



Border Violence Monitoring Network

4 May 2022

D. v. Bulgaria

Application no. 29447/17

**Rule 9 Communication
to the Council of Ministers
Council of Europe**



Border Violence Monitoring Network

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04 May 2022

Submission by the Border Violence Monitoring Network (BVMN) pursuant to Rule 9.2 of the Committee of Ministers' Rules for the Supervision of the Execution of Judgments, on the implementation of *D. v. Bulgaria* (Application no. 29447/17)¹

I. Introduction

1. In line with Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, the Border Violence Monitoring Network ("BVMN") hereby presents a communication with regard to the execution of the general measures in the European Court of Human Rights ("the Court" or "ECtHR") judgment in *D. v. Bulgaria*.
2. BVMN is a network of non-governmental organizations situated along the Balkan and Greek migration route, whose purpose is to monitor and document human rights violations at European borders.² BVMN works to denounce pushbacks and guarantee safe access to asylum. Since 2017, BVMN has collected more than 1,400 testimonies of pushbacks. With such evidence BVMN

¹ <https://hudoc.exec.coe.int/eng?i=004-58825> final judgment date 20/10/2021.

² BVMN is represented under the legal framework of Rigardu e.V.

produces comprehensive reports, analyzing trends in border violence.³ As well as coordinating grassroots participation in legal processes at national, regional and international levels, BVMN routinely files submissions to judicial and international bodies outlining rights violations during pushbacks, including legal briefings to Special Rapporteurs on the use of torture during pushbacks.⁴ BVMN has expertise in and wishes to provide input on international legal standards linked to the prohibition of *refoulement*, the prohibition of torture, the right to life and the right freedom from arbitrary detention and other specific obligations in relation to people's rights at borders.

II. Executive Summary

3. The case *D. v. Bulgaria* concerns the applicant's removal to Turkey in October 2016, within 24 hours of his arrest, in breach of domestic law and without a prior examination of the risks he faced, even though the Bulgarian authorities had sufficient information to indicate that the applicant, a journalist, could have had genuine concerns from the standpoint of Article 3. The Court noted various deficiencies, such as the Bulgarian State's failure to provide the applicant with the assistance of an interpreter or translator, information about his rights as an asylum seeker or access to a lawyer or a representative from organizations specialized in international protection.
4. In the light of the systematic nature of the problem shown in the individual case of D. BVMN calls on the Committee of Ministers to:
 - Upgrade the case from standard to **enhanced procedure** due to systematic and widespread practice of push backs by Bulgarian authorities;
 - Request Bulgarian authorities to introduce in its asylum procedure a **compulsory individual assessment for asylum seekers with regards to Turkey** being a safe third country or safe country of origin. The assessment should be always applied to Turkish nationals applying for asylum;
 - Call on the Bulgarian authorities **to implement policies to ensure that the perpetrators of pushbacks are held accountable** for their illegal actions;
 - Ask for Bulgaria's commitment to implement **continuous capacity building and training of border police** to ensure compliance with EU *acquis* and respect for fundamental rights;
 - Call on Bulgaria to implement **effective and independent border monitoring procedures**.

III. General Measures

A. Supervision under Enhanced procedure

³ See for example: BVMN. 2021. Annual Torture Report 2020. Available at: <https://www.borderviolence.eu/annual-torture-report-2020/>; BVMN. 2020. *Violations at the Greek Borders. Sea and Land Report (February/March 2020)*. Available at <https://www.borderviolence.eu/new-report-on-violations-at-greek-borders/>; BVMN. 2020. *Special Report: COVID-19 and Border Violence along the Balkan Route*. Available at: <https://www.borderviolence.eu/special-report-covid-19-and-border-violence-along-the-balkan-route/>; Mobile Info Team (member of BVMN). 2019. *Illegal Pushbacks at the Border: Denying Refugees the Right to Claim Asylum*. Available at: <https://www.mobileinfoteam.org/pushbacks>.

