard one (Refugee Council of Australia, 2010). Furthermore, the onshore division is the legal obligation of all countries emanating from the Refugee Convention. Once again this shows that in Bulgaria the negative perception of people applying for asylum by crossing the border is not lawfully correct and should be altered to bring a positive change in the overall attitude. Lastly, Australia recognizes the importance of the offshore branch of asylum seeking by resettlement procedures in order to express solidarity and reduce the burden for countries hosting large population of asylum seekers.

Another interesting point examined by the Australian Refugee Council which is also widely contested in Bulgaria is the threat to the national security. According to the Australian authorities, the majority of those arriving irregularly are in a genuine need of protection(ASIO, 2011). What makes this survey even more interesting is the comparison of those arriving without any documents and those with visas and other forms of identification. The numbers show that up to 90% of those irregular persons are to be recognized as refugees while the percent is only 40 for those with visas (ASIO, 2011). Finally, the Australian Security and Intelligence Organisation (ASIO) concluded that the prospects of security threats are very low (2011). Furthermore, they claimed that it would be unlikely for criminals to enter countries in that manner due to the strict security checks and the long procedures of examining and questioning (ASIO, 2011). This example shows, to a certain extent, that fears of the unknown or of the 'illegal' refugees and asylum seekers is over-exaggerated and used as justification to violate the right of asylum. A similar survey for the Bulgarian reality would have an educative effect on the public and the border police which might lead to improved behavior towards asylum seekers apprehended at the border, for instance. In fact, according to research carried out by the European Union Agency for fundamental rights (FRA), the majority of people crossing the southern borders of the EU are people who are entitled to international protection, mostly people trying to escape from the war in Syria (FRA, 2015). In this spirit, more should be done by non-governmental organizations and associations in Bulgaria to increase transparency so better solutions could be pursued. This is also one of the approaches suggested by the UNHCR, called Improving Response through Statistical Transparency (The UN Refugee Agency, 2013).

A point to be taken by the Bulgarian authorities is that national security concerns do not clear the path for ignoring international obligations such as the right to provide asylum for those in need of protection. If the authorities are worried about jeopardizing the security of the citizens, the way forward is to improve the efficiency of the border control and the measures of scrutiny in order to ensure that those who enter do not pose any threats, instead of concentrating efforts on driving refugees away from the border (Pluim & Hofmann, 2015). Additionally, preventing people from entering by building fences and making the crossing of the border 'mission impossible' is not going to stop people seeking asylum and fleeing their homes because refugees are fleeing from, not fleeing to a specific country as pointed out by the Australian Refugee activists (Refugee Council of Australia, 2010). It could reduce the number for a limited time but other ways to enter would be found such as corruptive security guards, dangerous climbing of the fence or even destroying it or digging tunnels which might actually increase the casualties. Lastly, the flow of refugees would not stop, asylum seekers would simply change the used route (Refugee Council of Australia, 2010).

5.6 The African example

The African example was recognized by the legal advisor to the Austrian Embassy as something that Bulgaria and the EU could learn from. Besides the prohibition of collective expulsions, two more specific activities were outlawed by the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa that deserve to be mentioned here. In article II (2) rejections and returns of asylum seekers at the border are also explicitly established as illegal (OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969). This might be considered as a potential alternative to solve the legal loophole in the Bulgarian and European law when it comes to rejecting asylum seekers at the border. By explicitly prohibiting rejections and returns there would be no room left for interpretations of the legality of these acts. This proposal provides a legal durable solution which could be implemented by means of amending the Bulgarian law. According to the principle of minimum harmonization, Member States are allowed to implement stricter measures in order to protect the well-being of the people on their territory (Jans, 2008).

6. Conclusion and Recommendations

To answer my central question “Is Bulgaria in breach of European and International obligations by limiting access for asylum seekers and refugees at the Bulgarian-Turkish border and if so, how could the situation be rectified?”, it should be clear by now that Bulgaria has not fully complied with the ECAS and the international standards established by the Geneva Convention on Refugees and the Protocol from 1967. It is also justified to conclude that the practices applied by the Bulgarian border police of forcible returning and summarily expelling asylum seekers trying to cross the border irregularly is a clear violation of the abovementioned agreements. Due to the recent developments in asylum law and the principle of externalization, although it is generally recognized the Bulgaria has the right to refuse entry to undocumented persons, the border policy is bound by human rights when engaging with asylum seekers even on a foreign ground which makes pushbacks illegal (personal interview, Minos Mouzourakis, 2015). What is more, as it has been argued by almost every source the refugee status is declaratory and it does not depend on the decision of the national authorities (Goodwin-Gill & McAdam, 2007). Finally, there are still concerns expressed for the detention policy applied to all arriving at the border and the receptions conditions in Bulgaria although they were not identified as major violations but rather areas where seeking amelioration is essential (personal interview, Boris Cheshirkov, 2015).

Apart from that, there is still room from improvement and better alternatives should be pursued both by the SAR and the Ministry of Interior. Additionally, the EU and all the 27 MS have a bigger role to play in the future as the complexity of the refugee situation calls for a European solution not just national one. Therefore, the recommendations that will be presented below cover the two layers of the solution.

In order to redress the issue of ensuring that the right to seek asylum is better protected and safeguarded in Bulgaria, the following policy options have been justified both by the interviewees and the desk research. Moreover, it is reasonable to say that they also address the security needs of Bulgaria and its citizens. Additionally, during the research it became clear that the solution does not consist of only one alternative but rather a combination of policies that need to be implemented simultaneously. Lastly, in line with the criteria set up in the beginning of the thesis, the recommended policies have proven to be in harmony with legal standards and international norms, offering long-

standing solutions. However, the implementation prospects are the main shortcomings for two of them, namely resettlement and relocation.

The first thing to begin with, as it was analyzed to have the greatest potential to establish positive change, will be the education and the legal training of the Bulgarian border police and security guards. Together with Frontex and Europol, cooperative mechanism for distinguishing the most vulnerable asylum seekers should be put into practice. Only by collaboration with anti-terrorism bodies such as the The United Nations Counter-Terrorism Implementation Task Force (CTITF), it could be ensured that asylum seekers do not pose any risks to the Bulgarian and European security. Moreover, in this way the main reason for the negative perception of asylum seekers among Bulgarian would be erased. After solving the cause of the problem, the symptoms should be cured as well in next paragraphs.

What became evident is that policies of deterrence such as pushbacks, detentions and building of fences do not work in the long term. Instead, policies that reduce the actual number of refugees and asylum seekers, left to seek better protection through illegal methods such as smuggling, need to be developed as they are more effective. Therefore, humanitarian admissions, resettlement and relocation mechanisms should be established and encouraged by the Bulgarian authorities. Although the ultimate decision for these European measures lies within the Council, the Bulgarian MEPs need to push forward the relocation agenda within the European Parliament. It is of paramount importance, however, to make it crystal clear that resettlement and relocation do not substitute each other. In order for these measures to have a maximum effect, the quota numbers for European relocation, for example, should not be deducted from the total quota number for resettlement.

Bulgaria has to ensure that there are enough legal avenues for asylum seekers to lodge applications through granting visas via its consulates in Turkey. Lastly, Bulgaria should fully transpose the EU directives on asylum seekers and refugees and take the needed action to change the national laws so they are in line with its obligations. Furthermore, the Bulgarian authorities need to use more actively the discretionary clauses available in the Dublin regulation.

Finally, it is recommended that more research on the financial side of all these potential policies is carried out. Additionally, it should be estimated how many asylum seekers and refugees would be covered by every alternative in terms of resettlement and relocation. These could be calculated after more elaborative work on the new relocation proposal by the Commission is carried out. Last but not least, ways to overcome the political barriers to relocation and resettlement mechanisms should be analyzed.

References:

- Abi-Saab, G. (2000). The admission and expulsion of refugees with special reference to Africa. *African yearbook of international law*, 8, 71-91. Retrieved March 4, 2015, from the Peace Palace Library.
- Amnesty International. (2014, December 5). *Facts & Figures: Syria refugee crisis & international resettlement*. Retrieved March 2, 2015, from Amnesty International: <https://www.amnesty.org/en/articles/news/2014/12/facts-figures-syria-refugee-crisis-international-resettlement/>
- Andric v. Sweden, 45917/99 (European Court of Human Rights February 23, 1999).
- ASIO. (2011, October 11). *ASIO Report to Parliament 2010-11*. Retrieved March 12, 2015, from ASIO: <http://www.asio.gov.au/img/files/Report-to-Parliament-2010-11.pdf>
- Asylum Seeker*. (2014). Retrieved May 16, 2015, from UNESCO: <http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/asylum-seeker/>
- BHC: Position on the Law on Asylum and Refugees Draft Amendments*. (2013, November 28). Retrieved May 14, 2015, from Bulgarian Helsinki Committee: <http://www.bghelsinki.org/en/news/press/single/bhc-position-law-asylum-and-refugees-draft-amendments/>
- Boed, R. (1994). The State of the Right of Asylum in International Law. *Duke Journal of Comparative and International Law*, 5 (1), 1-34. Retrieved January 31, 2015, from the Peace Palace Library.
- Border Monitoring EU. (2015, March 24). *Still no good life for refugees in Bulgaria*. Retrieved April 19, 2015, from Bulgaria Border Monitoring EU: <http://bulgaria.bordermonitoring.eu/>
- Bulgaria: New Evidence Syrians Forced Back to Turkey*. (2014, September 18). Retrieved March 29, 2015, from HRW: <http://www.hrw.org/news/2014/09/18/bulgaria-new-evidence-syrians-forced-back-turkey>
- Charter of Fundamental Rights of the European Union*. (2000, 12). Retrieved February 27, 2015, from European Parliament: http://www.europarl.europa.eu/charter/pdf/text_en.pdf

- Common European Asylum System*. (2014, April). Retrieved May 1, 2015, from EC: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm
- Constitution of the Republic of Bulgaria*. (2007). Retrieved May 11, 2015, from Supreme Court of Cassation Republic of Bulgaria: http://www.vks.bg/english/vksen_p04_01.htm
- Convention and Protocol Relating to the Status of Refugees*. (2014). Retrieved May 17, 2015, from Office of the United Nations High Commissioner for Refugees: <http://www.unhcr.org/3b66c2aa10.html>
- Costello, C. (2012). Courting Access to Asylum in Europe: Recent Supranational Jurisprudence Explored. *Human Rights Law Review*, 12 (2), 287-339. Retrieved May 18, 2015, from the ECRE.
- Council of Europe. (1950, November 1). *European Convention on Human Rights*. Retrieved February 28, 2015 from European Court of Human Rights: http://www.echr.coe.int/Documents/Convention_ENG.pdf
- Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals*. (2008, December 16). Retrieved March 27, 2015, from Eur-lex: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF>
- Doty, R. L. (1998). Immigration and the politics of security. *Security Studies*, 8 (2-3), 71-93. Retrieved May 2, 2015, from the Peace Palace Library.
- Dublin Regulation*. (2014). Retrieved March 13, 2015, from ECRE: <http://www.ecre.org/topics/areas-of-work/protection-in-europe/10-dublin-regulation.html>
- EASO. (2012, July). *EASO fact finding report on intra-EU relocation activities from Malta*. Retrieved May 3, 2015, from European Asylum Support Office: <https://easo.europa.eu/wp-content/uploads/EUREMA-fact-finding-report-EASO1.pdf>
- ECtHR - Hirsi Jamaa and Others v Italy [GC]*. (2012). Retrieved May 18, 2015, from European Database of Asylum Law (EDAL): <http://www.asylumlawdatabase.eu/en/content/ecthr-hirsi-jamaa-and-others-v-italy-gc-application-no-2776509>