⁴ See for example: BVMN. 2021. Submission to the UN Committee on Economic, Social and Cultural Rights on Bosnia-Herzegovina. Available at: <https://www.borderviolence.eu/submission-to-cescr-on-bih/> and BVMN. 2021. Submission to the UN Rapporteur on Torture Regarding Greece. Available at: <https://www.borderviolence.eu/submission-to-the-un-special-rapporteur-on-torture-regarding-greece>

5. Returning a Turkish journalist who had expressed his fear of ill-treatment to the border police without prior assessment of the risks constituted a violation to Article 3 of the Convention (ECtHR 2021, *D. v. Bulgaria*, no. 29447/17, § 146). Yet, the case of D. is no exception. Bulgarian authorities systematically conduct summary expulsions (pushbacks), and therefore systematically violate the European Convention on Human Rights (“the ECHR”). Due to the systematic nature of these pushbacks to Turkey, and in order to guarantee that summary expulsions do not happen in the future, the case *D. v. Bulgaria* should be upgraded under enhanced procedure by the Committee of Ministers.
6. In fact, in 2020, the National Border Monitoring Framework on the Bulgarian-Turkish border, registered alleged 1067 pushback incidents which affected 15173 individuals.⁵ In the following year, the Bulgarian Helsinki Committee recorded 1.064 indirect pushbacks (preventing individuals from crossing into Bulgaria) and 323 direct pushbacks (returns from inside the country) over the first eight months of 2021, affecting at least 13.363 people.⁶ At the end of August 2021, Bulgarian police reported that they were sending between 100 and 200 “illegal immigrants” back to Turkey every day through summary expulsions.⁷
7. At the end of July 2021, the Interior Minister Boyko Rashkov stated that 16,900 people had been returned to neighboring countries since the start of 2021.⁸ This data suggests an expansion of pushbacks since 2020, when 15,173 people were pushed back over the course of the entire year.⁹ BVMN recorded several pushbacks between April 2021 and February 2022 near Russe (Bulgaria)

⁵ Bulgarian Helsinki Committee. 2021. Annual report on border monitoring. Bulgaria 2020. Available at: <https://www.bghelsinki.org/web/files/reports/146/files/2021-annual-border-monitoring-report-for-2020-en.pdf> [Accessed 2/03/2022].

⁶ ECRE. 2021. Bulgaria: Pushbacks Escalate as Government Discusses Reinforcements at Borders. Available at: <https://ecre.org/bulgaria-pushbacks-escalate-as-government-discuss-reinforcements-at-borders/> [Accessed 15/03/2022].

⁷ ECRE. 2021. Bulgaria: Pushbacks Escalate as Government Discusses Reinforcements at Borders. Available at: <https://ecre.org/bulgaria-pushbacks-escalate-as-government-discuss-reinforcements-at-borders/> [Accessed 15/03/2022].

⁸ Simeon Yanev. 2021. Boyko Rashkov reported increased migratory pressure. Available at: <https://news.bg/politics/boyko-rashkov-otchete-zavishen-migratsionen-natisk.html> [Accessed 21/03/2022];

BVMN. 2021. Monthly Report: July. Page 5. Available at: <https://www.borderviolence.eu/wp-content/uploads/July-21-Report-BVMN.pdf> [Accessed 18/03/2022].

⁹ ECRE. 2021. Bulgaria: Pushbacks Escalate as Government Discusses Reinforcements at Borders. Available at: <https://ecre.org/bulgaria-pushbacks-escalate-as-government-discuss-reinforcements-at-borders/> [Accessed 15/03/2022].

to Turkey from where D. was returned, affecting a total of 20 persons.¹⁰ Recent reports show that the frequency of pushbacks increased and became increasingly more violent.¹¹ According to the Bulgarian Ministry of Interior, in January 2022 alone 30 people have been returned, at least four of them forcibly¹².

8. With regards to Turkish nationals, in 2020 just one Turkish national was granted protection in Bulgaria. The authorities instrumentalized the COVID-19 quarantine to organize fast readmissions To Turkey. The practice employed was to prevent people from lodging an asylum application or to access other avenues for international protection. At least 28 Turkish nationals were readmitted to Turkey in 2020 within the period of quarantine without guarantees. This practice has been publicly acknowledged by the Bulgarian Prime Minister¹³.
9. The violence recorded at Bulgarian borders is unprecedented. In 2022, BVMN recorded an increase in cases of pushbacks from Bulgaria to Turkey. The practices described are the use of dog attacks¹⁴, sexual harassment against women, placing people in the back of vehicles and “transported to the border region, often in cramped and unsafe conditions. In addition, some degree of physical violence and forced undressing along with the theft of personal belongings was reported in all cases. Requests for asylum were systematically ignored or denied, and respondents described verbal abuse on the part of Bulgarian authorities”¹⁵.
10. All the practices shown above accompany or are perpetrated in the context of summary expulsions or pushbacks as they happen systematically at the border between Bulgaria and