- ERN. (2014). *Resettlement, relocation or humanitarian admission*. Retrieved May 2, 2015, from European Resettlement Network: <http://www.resettlement.eu/page/resettlement-relocation-or-humanitarian-admission-we-explain-terminology>
- EUROMED. (2013, May). *The Management of Mixed Migration Flows in the last decade: Lessons learnt and options for the future*. Retrieved March 17, 2015, from EUROMED Migration III Project: http://www.euromed-migration.eu/uploads/tx_euromedhelper/130528_IR_Budapest_strategic_overview_EN_01.pdf
- European Commission. (2015, May 13). *A European agenda on Migration*. Retrieved May 20, 2015, from EC: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf
- European Convention on Human Rights*. (1963). Retrieved March 13, 2015, from ECtHR: http://www.echr.coe.int/Documents/Convention_ENG.pdf
- Fourlanos, G. (1986). *Sovereignty and the ingress of aliens: With special focus on family unity and refugee law*. Stockholm: Almqvist & Wiksell International.
- FRA . (2015, February). *Legal entry channels to the EU for persons in need of international protection: a toolbox*. Retrieved March 13, 2015, from European Union Agency for Fundamental Rights: http://fra.europa.eu/sites/default/files/fra-focus_02-2015_legal-entry-to-the-eu.pdf
- Georgieva, S. (2015, May 18). *Around 4 500 people sought protection from Bulgaria since the beginnin of the year*. Retrieved May 19, 2015, from Mediapool: <http://www.mediapool.bg/okolo-4500-dushi-sa-potarsili-zakrila-v-bulgaria-ot-nachaloto-nagodinata-news234147.html>
- Goodwin-Gill, G., & McAdam, J. (2007). *The Refugee in International Law*. Oxford: Oxford University Press.
- Grahl-Madsen, A. (1966). *The Status of Refugees in International Law: Refugee character Vol. 1*. Leiden: A.W. Sijthoff.

- Grahl-Madsen, A. (1972). *The Status of Refugees in International Law: Volume II: Asylum, Entry and Sojourn*. Leiden: A.W. Sijthoff.
- Hathaway, J. (2005). *The Rights of Refugees under International Law*. Cambridge: Cambridge University Press.
- Henle, M. (1962). On the relation between logic and thinking. *Psychological Review*, 69 (4), 366-378. Retrieved February 12, 2015, from <http://psycnet.apa.org/journals/rev/69/4/366>
- Human Rights Watch. (2014, April). "Containment Plan" Bulgaria's Pushbacks and Detention of Syrian and Other Asylum Seekers and Migrants. Retrieved February 28, 2015, from HRW: http://www.hrw.org/sites/default/files/reports/bulgaria0414_ForUpload_0.pdf
- IDC open letter to Bulgarian MPs on draft amendments to Law on Asylum and Refugees. (2015, April). Retrieved May 21, 2015, from International Detention Coalition: <http://idcoalition.org/news/idc-open-letter-on-bulgarian-mps-on-draft-amendments-to-law-on-asylum-and-refugees/>
- Immigrant stabbed a girl in Sofia 10 times with a knife. (2013, November 2). Retrieved May 3, 2015, from BNews: <http://www.bnews.bg/article-90183>
- Islam, R., & Bhuiyan, J. (2013). *An introduction to International Refugee Law*. Leiden: Martinus Nijhoff Publishers.
- Jans, J. (2008). *Minimum Harmonisation and the Role of the Principle of Proportionality*. Retrieved May 12, 2015, from Social Science Research Network: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1105341
- Kirişci, K. (2005, May 10). *To Lift or Not to Lift the Geographical Limitation to the 1951 Geneva Convention Relating to the Status of Refugees: Turkey's Pre-accession to the EU and Asylum*. Retrieved May 11, 2015, from EDAM: <http://edam.org.tr/document/Kirisici2.pdf>
- Kirschenbaum, E. (2013, July 25). *Israel, Refugees, and Collective Identity*. Retrieved April 24, 2015, from E-International Relations Students: <http://www.e-ir.info/2013/07/25/israel-refugees-and-collective-identity/>

- Konstantinova, D. (2014, May 3). *EU-Turkey readmission agreement benefits Bulgaria*. Retrieved April 3, 2015, from Bulgarian National Radio Website: <http://bnr.bg/en/post/100338784/eu-turkey-readmission-agreement-benefits-bulgaria>
- Lambert, H. (2012). 'Safe third country' in the European Union: An evolving concept in international law and implications for the UK. *Journal of Immigration, Asylum and Nationality Law*, 26 (4), 318-336. Retrieved April 29, 2015, from The Peace Palace Library.
- Loreto, A. D. (2014). *All in the same boat: The challenges of mixed migration*. Retrieved April 16, 2015, from The UN Refugee Agency: <http://www.unhcr.org/pages/4a1d406060.html>
- Mallia, P. (2011). Case of M.S.S. v. Belgium and Greece: A Catalyst in the Re-thinking of the Dublin II Regulation . *Refugee Survey Quarterly*, 30 (3), 107-128. Retrieved May 7, 2015, from The Peace Palace Library.
- McLinden, G., Fanta, E., Widdowson, D., & Doyle, T. (2010). *Border Management Modernization*. Washington: World Bank Publications.
- Mebusevleri, T. (2014, July 8). *Turkey ratifies Readmission Agreement*. Retrieved April 6, 2015, from The Journal of Turkish Weekly: <http://www.turkishweekly.net/news/168918/turkey-ratifies-readmission-agreement.html>
- Nielsen, N. (2015, May 11). *EU to propose 'binding' quotas for migrant relocation*. Retrieved May 15, 2015, from EU Observer: <https://euobserver.com/justice/128655>
- OAU Convention Governing the Specific Aspects of Refugee Problems in Africa*. (1969). Retrieved March 27, 2015, from UNHCR: <http://www.unhcr.org/45dc1a682.html>
- O'Leary, Z. (2004). *The Essential Guide to Doing Research*. London: SAGE Publications.
- Papastavridis, E. (2010). 'Fortress Europe' and FRONTEX: Within or Without International Law? *Nordic Journal of International Law*, 79 (1), 75–111. Retrieved January 30, 2015, from The Peace Palace Library.

- Patterson, M. (2015, May 13). *EC migration agenda represents welcome shift and must not be undermined by member states*. Retrieved May 14, 2015, from Amnesty International: <http://www.amnesty.eu/en/news/press-releases/all/ec-migration-agenda-represents-welcome-shift-and-must-not-be-undermined-by-member-states-0896/#.VV0W9ZN2y8H>
- Pluim, M., & Hofmann, M. (2015, February). *ICMPD Working Paper 08 Integrated Border Management and Development*. Retrieved March 2, 2015, from International Centre for Migration Policy Development: http://www.icmpd.org/fileadmin/ICMPD-Website/ICMPD_General/Working_Papers/Working_Paper_BMdevelopment_final.pdf
- Refugee Council of Australia. (2010). *Myths and facts about refugees and asylum seekers*. Retrieved March 11, 2015, from RCA: <http://www.refugeecouncil.org.au/docs/news&events/rw/2010/4%20-%20Myths%20and%20facts%20about%20refugees%20and%20asylum%20seekers%202010.pdf>
- Refugees in Bulgaria*. (2015, March). Retrieved May 18, 2015, from Zakrila Info: <http://zakrila.info/>
- Regulation (EC) No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders*. (2006, March 15). Retrieved March 22, 2015, from Eur-Lex: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006R0562&from=EN>
- Reilly, A. (1995). *Detention Of Asylum Seekers - A Questionable Policy*. Retrieved May 9, 2015, from Australian Institute of Criminology: http://www.aic.gov.au/media_library/conferences/multiculturalism/reilly.pdf
- Reuters. (2015, January 14). *Bulgaria to extend fence at Turkish border to bar refugee influx*. Retrieved May 18, 2015, from National Bulgarian News: <http://national.bgnnews.com/bulgaria-to-extend-fence-at-turkish-border-to-bar-refugee-influx-haberi/2831>
- Robinson, N. (1997). *Convention relating to the Status of Stateless Persons. Its History and Interpretation*. Retrieved April 6, 2015, from Refworld: <http://www.refworld.org/docid/4785f03d2.html>
- SAR. (2015, May). *Statistics and reports*. Retrieved May 19, 2015, from State agency for Refugees with the Council of Ministers: <http://www.aref.government.bg/?cat=21>

- Savova, I. (2015, January 31). *Country Report Bulgaria*. Retrieved March 25, 2015, from Asylum Information Database: <http://www.asylumineurope.org/reports/country/bulgaria>
- Spindler, W. (2015, March 12). *UNHCR unveils far-reaching proposals for European action in the Mediterranean Sea*. Retrieved May 2, 2015, from UNHCR: <http://www.unhcr.org/55019bce6.html>
- Stenberg, G. (1989). *Non-expulsion and non-refoulement: the prohibition against removal of refugees with special references to articles 32 and 33 of the 1951 convention relating to the status of refugees*. Uppsala: Iustus Förlag.
- Stevis, M. (2014, April 29). *Reports of Refugee Pushbacks in Greece, Bulgaria Make EU Mull Action*. Retrieved May 2, 2015, from The Wall Street Journal: <http://blogs.wsj.com/brussels/2014/04/29/reports-of-refugee-pushbacks-in-greece-bulgaria-make-eu-mull-action/>
- Sutcliffe, K. (Director). (2015). *Trapped In Bulgaria: Europe Or Die (Episode 3/4)* [Motion Picture].
- Szandelszky, B. (2015). *Caring for the Vulnerable in Asylum*. Retrieved May 3, 2015, from The UN Refugee Agency for Central Europe: <http://www.unhcr-centraleurope.org/en/what-we-do/caring-for-the-vulnerable/caring-for-the-vulnerable-in-asylum.html>
- Taylor, S. (1994). Australia's Implementation of its Non-Refoulement Obligations. *UNSW Law Journal*, 17 (2), 432-474. Retrieved March 16, 2015, from the Peace Palace Library.
- The Human Cost of Fortress Europe*. (2014). Retrieved February 27, 2015, from Amnesty International: http://www.amnesty.nl/sites/default/files/public/eur_050012014__fortress_europe_complete_web.pdf
- The UN Refugee Agency. (2013). *25 Years of Global Forced Displacement*. Retrieved March 23, 2015, from UNHCR: <http://www.unhcr.org/54cf99109.html>
- Unaccompanied Minors*. (2011). Retrieved May 17, 2015, from IOM: <http://avrr.belgium.iom.int/en/other-projects/unaccompanied-minors.html>