¹⁰ BVMN. 2021. Monthly Report: July. Page 5. Available at: <https://www.borderviolence.eu/wp-content/uploads/July-21-Report-BVMN.pdf> [Accessed 18/03/2022]; BVMN. 2021. “ONE OFFICER TOLD ME, ‘ONE MORE TIME IN BULGARIA AND I WILL KILL YOU.’”.

Available at:

<https://www.borderviolence.eu/violence-reports/september-11-2021-0000-chernodab-budakdoganca/> [Accessed 18/03/2021]; BVMN. 2021. “ THE OFFICER TOLD ME HE WANTED TO KILL ME, DO YOU THINK HE GAVE ME WATER?”. Available at:

<https://www.borderviolence.eu/violence-reports/october-9-2021-0000-shtit-bulgaria-to-ahi-turkey/> [Accessed 18/03/2022]; BVMN. 2021. “AS THE RESPONDENT DID NOT HAVE MONEY NOR PHONE, THE OFFICERS TOOK ALL HE HAD IN A SMALL BAG, WHICH WAS SOME CHOCOLATE AND 2 SMALL BOTTLES OF WATER. ”. Available at:

<https://www.borderviolence.eu/violence-reports/october-3-2021-0700-sladun-bg-buyukismailce-tr/> [Accessed 18/03/2021]; BVMN. 2021. “WE COULDN’T TALK. WHEN ONE OF US SAID “CAMP” THEY SLAPPED HIM”. Available at: <https://www.borderviolence.eu/violence-reports/april-13-2021-0000-matochina-hatipkoy/> [Accessed 18/03/2022]; BVMN. 2022. “WHEN THE RESPONDENT ASKED FOR ASYLUM, THE BULGARIAN OFFICER JUST RESPONDED, "NO CAMP. CAMP CLOSED. NO MORE ARAB. GO SYRIA””. Available at:

<https://www.borderviolence.eu/violence-reports/january-12-2022-1730-prisadets-bg-to-huseyinpinar-tr/> [Accessed 18/03/2022].

¹¹ BVMN. 2022. Monthly report: February. Available at:

<https://www.borderviolence.eu/wp-content/uploads/BVMN-Monthly-Report-February-2022.pdf-1.pdf> [Accessed: 2/04/2022].

¹² Bulgarian Minister of Interior. Monthly Report: January 2022. Page 10. Available at:

<https://www.mvr.bg/%D0%BC%D0%B8%D0%BD%D0%B8%D1%81%D1%82%D0%B5%D1%80%D1%81%D1%82%D0%B2%D0%BE%D1%82%D0%BE/programni-dokumenti-otcheti-analizi/%D1%81%D1%82%D0%B0%D1%82%D0%B8%D1%81%D1%82%D0%B8%D0%BA%D0%B0%D0%BC%D0%B8%D0%B3%D1%80%D0%B0%D1%86%D0%B8%D0%BE%D0%BD%D0%BD%D0%B0-%D1%81%D1%82%D0%B0%D1%82%D0%B8%D1%81%D1%82%D0%B8%D0%BA%D0%B0> [Accessed: 02/04/2022].

¹³ AIDA. 2020. Country Report: Bulgaria. Page 50. Available at:

https://asylumineurope.org/wp-content/uploads/2021/02/AIDA-BG_2020update.pdf [Accessed 15/03/2022].

¹⁴ BVMN. February 2022. Illegal pushbacks and border violence reports. Available at:

<https://www.borderviolence.eu/wp-content/uploads/BVMN-Monthly-Report-February-2022.pdf-1.pdf> [Accessed on 03/05/2022]

¹⁵ BVMN. December 2021. Illegal pushbacks and border violence reports. Available at:

<https://www.borderviolence.eu/wp-content/uploads/BVMN-Monthly-Report-December-2021.pdf-1.pdf> [Accessed on 03/05/2022]

Turkey. For this reason, we strongly recommend that the case *D. v. Bulgaria* should be necessarily upgraded to enhanced supervision and receive special attention from the Committee of Ministers to ensure that these practices are put to an end.