- UNHCR. (2007, June 29). *10-Point Plan of Action*. Retrieved April 5, 2015, from The UN Refugee Agency: <http://www.unhcr.org/4688b4af2.html>
- UNHCR. (2012). *A pilot project for intra-EU re-allocation of beneficiaries of protection from Malta*. Retrieved May 3, 2015, from UNHCR: <http://unhcr.org/4ef338859.pdf>
- UNHCR. (2013). *EU Resettlement Fact Sheet*. Retrieved May 1, 2015, from UNHCR: <http://www.unhcr.org/524c31b69.pdf>
- UNHCR. (2015, March). *UNHCR proposals to address current and future arrivals of asylum-seekers, refugees and migrants by sea to Europe*. Retrieved May 5, 2015, from the Refworld: <http://www.refworld.org/docid/55016ba14.html>
- United Nations Counter-Terrorism Implementation Task Force. (2011, August). *Interagency Coordination in the Event of a Terrorist Attack Using Chemical or Biological Weapons or Materials*. Retrieved April 13, 2015, from United Nations: http://www.un.org/en/terrorism/ctitf/pdfs/ctitf_wmd_working_group_report_interagency_2011.pdf
- Veneff, S. (2013, September 28). *The Syrian refugees - a threat or a humanitarian crisis*. Retrieved May 16, 2015, from E-vestnik: <http://e-vestnik.bg/18754>
- Wagner, M., & Kraler, A. (2014, October). *An Effective Asylum Responsibility-Sharing Mechanism*. Retrieved March 25, 2015, from The International Centre for Migration Policy Development: http://www.icmpd.org/fileadmin/ICMPD-Website/ICMPD_General/Publications/2014/ICMPD_TP_Responsibility_Sharing_October_FINAL.pdf
- Weber, A. (2012). The Impact of the Charter of Fundamental Rights and Freedoms of the EU for the Asylum and Refugee Law of the EU. *Quarterly on Refugee Problems*, 50 (3/4), 169-176. Retrieved February 1, 2015, from The Peace Palace Library.
- Weis, P. (2010). *International Refugee Law*. Farnham: Ashgate .

Appendices:
Student Ethics Form
European Studies

Your name: Diana Totinska

Supervisor: Rebekah Tromble

Instructions/checklist

Before completing this form you should read the APA Ethics Code (<http://www.apa.org/ethics/code/index.aspx>). If you are planning research with human subjects you should also look at the sample consent form available in the Final Project and Dissertation Guide.

- a. Read section 3 that your supervisor will have to sign. Make sure that you cover all these issues in section 1.
- b. Complete sections 1 and, if you are using human subjects, section 2, of this form, and sign it.
- c. Ask your project supervisor to read these sections (and the draft consent form if you have one) and sign the form.
- d. Append this signed form as an appendix to your dissertation.

Section 1. Project Outline (to be completed by student)

(i) Title of Project:

Ensuring access to asylum for refugees and asylum seekers at the external border of the EU. Case study of the Bulgarian-Turkish border.

(ii) Aims of project:

1. To research and assess different policy options and good case practices that can be implemented by the Bulgarian authorities in order to stop illegal actions such as push backs.
2. To examine how could the EU and other countries help in rectifying the situation of the asylum seekers.

(iii) Will you involve other people in your project— e.g. via formal or informal interviews, group discussions, questionnaires, internet survey etc. (Note: if you are using data that has already been collected by another researcher—e.g. recordings or

transcripts of conversations given to you by your supervisor, you should answer

'NO' to this question.)

YES NO

If no: you should now sign the statement below and return the form to your supervisor. You have completed this form.

This project is not designed to include research with human subjects. I understand that I do not have ethical clearance to interview people (formally or informally) about the topic of my research, to carry out internet research (e.g. on chat rooms or discussion boards) or in any other way to use people as subject in my research.

Students's signature _____

Date _____

If yes: you should complete the rest of this form.

Section 2 Complete this section only if you answered YES to question (iii) above.

(i) What will the participants have to do? (v. brief outline of procedure):

I would like to conduct several interviews with the participants so they will have to answer my questions and share their opinion on the matter with me.

(ii) What sort of people will the participants be and how will they be recruited?

The participants will be professionals involved with refugees and asylum seekers in Bulgaria as well as abroad and in other European countries, agencies and NGOs. I would like to reach different groups of experts, so I will request interviews with Bulgarian authorities (The Bulgarian Refugee Agency) and Bulgarian activist in the field (the Bulgarian Helsinki Committee) to better examine the Bulgarian context. On the other hand, I would like to hear the opinion of campaigners and researchers from the European Council for Refugees and Exiles. Lastly, an interview with someone from the Office of the UNHCR will be requested to cover the international level.

(iii) What sort of stimuli or materials will your participants be exposed to, tick the appropriate boxes and then state what they are in the space below?

Questionnaires []; Pictures []; Sounds []; Words []; Other [].

I will only use words, my opinion and proven facts and statistics.

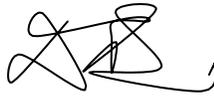
(iv) Consent: Informed consent must be obtained for all participants before they take part in your project. Either verbally or by means of an informed consent form you should state what participants will be doing, drawing attention to anything they could conceivably object to subsequently. You should also state how they can withdraw from the study at any time and the measures you are taking to ensure the confidentiality of data. A standard informed consent form is available in the Dissertation Manual.

Consent will be requested from anyone of the interviewees.

(vi) What procedures will you follow in order to guarantee the confidentiality of participants' data?

Personal data (name, addresses etc.) should not be stored in such a way that they can be associated with the participant's data.

I will ask each and everyone of the participants to use their real names and positions. If the interviewees want to remain anonymous I will not mention even their positions, only the organization they work for. To ensure that nicknames are not linked to the real names of the participants, I will use letters from the English alphabet. The first letter will respond to the first interviewee (Ms./Mr. A), the second for the second interviewee and so forth. The interviewees will be consulted for approval.



Student's signature:.....**date:10.05.2014**

Supervisor's signature(if satisfied with the proposed procedures):



date:19May2015

Informed Consent Form (Anna Bazelkova)

1) Research Project Title

“Is Bulgaria in breach of European and International obligations by limiting access for asylum seekers and refugees at the Bulgarian-Turkish border and if so, how could the situation be rectified?”

2) Project Description (1 paragraph)

In the context of the ever increasing flows of asylum seekers and refugees in the EU and particularly in Bulgaria as well as the dreadful events happening at the Southern European border, the question of how to protect both asylum seekers and national security is at the center of a heated debate. Since Bulgaria is rather unprepared to meet the demands of so many newcomers, Bulgarian authorities recourse to practices whose legality is questionable and which tragically lead to injuries and suffering for those seeking refuge and asylum. Thus my thesis aims to examine what Bulgarian authorities are doing wrong and what can be done to correct the mistakes and move forward. Indeed, I would try to analyze good case practices and policy alternative that could be implemented by Bulgaria or at a European level so no more push backs take place at the Bulgarian-Turkish border. The overall intention of this research is to find a solution which protects the right to seek asylum and hopefully at the same time ensures that Bulgaria safeguards its Southern border, its citizens and their security. To do so, my thesis will be divided in two parts, where the first one will discuss the practices of the Bulgarian authorities and their legality according to international and European law, while the second part will provide thorough analysis of what can be done better to ensure that Bulgaria is fulfilling its obligations in a manner that is also consistent with its security needs.

If you agree to take part in this study please read the following statement and sign this form.

I am 16 years of age or older.

I can confirm that I have read and understood the description and aims of this research.

The researcher has answered all the questions that I had to my satisfaction.

I agree to the audio recording of my interview with the researcher.

I understand that the researcher offers me the following guarantees:

All information will be treated in the strictest confidence.

My name will not be used in the study unless I give permission for it.

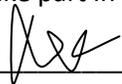
Recordings will be accessible only by the researcher.

Unless otherwise agreed, anonymity will be ensured at all times.

Pseudonyms will be used in the transcriptions.

I can ask for the recording to be stopped at any time and anything to be deleted from it.

I consent to take part in the research on the basis of the guarantees outlined above.

Signed: _____  _____ Date: 12.05.2015

Informed Consent Form (Minos Mouzourakis)

1) Research Project Title

Ensuring access to asylum for refugees and asylum seekers at the external border of the EU. Case study of the Bulgarian-Turkish border.

2) Project Description (1 paragraph)

In the context of the ever increasing flows of asylum seekers and refugees in the EU and particularly in Bulgaria as well as the dreadful events happening at the Southern European border, the question of how to protect both asylum seekers and national security is at the center of a heated debate. Since Bulgaria is rather unprepared to meet the demands of so many newcomers, Bulgarian authorities recourse to questionable practices leading to injuries and suffering for those seeking refuge and asylum. Thus, my thesis aims to examine what Bulgarian authorities are doing wrong and what can be done to correct the mistakes and move forward. Indeed, I would try to analyze good case practices and policy alternatives that could be implemented by Bulgaria or at a European level so no more push backs take place at the Bulgarian-Turkish border. The overall intention of this research is to find a solution which protects the right to seek asylum and hopefully at the same time ensures that Bulgaria safeguards its Southern border, its citizens and their security. To do so, my thesis will be divided in two parts, where the first one will discuss the practices of the Bulgarian authorities and their legality according to international and European law, while the second part will provide thorough analysis of what can be done better to ensure that Bulgaria is fulfilling its obligations in a manner that is also consistent with its security needs.

If you agree to take part in this study please read the following statement and sign this form.

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Recordings will be accessible only by the researcher.

Unless otherwise agreed, anonymity will be ensured at all times.

Pseudonyms will be used in the transcriptions.

I can ask for the recording to be stopped at any time and anything to be deleted from it.

I consent to take part in the research on the basis of the guarantees outlined above.

Signed:Minos Mouzourakis

Date:17 May 2015

Informed Consent Form (Boris Cheshirkov)

Informed Consent Form

Informed Consent Form

1) Research Project Title

Ensuring access to asylum for refugees and asylum seekers at the external border of the EU. Case study of the Bulgarian-Turkish border.

2) Project Description (1 paragraph)

In the context of the ever increasing flows of asylum seekers and refugees in the EU and particularly in Bulgaria as well as the dreadful events happening at the Southern European border, the question of how to protect both asylum seekers and national security is at the center of a heated debate. Since Bulgaria is rather unprepared to meet the demands of so many newcomers, Bulgarian authorities recourse to questionable practices leading to injuries and suffering for those seeking refuge and asylum. Thus, my thesis aims to examine what Bulgarian authorities are doing wrong and what can be done to correct the mistakes and move forward. Indeed, I would try to analyze good case practices and policy alternatives that could be implemented by Bulgaria or at a European level so no more push backs take place at the Bulgarian-Turkish border. The overall intention of this research is to find a solution which protects the right to seek asylum and hopefully at the same time ensures that Bulgaria safeguards its Southern border, its citizens and their security. To do so, my thesis will be divided in two parts, where the first one will discuss the practices of the Bulgarian authorities and their legality according to international and European law, while the second part will provide thorough analysis of what can be done better to ensure that Bulgaria is fulfilling its obligations in a manner that is also consistent with its security needs.