B. *The necessity to implement a compulsory individual assessment for asylum seekers with regards to Turkey being a safe country of origin.*

11. According to the 2002 Bulgarian Law on Asylum and Refugees¹⁶ Bulgaria should provide for an individual assessment for every asylum application. At the same time, Bulgarian authorities should enact measures to remove Turkey's classification as safe country. Bulgarian authorities should carefully examine the well-founded fear which applicants as D. might express of being ill-treated if returned to Turkey (ECtHR 2021, *D. v. Bulgaria*, no. 29447/17, §§ 136, 137). As the Court states, the Directive 2011/95/EU obliges the member states to guarantee the individual assessment of an application for international protection by among others taking into account "all relevant facts concerning the country of origin" (ECtHR 2021, *D. v. Bulgaria*, no. 29447/17, § 69). In order to fulfill State's obligations under Article 3 ECHR effectively, "a person seeking international protection must be afforded safeguards against return to his or her country of origin until his or her allegations are carefully examined" (ECtHR 2021, *D. v. Bulgaria*, 29447/17, § 118).
12. However, in practice, access to an individualized assessment is structurally denied. As reported by AIDA in 2020, "it is a long-standing practice of the Bulgarian authorities to prevent Turkish nationals from accessing the international protection procedure and to return them back, including in some cases in violation of the non-refoulement principle".¹⁷ **This assertion is reflected in the rejection rate of Turkish asylum seekers which were rejected 100% of the time in 2018 and 2019.** Similarly, in 2020 only one Turkish national was granted protection in Bulgaria.¹⁸ In Bulgaria's periodic report to the CERD, it confirmed this rejection rate stating that between June 2017 and May 2020, 32 asylum requests from Turkish Citizens were rejected and none were accepted.¹⁹ In the context of many more people fleeing Turkey the low number of 32 asylum requests suggests that claims for international protection are not officially registered or recorded like in the case of D.
13. Sources also suggest that Turkey is not a safe country especially for people like D. belonging to the criminalized/targeted group of journalists.²⁰

¹⁶ See Law for the Asylum and the Refugees of 16 May 2002. Available at: https://www.ecoi.net/en/file/local/1328220/1504_1216913233_law-for-the-asylum-and-the-refugees-as-amended-in-2007.pdf [Accessed: 2/04/2022].

¹⁷ AIDA. 2020. Country Report: Bulgaria. Pages 11,19. Available at: https://asylumineurope.org/wp-content/uploads/2021/02/AIDA-BG_2020update.pdf [Accessed 15/03/2022].

¹⁸ AIDA. 2020. Country Report: Bulgaria. Pages 50. Available at: https://asylumineurope.org/wp-content/uploads/2021/02/AIDA-BG_2020update.pdf [Accessed 15/03/2022].

¹⁹ CERD/C/BGR/23-25, Twenty-third to twenty-fifth periodic reports submitted by Bulgaria under article 9 of the Convention, due in 2020, 15.02.2022, para. 120.

²⁰ In their Rule 9.2. submission, the Turkish Media and Law Studies Association highlights the limitation of press and media through legal amendments and by encarcerating journalists in Turkey, see: Media and Law Studies Association. 2022. Rule 9.2 Communication from MLSA on Altug Taner Akcam and others groups v. Turkey. Available at: [https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:\[%22DH-DD\(2022\)116revE%22\]}](https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22DH-DD(2022)116revE%22]}) [Accessed 2/04/2022].