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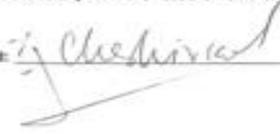
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Recordings will be accessible only by the researcher. Unless otherwise agreed, anonymity will be ensured at all times. Pseudonyms will be used in the transcriptions.

I can ask for the recording to be stopped at any time and anything to be deleted from it.

I consent to take part in the research on the basis of the guarantees outlined above.

Signed: 

Date: 19.5.2015

Interview Transcript (Anna Bazelkova)

Anna Bazelkova is a representative of the Centre for Legal Aid 'Voice in Bulgaria'. She has been involved in numerous activities in the integration centers in Bulgaria. She was one of the interviewers of asylum seekers for the creation of a monitoring report for Bulgaria. Currently, she is a teacher in Voenna Rampa, one of the integration centers in Sofia. She graduated in Human Rights and Social Studies in Sweden.

Before the interview we agreed that she will give me a short overview of the Bulgarian situation and I will ask any additional questions that I might have. The interview was in Bulgarian so I translated it myself. I translated only the most relevant information connected to my research as we continued speaking and discussing the Bulgarian situation for more than two hours.

The answers of the interviewee are put in grey.

.....

I set up the recording and if you are ready we can begin.

Ok, so in terms of the fence, it is in its final stage.

Is Frontex helping in its construction?

As far as I know, yes as it helps with the securing of the external borders of the EU. The same happened in Greece. There is a report by Frontex which I will send it to you to read it. The money for the construction is from the EU. About the pushback there is of course no official information, but in our professional environment it has been discussed that there is unofficial agreement with Turkey to push them back. But this is not confirmed and I would advise you not to use it in your dissertation as there is no proof for that. In Turkey they don't receive any humanitarian or refugees status, they receive only temporary protection in camps subsidized by the UNHCR. But I am involved in the monitoring of Bulgaria (I will send you the final report to use it) through my organization Centre for Legal Aid Voice in Bulgaria. We and one other organization worked with people suffered from ill-treatment and detention. According to Directive 33 of the EU, every MS needs to identify the most vulnerable people among the asylum seekers. In Bulgaria this has to be conducted by SAR through the use of questionnaire consistent of 10 questions (created by NGOs across Europe). And our purpose was to see if this is actually working in Bulgaria by interviewing different kinds of refugees and asylum seekers. From there we learned a lot of things about how the asylum seekers enter the Bulgarian border- it is very organized.

What do you mean by that?

With smugglers, even help from the Turkish authorities. We learned that they are always detained in one of the three facilities in Bulgaria (Busmanci, Lubimec and Elhovo). We found out that some of the people have been detained for several days, other for several weeks or even months. In 2013 the process was a little bit reduced. But the violation here is that they are treated according to the LARB, and they cannot lodge their asylum claim immediately. They are treated as illegal immigrants; you can note this in your thesis.

Do you know what the situation in other EU countries is?

Yes, they are treated according to the asylum law because they process their claim immediately.

That is very interesting. Why in Bulgaria is that?

I cannot answer this question. But you can have a look at the newest versions of the both laws: LARB and LAR. It can be very misleading, be careful. Go to Lex BG to find the proper versions.

But isn't it the EU insisting on treating these people like asylum seekers?

Well, they do but I will explain to you what is happening. After they lodge an application, they go to the one of the three open-type centers in Sofia, Harmanli and I think Haskovo. They are under the control of SAR, while the close-type centers are under the Ministry of Interior. And that is why those that are in the SAR facilities are treated in accordance with Law, while those in the closed facilities are treated in line with the LARB. There is no specific procedure to establish who goes to the open-type and who goes to the closed-type facilities.

But who is taking the decision?

Well, it is not clear but mainly the border police. If they are in a close-type facility, lawyers from the Bulgarian Helsinki Committee (BHC) go to visit them once or twice a week in order to provide them with the application documents so they are able to lodge an asylum claim. In the open-type facilities the BHC had a permanent office there until 2013 where asylum seekers can go and ask for the documents. After that there was a problem with the financing and I am not sure what happened with their presence in the facilities. But still they are the people collecting the applications. Until the end of 2014 in Sofia they were accepting applications only in Ovcha Kupel (one of the SAR facilities in Sofia) - it was centralized. Now you can submit your application in all of the open-type centers in Sofia. After they submit the application, the asylum seekers receive a white card with a photo and wait for the first interview. After it you receive a green card with a photo, number, country of origin, names, a stamp and at the back the current address in Bulgaria. They are using it while the procedure is ongoing as identification but it is not an official document. It does not replace the ID. The Syrian asylum seekers have a speedy procedure in Bulgaria. Among them, a lot of people are from Kurdish origin, they cross the border relatively easily and without being as ill-treated as other asylum seekers from other countries. You will see in the report what happens to other asylum seekers, one part is about the legal dimension and the other is written from a psychiatrist perspective. I will send it to you. The questionnaire is not used in all cases; there is no system or systematic approach. However, there is an improvement from 2013 in the application process - it is faster now. In Ovcha Kupel the people are from all nationalities. In Voenna Rampa (the other SAR facility in Sofia) only Syrians, and in Vrazdebna (the third facility) mainly from Afghanistan. They do not have the right to divide them like that but there were a lot of violence in the past. Those in Vrazdebna are ignored and they stay there more than a year and receive the most rejections. There is not even one translator from SAR there. There are certain active channels there which assist them to disappear to other EU countries. Until 2013 the majority of the status received were humanitarian but now there are mostly refugees' statuses because (and this you will not read in official statements) the integration programme is not working right now, the monthly stipend has also been canceled (65 leva per month) for those waiting confirmation of their status.

Why is that?

If you ask the Ministry, the official response is that they were not providing them with breakfast and that money will go for breakfast now. If there is no integration programme, we cannot do anything with this people, no Bulgarian classes and so on. So by granting them refugee status the refugees are allowed to travel within the EU and thus the Bulgarian authorities are hoping that they will find prospects in other EU countries and leave Bulgaria because they cannot leave with humanitarian status. Now concerning the kids (which is also a violation although is not one of your initial questions) according to the Convention for Protection of Children, every kid has a right to education. Although we ratified it we don't comply with it. They do not put them in school because firstly they need to take an exam in Bulgarian, created by the Ministry of Education and then they decide in which grade to put you (13 years old go to the 4th grade usually with 3 grades lower in comparison to Bulgarian kids at the same age). There were teachers from SAR until last year but

again the money was not enough and this programme was cut. And that is why a lot of NGOs go and teach Bulgarian to the kids in the centers so they can pass the exam and only then they can sign for school. Now there is one opportunity to go to school without the test but only after an interview but this has not been explained to them and after all the money was stopped their parents and the kids themselves are not interested in school as simply they cannot survive in Bulgaria and want to escape. Law stipulates that every kids need to start school immediately.

Concerning the unaccompanied minors, there are more violations. Nobody knows what is happening with them. Initially they were put in Bania (city in Bulgaria) but there is nobody there right now as they all escaped. Some are put in crisis centers for kids with disabilities or orphans or suffered human trafficking. I have conducted a lot of interviews with them and you will see in the report. They do not appoint to them legal guardians. Usually they travel with aunts or uncles but they are not official guardians as they don't have documents. So they appoint a social worker to help them with application and once they receive a status they no longer have a guardian or a person to help them. And thus they cannot apply for Bulgarian documents or ID as nobody can sign on their behalf but one country cannot excuse itself saying that they don't have legal guardians and that is why they cannot apply for Bulgarian documents. There are currently suggestions how to amend the law.

So, when do they start treating asylum seekers under the LAR?

When they receive their green card. It can happen after three days but it can happen after weeks. It depends where they were put – in close-type facilities or open-type one. On the other hand, if they try to escape Bulgaria and they were apprehended by the police, they are sent to prison. (Here she explained a case in Sweden which is not of particular relevance to my topic about voluntary returns after rejection to your application).

The things that I am mostly interested in are there any particular violations taking place at the border?

Unofficially and according to my personal observations, I could tell you that the border guards are not properly trained. I assume that it is on purpose so there will be chaos and so the Ministry of Interior can control the situation at the border and so they can treat the asylum seekers as illegal immigrants and increase the security measures. In this connection, there are interviews conducted by DANS (The Bulgarian Security Agency) in Voenna Rampa in Sofia, for example. I haven't heard anything like this in the other countries; it is like having FBI conducting interviews. It is all about the national security in addition to SAR interviews. Some problems were discussed with the translators.

So, what is the objective behind treating them like illegal immigrants and not as asylum seekers?

They can be detained and even expelled. I can't say more. In Bulgaria it is not automatically, we don't have the capacity to immediately start the application process at the border. You need to research this I cannot give you a definite and official answer. You cannot prove this.

There are also cases of some asylum seekers directly appearing before the authorities in Sofia. But how they got there, nobody knows. What I believe is that some is helping these people to do that, maybe smugglers. But then they started to apprehend these people arriving in Sofia and applying for asylum and they brought them back to the facilities at Busmanci. We cannot understand what is happening, every two weeks the mechanism is changed. There are articles and also positions of the BHC on this.

Do you know anything more about the fence and the border?

Well, I know that we expect more people this year because of the Greek fence and their increased boarder security. Here is an article form Dnevnik and New York Times, I will send it to you.

And do you know if Bulgaria has issued an official statement about the refugees issue and whether they have requested something from the EU as assistance?

In the article there is more on Frontex. What was your question again? We have just received 10 million euro for the 2014-2020 period from the EU Refugee Fond but they will not be enough for everything. There was a stamen from Bobby (the founder of the organization Friends for Refugees) who was also an interviewer and works for the BHC now. He wrote an article about the money that we haven't properly presented our needs. He has cited that Estonia has received almost the same amount of money although they have only 78 applicants last year.

Do you want to add something else?

Well, we didn't discuss all your questions. If you want to ask me something more?

You gave me very good directions for my research. Let me check: About the reasons you said that it is because of the national security.

Have you read the report from HRW?

Yes, Amnesty as well.

There you can also find more about the Bulgarian violations.

What about the Dublin Regulation?

Well, they have sent one family to Bulgaria which I interviewed.

I wanted to ask if Bulgaria is opposing it? As I have heard at the Amnesty International camp, we did not take their fingerprints at the border purposefully so other EU countries cannot find out where they came from.

Who told you that?

I have heard this at the camp last summer.

Well, I think this is not true. They must do it otherwise we violate the law. We take them and put them in EURODAC and they stay there 4 to 6 years. And if you go somewhere else they will now from which country you come. And according to Dublin they need to return you in the country of first entry. And this family with several daughters, one of which was with heavy depression as they entered in their house on Germany and immediately extradited them to Bulgaria. Don't think that these things are happening only in Bulgaria. An example in Sweden was also discussed. I found here another article you can see.

Have you heard about the collective examination of applications?

No, but in Bulgaria happened that several asylum seekers were interviewed together although these interviews need to be confidential. For example, families.

No, I mean if a group of refugees come from Syria and then their applications are examined altogether.

No, I haven't heard about this. Only if they were a family or mother with kids and so on.

Is there a system with which terrorist or criminals can be identified immediately?

Apparently through the interviews with DANS which don't have anything with SAR. And I can tell you that, but you cannot cite this as this is my observation; all those people in DANS are

military people which lead to the conclusion that the Ministry of Interior is heavily involved. And they are all transferred from one center to the other. I know a former military guy who was then appointed as a social worker.

Ok I have two final questions. Just tell me your personal opinion. What should be done to stop the pushbacks? Any recommendations you have?

I think the most important thing is to have trainings but for them to be effective the people occupying the highest position should be educated. The theory should be well known, they should know the rights of the asylum seekers according to international law. They should know that they must not use violence on them, kick them and so on. The smuggler networks should be researched and also the police guards for any bribes or if they help the smugglers in some way.

And how can we do this?

You need to read about TITAN Operation and Lampedusa. The newest proposal is to grant the asylum seekers the right to apply for asylum from third countries and thus they won't have to conduct these risky journeys. And money would be saved in this way.

Yes, that was my objective: to find out how not to violate the right to seek asylum.

Well not only the pushbacks are the problem, but also the detention and integration centers, the lack of money for them, the fact that kids do not go to school, their detention and the delays in the procedures because they are treated to LARB.

Are we the only one doing this?

Well, I cannot answer this but I haven't heard any other country to have this.

But there is the ECAS?

We have many common policies, but we also have our particularities. Laugh

Any country with a good-case practices that you could recommend me examine?

Well, I only have observations over Sweden.

But you say that there are also some violations taking place there?

Well yes, but the integration there is at a very good level, you can learn the language, you receive financial assistance; they provide you with a place to live and so on.

We discussed formalities about the interviews and her position which I will not translate due to their irrelevance. We also discussed the consent form.

Interview Transcript (Minos Mouzourakis)

Mr. Mouzourakis is the AIDA (Asylum Information Database) Coordinator at ECRE. He did his Master in Refugee and Forced Migration Studies at the University of Oxford. He was previously employed as a researcher at UNHCR and the EP. He was also a trainee at the Greek Council for Refugees. He speaks fluently English, French and Greek.

The interview began on the phone and then we switched to skype.

.....

Hello, Mr. Mouzourakis. I am Diana. Good morning.

Hello, how are you?

I am good. Is it convenient for you to speak now or

Yes, can you hear me properly?

Yes

Ok, great. Thanks very much for calling again. I hope you are well. I was very interested by your research topic and some of your questions. They are very up to the point, especially with the recent developments happening in Bulgaria.

So you think it is good?

Sure, sure, there is a lot happening and now with the recent proposal I think this is the good time to look at these questions.

How would you like to do this? Should I ask my questions or if you have them in front of you you can just start answering and if I have additional questions..

Sure, regarding the questions about the issue on the ground I don't think I am the best person to give you really accurate answers but I assume you already have spoken with organizations working in Bulgaria, obviously, who have a better overview of what is happening. But maybe we can speak a little bit more on the set of the European dimension and some of the issues that relate to access. I hope that will be helpful for you.

This is one of the biggest parts in my thesis so ...

(Something happened with the connection)

Something happened with the network.

I was wondering, would it be possible to speak through skype. Would that be easier?

It will be definitely easier for me.

Ok good. Could you add me on skype? My username is Could you call me on skype in 3 minutes? Ok thank you very much

(I am calling)

Is it better now?

From my sight, I think yes.

For me as well.

So weird that skype works better than phones these days. Laugh

So, yeah, I am looking forward to hear the European perspective. It will be perfect.

Sure absolutely. From what I saw mainly some of the question you have are specifically about the issue of access and sort of the border restrictions and the compatibility with the Refugee Convention and international law and then some of the issues are on relocation which might be quite interesting to see especially since there is going to be a lot of changes coming up and some new EU proposals. So mainly I was looking at the question of treating entrance under the LARB rather than under LAR. In terms whether this is a violation of the Refugee Convention. In very legal, principle terms, I think, we would agree that it is in a sense that because the refugee status is declaratory rather than constitutive, a person entering the territory does not become a refugee when the national authorities make that decision. They are refugee already obviously. So treating that person as a different from a refugee just because they haven't gone through the official procedure formally would not be permissible under the Refugee Convention. Now the problem in practice is obviously that until the authorities are aware that the person qualifies for refugee status, they cannot treat her as such. And this is kind of, you know, the general premise that you need to go through an individualized refugee status determination process in order to be recognized as a refugee.

But do you have any idea how it is in the other EU countries?

So what is different in Bulgaria from some EU countries relates more to the time period you go through in order to access the procedure. So from what I understand with speaking with organizations in the country you might have situations where a person wishes to apply for asylum and have expressed that intention but the formal process of registering that application can take quite long from that. Or you might have people that have expressed that wish to apply for asylum but the authorities have not received that request and haven't processed it as quickly as they should. Now this is a problem that has also been documented in some other countries. Greece is another interesting example where access to asylum is quite problematic. This may range from border issues even to issues on the territory. So, for example, you might have problems of people entering the territory, telling the authorities that they wish to apply for asylum, the authorities not (register) the claim formally which means in official term that the person is not an asylum seeker yet and that obviously exposes them to a risk of deportation and a risk of detention which is a quite common practice even in Bulgaria as I understand it since they are placed in pre-deportation facility and only then managed to register a claim for asylum. And in other cases where the registration process with asylum authorities is difficult is also the case in countries like Greece. It may take weeks or even months for people to even register a claim and between that time there is obviously a state of legal limbo in the persons' status which makes them more vulnerable to deportation and detention measures. In other countries where the asylum process and the registration process works much more quickly and sort of efficiently this is not much an issue in the sense that if somebody comes and approaches the authorities with a wish to apply for an asylum the registration process is technically done quite quickly so they are not treated as an irregular migrants but directly as an asylum seeker. So as you have properly framed it in the inquires relating to the implementation of the authorities' obligations in practice. Because on the EU framework that applies to all the countries as soon as a person expresses a wish to make an international protection claim they have to be considered as an applicant so it basically starts from the first contact with the authorities where there is evidence that the person wishes to apply rather than the formal registration. In order to safeguard persons from cases exactly this where they have to wait until they are registered and throughout this process of waiting they can be vulnerable to sort of adverse treatment.

Great. I am a little bit slowly because I am writing down everything you say.

Ooo sorry I will make sure to go slowly.

So in a relation to the Bulgarian fence on the border I think it is quite a critical issue because it is very controversial and the negative impact on protection seekers is evident and cannot be overstated. But there are a lot of questions on the legal status of it, whether it is lawful to build a fence and secure and shut off the border that might be interesting also to compare with other cases where this has been practiced. It has been quite an issue even beyond the EU context. So I am not sure whether you will be interested in sort of comparitable examples or you would be more interested to see it in a Bulgarian context as in terms of legality and legal consequences.

Well, I would like to see it in the Bulgarian context but if this was solved somewhere in a legal manner I would be also interested.

Yea, in terms of the general compatibility with international law I think the overall position is very fussy and very uncertain. One of the cases and it was beyond EU, it was an ICJ case under the Un system but it related to the Israeli wall that was going to be build across the Palestinian border and raising exactly these issue whether it is legal for a state to close of its border in order to prevent people from entering. And this was back in 2004 so pretty old decision of the ICJ. It was an advisory opinion on whether this would be legal and I think in practice is was not really able to read a conclusion in a sense that a country is obviously preventing entry and that has impact on access to asylum and protection but on the other hand there is a right of every country to manage its own borders and protect the borders as long as it is not refouling people and expose them to a serious risk of harm or persecution by returning them. But the lines can be quite blurry and another very interesting examples that could be quite closely linked to Bulgaria, especially as it relates to Turkey again, was the fence that was build in Greece two years ago, in 2002. More or less the same debate that is currently active in Bulgaria. So you had a similar situation where the government was faced with a large number of arrivals and they found that the solution was to build the fence which was actually what happened. It was build on the Greek-Turkish land border and it covers 12 km range or something along these lines. Now the problem with whether it is legal or not has to do a lot with what the legal standard is if that makes sense. So if you look at the right of asylum let's say which is unequivocally recognized as a right under international law and is something that EU MS as definitely bound by, the right to asylum does not per se grant a right to be admitted to a territory of a country to apply for asylum. So while on the one hand, the right of asylum is a fundamental right that would mean that any person in BG can at any point apply for asylum, it does not mean that a person outside the country has the right to enter Bulgaria in order to exercise this right. And this seem like a small ...but in practice can has substantive effect in the sense that it can allow, lest say, the Bulgarian authorities in this situation to deny entry to people without violating the right to seek asylum. This creates a physical line between persons who has already made it to the territory and persons who haven't. But these are some of the limitation of the right to asylum and the right to guarantee entries into the territory. I don't know if this makes sense or I sound a little bit confusing.

No, no it makes sense but I need to correct a few things in my thesis then I wrote.

I mean another point that can be interesting and makes even more complicated, unfortunately, this debate is that the principle of non-refoulement ..

(connection dropped)

Do you hear me now?

Somebody is sabotaging this conversation and I don't know why. Laugh

What I was trying to say is that the non-refoulement principle whether you take it from the Refugee Convention and art.33 relating to the non-refoulement of refugees or from the broader human rights framework under the EU Convention on Human Rights and the Charter this could have quite some impact on whether denying entry at the border can be lawful or not. Because it has been interpreted in the courts in a way that says that if a country returns a person to a territory where they face ill-treatment they violate HR under the EU convention and this might be a place where you can drop parallels between what happens at the Bulgarian border though the building of the fence and other ways of collective expulsions as you mentioned. So you have probably seen the argumentation of the Strasbourg Court in the Hirsi Jamaa Case against Italy. This was a case decided in 2012 which changed quite dramatically the landscape of the interdiction at the border. This was not a land issue; it was a sea border so it was even more complicated from a factual perspective. But it was a very interesting case cuz it basically concerned the situation beyond the borders in the high seas of the Mediterranean between Libya and Italy so outside the Italian territory. The Italian Naval force, the coast guard, has pushed back a boat coming from Libya. So in legal terms the right to asylum would necessarily apply because the persons were not yet on Italian territory. It happened beyond Italian territory but the way it was argued in Court and the Court accepted this argumentation was that because Italy has jurisdiction through the involvement of its vessels even though it was beyond the border, fundamental rights apply outside the border, it was extraterritorial, and because they returned and refouled the people to back to Libya this was violation of their human rights.

Wow, I need to see this case.

And this was sort of a seminal ruling in defining, you know, the extraterritoriality of international protection and where border controls actually lie because after Hirsi the idea is that where ever a country has jurisdiction, and then the focus obviously plays what jurisdiction actually means, and this is what we might discuss where this can be applied in the fence context but whenever and wherever a country exercises its jurisdiction it should be bound by HR even if that is beyond borders which changes quite a lot how we conceptualize the right of asylum and where the right of non-refoulement can actually apply.

I haven't been aware of this case but it is amazing.

So in one sense the problem with jurisdiction and I think if you go through that case you will see exactly how the Court tried to deal with the case, as I think this is exactly the pros of the argument proving exactly how it is that a country, Italy in that case, is able to be involved beyond its territory in order to be bound by human rights. And for this there is a really good article by Catherine Costello who writes exactly on this issue. So she analyzes the case and the previous judgments of the Court to understand how this concept of jurisdiction might play and where it could actually apply. I could send it to you by email if you are interested.

Of course.

It will be good for an overview. So the problem in very rough terms, and I will keep the details because it is maybe better to read the judgment and the analysis, the idea is that a country does not exercise an effective control, this is the concept used, over a specific part of land, territory or over specific groups of persons, if there is no such effective control there is no jurisdiction and HR do not apply. So the scenarios could be varying on what happened exactly in practice. Think of one example where Bulgarian police van is on Turkish territory and is apprehending a number of people trying to cross the border and is returning them back to the police station in Turkey. This, for example, would qualify as an effective control because you are physically taking the persons on the van and transferring them to another location. In that sense if you can prove that return to Turkey would be refoulement that would be clear violation of HR under this Hirsi line of thought. Now if you build the fence and there is no contact between authorities and persons it might be still arguable that there is some kind of degree over the territory or over the persons but you understand

how this could be more ambiguous in practice in the sense that the authorities might be able to argue that they just, you know, raise the fence to secure the border but there is no contact with the people. They do not take the people actively and return them to a specific location

So, no HR apply.

So in that sense it can be the counterargument that could be raised but it is not necessarily a conclusive one. It might be something that you know could be litigated or should be analyzed further. I think it is one of these very grey areas of the law. It is quite difficult but it is very interesting research inquiry I think to see where the lines could be drawn. But what is definitely for sure is that especially after Hirsi all these questions to the right of access a territory become a very factual question. It depends really on the details of the specific situation. So, for example, if you look at what happened with the Greek fence when it was built there was a lot of criticism now only by NGOs but even from the EC and other actors in the EU and international community.

But can I just ask, it is strange because there is also criticism from the EC towards the Bulgarian fence but then I think was co-funded by the EU and Frontex was involved, for me it is kind of ridiculous.

Sure, exactly, it is very puzzling from a political perspective and that might be another inquiry that would be very interesting to make because of you draw some parallels with the Greek case and this could be interesting. The EC has condemned this move and has urged the Greeks not to do it but the project was funded by the EU funds. So it makes quite an interesting example I think and quite an intriguing case. And what has happened then is that since the fence became a reality and it was no longer a debate to be discussed, there is no longer active criticism on this at least from official sources. The NGO actors that remain active in this field always remain critical of the notion of the fence actively shutting off access for people in need of protection but from the EC side, for example, this has become an accepted fact and hasn't been discussed since. Another example that is also relevant to the EU and it is quite critical given the level of tensions that it has raised is the number of abuses that have been documented is another fence or wall that is built in Northern Africa to cover two Spanish bits of territory, because you have small bits of territory bordering with Morocco that is again shut off by state and access to asylum again becomes very difficult in practice. This could also raise some issues that could become relevant to Bulgaria because you have situations where people might try to climb the wall and border guards on the other side might be firing wooden bullets or pushing them back and then if you think again of effective control that have been decided in Hirsi and other cases you might be able to see whether the authorities are doing something wrong or not. In my completely personal opinion I think this is a violation because this means that an involvement is made in the asylum seekers' movement if they are restricted in that way but it is a point that has to be argued in a sense.

Thank you very much for this.

So this was about the access on the sight and I will be very interested to see more in detail about this too and more current stories what is happening at the border now and it remains very critical issue. Now in relation to the EU wide and broader policy framework, this is also quite a timely period for the EU because a lot might be changing in fact, especially given the recent climate of the Mediterranean. So I am looking at the Q for the Dublin regulation and Fortress Europe as being compatible with the Refugee Convention. Now Dublin I think is very tricky elements of the CEAS. There is a very complex mechanism and it is definitely one of the ways in which the EU has broken apart from the Refugee Convention in defining its own asylum system because the assumption that is made by the Dublin system and this is also reflected in the Qualification directive and I will tell you also about it is that there can be no refugees within Europe. This is one of the problematic aspects of Dublin (And here I will skip a few minutes from the conversation as it is not relevant to my research. In short, the qualification Directive excludes the possibility to have refugees from EU countries.) However, it is very well established and there is no prospect of

changing it in the future because the EU is devising a EU common system. The other problematic bit with the Dublin Regulation is trickery in the following sense: Dublin basically says that because applications can be processed only in one MS to avoid people being able to apply in different countries at the same time there is this set of criteria applied under hierarchy and MS can determine which country is responsible for the asylum application and then could transfer the asylum seeker to that country. Now in very sort of strict terms this is not necessarily precluded by the Refugee Convention because if you look at article 1 (e) of the Convention which relates to some brands of exclusion. Article 1 (e) states that someone may not be treated as a refugee if they enjoy sufficient protection in another country. In the Refugee Convention this is very ambiguous concept but in practice countries have relied on it in order to start/ develop the concept of the safe-third country which is something that is applied even beyond Dublin. I don't know whether you are familiar with that notion of the safe third country.

No, unfortunately no, I should mention that I did not study law, I am studying ES and I just chose that topic because I was very involved with it. So it is new to me but I am trying to keep up.

My apologies. I didn't know. I just assumed that..Laugh

I took a minor in International Law.

The problem with Asylum Law is that it is even more complicated than any other are. So the Refugee Convention defines who is a refugee based on the idea of the well founded fear of persecution and the relevant criteria but it has a few clauses, provisions in article one.

Yes, I am aware of them.

Ok. And 1 (e) is one of these exclusion clauses that says that if you are protected in another country you are not a refugee. Now, what is in practice defined through the safe country concept which I will come back to in a minute, is the idea that if a person, let's say we are in Bulgaria, so if a person has come to Bulgaria through a country that could be considered safe and they have protection there, Bulgaria should have the right to exclude them and do not consider them as a refugee. Now, this as you understand is a very questionable practice, especially in Europe as everybody has to come through a specific country, it is very difficult to come directly from the country of origin. So you obviously transit from Northern Africa or Turkey, it involves a process, especially as the EU does not allow people to come legally to the EU so you have to irregularly go to another transit country and then go to Bulgaria which makes it more difficult. In practice this concept of the safe third country means that if you have come through some sort of place that is considered ok for you under quite ambiguous terms, you don't qualify for a refugee status in Bulgaria, let's say. This is generally applied to different countries, beyond the EU context, even if you look at the USA or Canada this is a concept that applies in practice so the majority of the receiving countries in the industrialized world, for that matter, use that concept in practice in order to limit the number of applications. If you look at Dublin the principle is mainly the same. So Dublin applies between EU MS but the idea is the same. You have come through Bulgaria, for example, and then you have moved onwards to Germany, since Bulgaria is at least assumed to be a sufficiently safe country, the person should be returned to Bulgaria.

But then all the countries at the external border will be overloaded with applications?

Sure, this is the problematic principle of Dublin. What is quite important to see as a detail in Dublin is that this sort of entry criteria, so when you came from is one of the main criteria but it is not the only one. The Dublin system has a list with different criteria based on which the EU decided which country has to examine a claim. There is, for example, family reunification. Let's take a person who comes to Bulgaria and apply but have family members in Sweden. They should be transferred to Sweden to be with his family although family is defined very narrowly and that is also problematic issue. So if you have a cousin in Sweden you do not qualify and then you have to

stay in BG. If you look how Dublin is applied in practice, however, so what actually happens on the ground: the majority of cases related exactly to this_ the first country you came from. So in practice, yes the external border countries would be the once receiving all the applications if the Dublin system works as it should. What complicates things even further? I am sorry, I wish things were simpler but Dublin is never a simple thing is that Dublin is something that is not really working in practice. It is very costly and very heavy system administratively but it does not really work. So what you have in terms of cases is countries would tell Bulgaria that they intend to send people back under Dublin but you will wither have delays in transfer or they would just process the application themselves. Or another issue which you are probably familiar with in relation to the Bulgarian Dublin system is that transfer may not be safe necessarily. So this was a quite recent turnaround in the operation of the Dublin system. Because the Dublin has been there since the 1990s, it is an old creature in the EU. But ever since the first cases against Greece in 2011 where transfers to Greece were completely prohibited.

From Belgium?

Yes, this was the MSS cases versus Belgium and Greece. And based on this, even until now, no country is allowed to return asylum seekers to Greece. There is a general prohibition on Greece. Bulgaria is much trickier because a lot of countries have suspended transfers but not all. It is much more delicate and on a case by cases basis rather than Greece. So in that sense having a system like the Dublin system where you could may agree with other countries that they should take the share of the asylum applications and process them would not per se be inconsistent. If you interpret the Refugee Convention in a sense that way and you feel that it allows countries do deflect the examination of applications because the person has been though a country that could offered them protection. What is very problematic is how exactly to determine whether a country is exactly safe. And the case of Bulgaria I think is a perfect illustration of this, how the Dublin system presumes many things about the EU in theory but in practice it is not reflected in the way the asylum system works. And there you can argue a number of different things. Even you if you say that Bulgaria is not as bad as prohibiting transfers completely as Greece is, it would still mean in some cases having people returning to very poor conditions, detention, problematic asylum procedure, low recognition rates. All these considerations should play in practice but the argument from governments is that neither the Refugee Convention nor the CEAS allow a person to choose where to apply for asylum. This is the argument that has been made to defend the Dublin system. People should be offered protection but where this protection should be offered is not for them to decide and what exact level of protection as long as it is in line with the Standards. Yes, so this is one of the many problems one encounters with the Dublin system. In terms of policies and actions to stop and prevent pushbacks, expulsions and to promote non-refoulement, in terms of legal framework and guarantees against non-refoulement on the EU level, this has been something that was comprehensibly developed. Even if you bring in the idea of this Hirsi case, I think the HR framework is very developed in Europe, even more than in other regions. So safeguards and guarantees are definitely there preventing unlawful expulsions and returns to situation of risks. What is done in implementations is a completely different matter. Then in order for activities to be taken to prevent pushbacks this would have to be a completely practical exercise. So it would have to be better border management, for example. And this is something that you might ask what the limitations are, what the EU could do to make border management more humane and more in line to the legal standards. Because in many if these cases you have not only involvement of local authorities but you also have Frontex. And this is one of the areas where Frontex has been heavily criticized for the way it is assess border authorities and playing its part in situation of ill-treatment of even pushbacks. I do not think there is a clear answer to what could be done but even in cases where there was EU involvement at the border it hasn't always been more protective for asylum seekers. And one will always bear the fact that Frontex is a border agency so even though it is bound by fundamental human rights and it has to ensure that its actions are compliant its mandate does not directly relate to international protection which means that the assessment of protection needs and being able to distinguish those that cannot be returned to those than could is something

that Frontex is not directly concerned with. I don't know if I am being too pessimistic or bleak but yeas. You could also see critics that might have been made against Frontex in its operation in the Greek-Turkish border in Eubros. Frontex has been received as a quite controversial agency even though the legal standards for its operations have been tightened up. In practice you don't have as protective implementation as you should. In one sense the law could be might limited to what could be done.

Then in terms of intra-EU relocation?

Sure, so perhaps you looked at the latest Commission document "The new agenda on immigration" that was supposed to propose a new approach to migration in general evolution of polices. To propose a relocation mechanism binding for EU MS is quite innovative and I think we can expect the MS and the Council will be very opposed to this idea and they will make it difficult to negotiate. Because so far, and I am glad that that you have mentioned EUREMA, the main idea was that it would be a completely solidarity-based approach for specific countries they face specific pressure but it will be voluntary and up to the discretion of MS to do it. And this was the main premise and the main failure of EUREMA. Because in both EUREMA I and II projects the numbers of people relocated was minimal.

I think it was 230 or something like that.

Yes, exactly which in the grand scheme of things to my eye is neglectible number of refugees which indicated the very severe limitations of having a voluntary system because it will rest entirely upon the good will of MS, even though there are indications that in practice the MS might not be very incentivized to admit numbers of refugees. I mean you see how this happens with resettlement from third countries but even within the EU voluntary mechanisms do not really work in practice. Now the other place where EUREMA is different to this model that the EC indicated that it is going to propose is that EUREMA was a scheme for refugees. So for people whose claims were processed in Malta, got a refugee status and were then transferred to new MS. This new scheme that would be proposed, which is expected to mainly run for Italy and Greece based on the general pressure and the difficulty for coping with, would be for asylum seekers. So this would basically mean that for these categories the Dublin system would not apply and you would have different mechanism for allocating asylum claims. You will have coming to Italy and then they will be directly transferred to, for example, Sweden or the United Kingdom, and their asylum applications would be processed there. Upon today the Dublin system is always the rule for how you distribute asylum applications and this would be bringing an important change. The problem is that it is very restrictive proposal in one sense and it hasn't been detailed enough. One of the issues is that the Commission said that this proposal would apply to persons in clear need of international protection. This is the term that they used and will be probably somehow defined in the instrument that would be proposed to the Council. Now if you have a situation where you do not process somebody's application but you send them to be processed in another country it is really difficult for you to know if you are in clear need of international protection. This might be a problematic issue. Imagine you have a situation where you have 1000 people landing on Italian shores and you want to see whether they will qualify to be sent to the respective countries based on their quotas. You would have to be satisfied as Italy that they are in clear need of international protection and the receiving country must also agree with this finding but this is done without examining the applications. So in practice who knows how is this going to work? It could mean that you have to process them twice but I am not sure how this is going to work. Or it would be applied only to cases or to people that are very likely to be recognized as refugees. So it would be a scheme that says since Syrian are widely recognized in the EU as needing international protection we can quickly decide that they should apply under the relocation mechanism. But it is something that has to be defined in legal terms and facts. It could be very contentious point in the negotiations. This is one aspect that could be a little bit problematic and another one which hasn't been defined by the EC is that there is no indication so far how asylum seekers can exercise some degree of choice in

the country they are going to go to. Because if you have a system that is compulsory for everybody, including the asylum seeker, you might have an asylum seeker that lands in Italy and want to go to the Germany because he has family members there but the Germany quota is full and they have to go Bulgaria even though they might not have any family in BG, no strong links, there is no reasons for them to be in Bulgaria but from the fact that BG has been the only country that has not been filled his quota yet. And this could lead to situations where you have to force people to be transferred to different countries, kind of along the line as the Dublin system works now. Because the way that Dublin works in currently, a lot of people resist transfer exactly on the ground that they do not want to be sent to BG or Greece or Italy. So you could have similar situation as you might have people who do not want to be transferred to another country as there is no reason for them to be. So again it can be quite tricky and if this will become another Dublin in that sense. If you look at the annex it has specifically calculated the quota for each country based on the different criteria, they look at the GDP, population size, unemployment rate and the number of applications that country has had in the previous years. And if you look at the quota, for some countries the number will be still high, for example Germany will still have quite a number of people, but for other countries the game will change a lot. Currently Germany and Sweden are the main countries and Italy where asylum applications are made. If you look at the quota proposed for Sweden it is much lower than the number it receives now. But again you have to bear in mind who exactly will be covered by this relocation, because it won't be general mechanism for all asylum seekers. It will be again a special measure for those well founded one in clear need of protection. So I think it is definitely something to keep an eye out on for. I think the Commission has indicated that by the end of May it would propose an initial relocation scheme that would be targeted for specific countries and then by the end of the year there would be general relocation mechanism that would be mandatory. So there is more to come on that arena.

Great! I am just looking at my questions. If you have any other recommendations just in general.

I mean, in general, it would depend on the specific context but I think one of the interesting elements to take into account is to see basically where the EU can collective action to make change and where new measures and new policies might not be sufficient because it becomes matter of local authorities and national level implementation. In terms what can be done at EU level still, I think this relocation proposal is definitely a promising change and it is quite a bold move from the Commission because the majority of the MS are very skeptical of changing the rules on asylum policy. I think this would be met with a lot of opposition. But quite a few of the things we discussed might be very useful to consider so having a mechanism that is coercive as the Dublin system is now since it doesn't allow the asylum seeker to be involved in choosing their country can have quite significant problems in practice because it becomes more costly not just from a human perspective that has to do with coercion and detention and rights abuses but also on administrative and financial perspective because it means that countries have to invest in forcing and returning people, in detaining and..so this is something that the EU could learn from the shortcomings of the Dublin system as this was one of the main difficulties having the system like Dublin. And if this is to be repeated with relocation it could be quite problematic and perhaps a missed opportunity to change. And I think having a less coercive mechanism would be beneficial for everybody, not just first for the asylum seekers but also for the countries operating because operating a system that is not litigated or coercive is much easier in terms of administration and finance. So this could be one of the things to be thought about in the future and the other would be the extent to which this become a general approach to disturbing asylum applications. It would start from something smaller in that sense of this clear need of protection definition but we would have to see what the merits of this are, how it can be developed and if this could be something to be considered as replacing the Dublin system for example, or of this would cost for the EU to think more broadly about changing the rules a bit more drastically. Another issue that I forgot to mention that could be also interesting in terms of the problems of relocation has to do a bit with discrimination between asylum seekers. Because I think the CEAS is far from being common in practice since you see so many differences in how the different countries apply the rules. So in what sense the country in

which the asylum application is processed matters quite a lot. The result could be quite different in terms of recognition rate and in term of the procedure, the right to have access to protection status. So in one sense if the EU is not common..., the relocation mechanisms that would be proposed will in one sense determine which asylum seekers will have access to better protection systems than others and this might be a little bit questionable for non-discriminative perspective. Because of our criteria is quotas is it a permissible criteria to decide for example that the asylum seekers will have access to adequate reception condition and the other one will not. This might be something to think about and I am not sure how the proposal will tackle this or if it will discuss it. But it is definitely an issue that should be at least present to the debate.

So much to look into. I am very thankful and it was very helpful.

I will also send you the consent form and the article.

Thank you very much again. Have a nice day!

All the best and if you need anything else let me know.

Interview Transcript (Boris Cheshirkov)

Mr. Cheshirkov is the spokesperson of the UNHCR for Bulgaria. We have started the interview in Bulgarian but then we switched to English as it was easier for both of us.

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Hello, Mr. Cheshirkov. It is Diana Totinska for the interview. How are you?

Hello, Diana.

Did you have the chance to look at my question?

No, but we can do it now.

What I am mostly interested in are the alternatives/ policies for Bulgaria that could be followed to stop pushbacks and collective expulsions and to ensure the right to seek asylum for everybody crossing the border. Yesterday I had an interview with a representative from the ECRE and I would like to hear the international perspective from you.

Ok, then ask your questions and I will try to answer them.

Firstly, what I find particularly astonishing is ...(as I do not know the specific terminology in Bulgarian we decided to switch to English)

According to the Bulgarian legislation the illegal immigrants who arrive on the border, they are treated according to the law on foreigners not according to the law for refugees and asylum?

That's correct. Anyone who presents themselves at the border and who arrives in an irregular manner, who is a third country national, unless they have explicitly applied for asylum or stated that they crave for or need protection, they are considered to be irregular migrants and this is to the point where they seek asylum and there is a change in status and then they are treated under the law for asylum and refugees.

Okay, but is it the same in the other countries or this is something particularly for Bulgaria?

This is a standard internationally, people who are fleeing war or persecution obviously they are refugees even without being declared they could be asylum seekers, but when foreigners are hazard in a country and they are undocumented which means that they don't have the right to be there, they don't have a passport, or they might have any identification at all, then unless they say "I am a refugee" and I am fleeing conflict, violence or persecution unless they state that and they can do this either in written form, verbally or even using gestures, but unless they do that they cannot be considered an asylum seeker unless they come forward and state that they are an asylum seeker so it is very important to have that jurisdiction in place which doesn't mean that they are not a refugee by international standards because a refugee, as you are likely well aware, is any individual person who is fleeing from a well found fear of persecution due to their race, their religion, their nationality, their memberships of particular social groups for their political opinion, will be granted refugee status and being recognized as a refugee is only an act it's an administrative act and claiming to be an asylum seeker or becoming an asylum seeker by stating "this is my case please review it" only then would they be considered under the law of the refugee and asylum, it's quite complex but it is important to note that these are three categories of people and it may so be that at certain point o time, they might be all three under law because they might be considered a regularly residing foreigner, an undocumented migrant or irregular migrant as you wish but please do not use illegal migrant because technically there is no such legal term. So they could be considered under law an irregular migrant until they say "I am a refugee", at that point they become an asylum seeker and after a careful review of their case by the authorities, in case of Bulgaria by the SAR in case the decision on their case is positive then they become a recognized refugee, holding protection status in Bulgaria. Bulgaria provides two forms of protection: 1) One is refugee status, which is more or less a mirror of the definition of the refugee from the 1951 Refugee Convention. They can also be issued a form of complementary protection or subsidiary protection which in Bulgaria it is called "The Humanitarian Status" and the criteria under which it is given is broader than that of a refugee status. I am probably confusing you by now..

No, no, no not at all, please continue.

But you were correct assuming that when someone arrives in to the country irregularly unless they have claimed asylum that they will be reviewed under the foreigners act, that is correct.

Okay, they arrive at the border, they say that they are an asylum seeker and that they want to start the procedure but then there is a time in, between the official procedure start, and between this time they are put, for example, in detention centers which is, according to me, a violation of their rights. What do you think about that?

It is in UNHCR position that detention is a last-resort measure which can only be applicable under due process, under law for a minimum time, the shortest amount of time possible, with legal guarantees and never in the case of children. So in that sense we feel that detention particularly arbitrary detention should be avoided and an alternative should be in place. In the case of Bulgaria we need to know that there are certain screening procedures and we are not against these procedures because there is a specific time frame which is mentioned under law and the procedures that are in place are allowing the security services to screen people and we don't have an issue with that as long as the time frames are applied and let me tell you how it works. Basically anyone who arrives into the country irregularly will be subject to a 24 hour police arrest procedure. During this procedure which is handled by border police, they will be screened and registered and the initial investigation in to their entry into the country would take place. The Bulgarian authorities are assisted by Frontex in this procedure, particularly in screening. They also rely on Frontex for interpretation or for support in briefing. During these 24 hours the border police needs to understand who this person is, to document their identity and to find out whether they are an asylum seeker or if they wish to claim asylum or whether they are a migrant who has arrived into the country with the intension to seek better work, to seek better health care or whatever other reason they might have. After this 24-hour procedure the foreigner, who may or may not be an

asylum seeker at that point, will be transferred to a close facility, it is a form of detention that is operated by the Bulgarian Director for Migration. Both the director and the border police are under the Ministry of Interior. Now the second facility which is called Allocation Centre and it is in the city of Elhovo it's a close facility where the Director for Migration, the National Security Agency and The State Agency for Refugees all hold officers and all conduct interviews with the people which means that another screening process takes place for migration purposes, for national security purposes and at any given time within this time framework between the border police and the Agency for National Security. If someone is to request asylum they would be then transferred over to the SAR. The second facility, the allocation center, usually has the holding period of three to five days. Now in some cases particularly for nationalities which require a language other than Arabic, English or French this time frame might be longer, for Syrian nationals it might be shorter. Unaccompanied minors and families are not subject to this detention process if they have sought asylum. In fact if you're a Syrian family that just arrived in Bulgaria you'll only be subject to this 24 hour holding period by border police and in many cases you will be processed much quicker so the detention period is very small window of detention. However, there are other nationalities; we have seen Pakistani nationals who have claimed asylum and they are still subject to being processed who spent up to two weeks in detention. But even in those cases we feel that since the time is limited it is till acceptable, we don't feel this is a serious violation of any law as long their freedom of movement is guaranteed thereafter and as long as they are transferred to a normal reception facility in the shortest time amount possible we don't see it as a serious violation, particularly as we also understand that there might be security sensitivities and every state is a sovereign state. Bulgaria has the right to have security procedures in place.

Ok, then I will turn your attention to the fence. From a legal perspective, do you think it might be considered as a violation of the Geneva Convention because is like an obstacle in front of the asylum seekers.

Once again it is very important to note, Bulgaria is a sovereign country and as such and particularly as a MS of the EU it is an external border of the EU, it is understandable there would be security measures in place and enforcement measures at the border. What we are concerned is that creating barriers and deterrents and building up fences. This does not resolve the issue of irregular movements, on the contrary it places, women, men, unaccompanied children, families at greater risk cuz they are forced to risk their lives in the hands of smugglers and at times even human traffickers in order to make ever more dangerous journeys into Bulgaria since they would be deterred otherwise. Now, in terms of a legal standpoint as long as people are provided with entry as long as they have alternatives to arrive into the country then there is no legal issue but we are concerned about two things. One, that there are very few legal alternatives to regular movements. For instance, Bulgaria is not participating in humanitarian admission programmes, BG is not participating in resettlement programmes, Bulgaria does not have humanitarian visas in place, Bulgaria is not issuing facilitated issues or work permits or even low-skilled labour visas or student visas which will otherwise take away at least some of the incentive to move using smugglers. That is on the one hand. On the other hand, we received reports that some people may have been pushed back which means that they have been denied entry and in some cases we even received reports of violence used against would-be asylum seekers and in some cases we heard that people had their money and phones confiscated. We feel this is unacceptable and Bulgaria should provide access to its territory to anyone who wishes to seek asylum. This is a fundamental human right, on one hand. And secondly we feel that pushing people back is a serious concern. We have called on the Bulgarian authorities not to deny entry and on the other hand, to provide solidarity to its neighbor Turkey which is the country with the largest number of refugees and asylum seekers in the world at this point, with over two million people.

Do you think there is a legal way to make Bulgaria stop these illegal practices? Any feasible alternative policy options, initiatives that may be useful?

The greatest challenge is that many of the people who have told stories or have provided second-hand reports of being forced back into Turkey from Bulgaria. There was a recent case of group of...men and due to an incident which occurred at or close to the border with Bulgaria, two men died of hypothermia. Perhaps you have seen reports at the end of March. We face this challenge that so far there haven't been credible (cases, persons) willing to come forward and testify in a court and seek legal procedures in view of this pushback or denying entry practice. We do have legal partners, we work with the BHC. We also have the litigation options that we could use to help bring cases to the ECtHR, for instance, or the ECJ. And it is important to have these cases in court because we might have a ruling that might send a precedent and we feel this would be an option to pursue. However, unfortunately, people are unwilling to testify and come forward with their stories publicly and secondly, we feel that the EU and its institutions can also work with Bulgaria as well as individual MS and work with Bulgaria so access to its territory to be granted to anyone seeking asylum and we are certainly making our own part of the shares.

Ok, now that you mentioned the EU. What is your position on the new proposal of the EC last week about the intra-EU relocation scheme?

Yes, we actually welcome and applaud the EU migration agenda that was presented by the President of the EC last week. We feel that this is a significant step forward, this is a breakthrough. We are now calling on the individual MS and the EU institutions and very quickly and fully adopt and implement this set of measures. And this is important to take place now because there is emergency for lives to be saved, we all have seen the tragedies at the sea. Just in one year over 20 000 people have perished many of whom refugees, fleeing war and persecution. We welcome and stand ready to support governments and Bulgaria in particular, so these measures can be implemented and can be put in practice.

So you think this might be the solution to the problem?

We feel that this is a significant breakthrough; we feel that having the resources triples for the sea operations that Frontex is conducting will help save lives. Some more about international waters was mentioned that is not relevant to my thesis. We feel the relocation system quota that has been proposed is a positive step that will ease the burden of certain countries which are receiving the majority of people. Initially these are, for instance, Italy which has received so far this year more than 60 000, countries like Greece which by the end of April this year already received over 25 000 but also countries like Germany and Sweden who at the end are facing 50 % of the asylum applications within the EU and of course, this also mean support for countries such as Bulgaria, Hungary, such as Cyprus which have received quite a large number of people over the past months and years. Now such a quota system based on population, GDP, unemployment rate, history of providing asylum, this will support countries that are under particular pressure and will help spread solidarity. And really the only way forward for Europe now is by countries to work together. We feel that stepping up the resettlement quota and announcing 20 000 resettlement places for vulnerable refugees who arrive in countries of first asylum where conditions are in any cases dire and particularly those who fled Syria where the conflict is in its fifth year, more and more Syrians have depleted all their resources, families are begging on the streets, single mothers are made to provide sexual favors in order to support themselves and we see children who should be in school that they are working at a very young age to help support their families. And for many the realization has come that they don't have a durable solution, a way to integrate so they have taken steps to move onwards and this increasing the number of people who arrive in Europe. Looking at the Syrian situations we are expecting any day now 4th million refugees from Syria to cross the Syrian border with one of its neighbors. Europe has only received 4% of these four million refugees and globally we are at this point of time where never after since WWII we had so many displaced people. Right now over 50 million people are displaced around the world. But they are not in Europe or Northern America or Australia; they are in the developing countries so it is important that the EU, introduced in the migration agenda, to work with countries of first asylum,

to work with countries of transit to improve conditions there and to provide more safety and more security. But at the end, the lasting solution would be peace and for that we need significant political solutions to resolve the numerous conflicts around the world.

Thank you. Do you still have time?

I have 10 to fifteen minutes.

Last questions then, I wanted to ask you about collective investigation of claims. I know that in Bulgaria it is happening to a certain extent, as you said Syrians are processed very quickly in comparison to other nationalities, for example. So do you have any specific comment on this, collective investigations for asylum seekers from a specific country?

It is important to remember that the assessment of asylum claims is an individual procedure which means that whenever a request for asylum is reviewed under the procedure, it is individual. The interviews are individual, the way it progress is individual but if we look at the Syria case it is very easy to say whether someone is need of international protection or not. We all know what is happening in Syria and the UNHCR is on the position that Syrians are refugees; there is no second guessing on that. Perhaps that is why Bulgaria has issued so many statuses to Syrian nationals. Last year Bulgaria was actually (one of the first) in Europe in terms of providing statuses mostly to Syrians but other nationalities has also benefited from this increased processing of protection claims. Not it is important to know that because it is individual some nationalities may need, particularly interpreters, languages, and the procedure may take longer but under law the general procedure can take up to three months. Then it can be extended to further three months and under special cases this can be extended further but in this six months they should have a decision on their claim and certainly in the case of Syrians, those coming of areas where there is active fighting and violence, those procedures are quicker. That is the way it is.

My last question would be if you have any general recommendations how to encourage the promotion of the principle of the non-refoulement, how to stop collective expulsions, how to promote the right to asylum.

Our general recommendations are as such. We feel that the border enforcement of the country should, the border management need to protection sensitive they need to be screening procedures at the actual border where people are identified early and they want to seek asylum and the need international protection. And they are provided with access to fair, transparent and admission procedure which will grant them the protection they deserve. We feel that there would nee to be adequate legal channels which will change the way people more, fewer people will then move irregularly as they would have access to humanitarian reception, they would have access to humanitarian visas. This would significantly change the need to use smugglers and traffickers.

And you said the Bulgaria does not provide any humanitarian visas in the beginning, is that right?

Yes, exactly, we need an investment in promoting this type of legal alternatives for movement. This would be a meaningful step towards people being provided with the legal opportunity and legal channel to enter the country and this would be a significant step for Bulgaria.

Can I just ask, what is the process? Does this take place in a Consulate in a foreign country?

Yes, exactly, most likely Turkey as this is where the majority of people arriving anyway. There is a Consulate in Ankara and one in Istanbul and people would be able to approach the Bulgarian Consulate and be provided with a form of entry and then their case would be reviewed in the country. So we feel this would facilitate or take away the need for people to move with smugglers and human traffickers. We also feel that the extension of the border fence should not take place if it envisions keeping asylum seekers out of the country, more protection sensitive border management should be in place.

Well, I think you gave me some food for thought and some directions.

Feel free to cross-reference with me later on or you can always send follow up questions. I will be happy to answer them but please keep in mind that it is a very busy time for our office and it may take longer to answer.

Could I just ask you to sign the consent form that I have sent you?

Yes, just one second. I will send it to you.

Thank you very much.

My pleasure. Good luck.