During the last few years it has become increasingly likely for activists including journalists to be arrested.²¹ The report *Torture in Turkey today* concludes that ‘certainly in the last five years [...], the use of torture is systematic towards groups such as political activists.’²² This danger even intensifies after being pushed back because the person has attempted to leave the country irregularly. Turkish journalists, as the applicant D. are at risk of experiencing torture, inhuman or degrading treatment in Turkey. D. was immediately detained after arriving in Turkey and sentenced to seven and a half years of imprisonment for allegedly being a member of a terrorist organization (FETÖ), an assumption that was largely based on the fact that he had the messenger application “Bylock” on his cell phone.²³ This is for example the case for Ayşe Erdoğan, who was pushed back from Greece to Turkey, where she was sentenced to six years in prison and is now held in Gebze high security prison, which is notorious for torture and suicide.²⁴ A letter from the female detainees of Gebze details “the under door”, a room used by Turkish authorities to carry out acts of torture and rape.²⁵ In another incident a group of Turkish political asylum seekers including Murat Capan, a Turkish journalist who worked for the critical Nokta magazine, was beaten and pushed back at the Turkish-Greek border. Murat Capan was sentenced to twenty-two and a half years in prison.²⁶ According to the Stockholm Centre for Freedom, Turkey is one of the leading jailers of journalists in the world.²⁷ Most recently, in March 2022 4 former Taraf journalists were detained for “exposing state secrets”²⁸.

14. Therefore, Bulgarian authorities should ensure the individual assessment of each asylum seeker, especially in the case of Turkish citizens, and targeted groups such as journalists..

²¹ Amnesty International. 2020. Turkey: Politicians, lawyers, activists targeted in new wave of mass arrests. Available at: <https://www.amnesty.org/en/documents/eur44/3221/2020/en/> [Accessed: 9/01/2022].

²² Turkey Tribunal. 2020. Torture in Turkey Today. Available at: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/TUR/INT_CCPR_IC3_TUR_44932_E.pdf [Accessed 9/01/2022]. ‘One of those incidents was the case of Murat Capan, a Turkish journalist who worked for the critical Nokta magazine. According to the narrative of Hellenic League for Human Rights, Capan and a Turkish family with three children crossed the Evros river in May 2017, escaping persecution. (...) Following the push-back incident, the security forces sent Capan to prison to serve his term, see: IPA News. 2019. “We were beaten and pushed back by masked men at Turkish-Greek border “ - Turkish journalist and asylum seeker. Available at: <https://ipa.news/2019/04/28/we-were-beaten-and-pushed-back-by-masked-men-at-turkish-greek-border-turkish-journalist-and-asylum-seeker/> [Accessed: 9/01/2022].

²³ ECCHR. 2021. European Court of Human Rights: Bulgaria’s pushback practice violates human rights. Available at:

<https://www.ecchr.eu/pressemitteilung/european-court-of-human-rights-bulgarias-pushback-practice-violates-human-rights/> [Accessed: 04/04/2022].

²⁴ Forensic Architecture. 2020. Pushbacks Across The Evros/ Meriç River: The Case Of *Ayşe Erdoğan* Available at: <https://forensic-architecture.org/investigation/pushbacks-across-the-evros-meric-river-the-case-of-ayse-erdogan> [Accessed 15/03/2022].

²⁵ Aydın, Özgür. 2017. Letter from Gebze Prison: We are under torture! Available at: <https://anfenglish.com/human-rights/letter-from-gebze-prison-we-are-under-torture-20237> [Accessed 15/03/2022].

²⁶ IPA News. 2019. “We were beaten and pushed back by masked men at Turkish-Greek border “ - Turkish journalist and asylum seeker. Available at: <https://ipa.news/2019/04/28/we-were-beaten-and-pushed-back-by-masked-men-at-turkish-greek-border-turkish-journalist-and-asylum-seeker/> [Accessed: 15/03/2022].

²⁷ Stockholm Center of Freedom. 2021. Jailed and Wanted Journalists in Turkey. Available at: <https://stockholmcf.org/updated-list/> [Accessed 15/03/2022].

²⁸ CPJ 2022: Turkish Court sentences 4 former Taraf journalists to prison for exposing state secrets. Available at: <https://cpj.org/2022/03/turkish-court-sentences-4-former-taraf-journalists-to-prison-for-exposing-state-secrets/> [Accessed 15/03/2022].

C. Lack of policy that ensures the prosecution of illegal pushbacks perpetrators

15. Over the first eight months of 2021, the Bulgarian Helsinki Committee recorded 1,064 indirect pushbacks (preventing individuals from crossing into Bulgaria) and 323 direct pushbacks (returns from inside the territory) affecting 13,363 people. This suggests an expansion of pushbacks since 2020.²⁹ Bulgarian national law on asylum and refugees should be aligned with the ECHR in relation to *non-refoulement* and the prohibition of collective expulsions. Therefore, with regards to international protection, there is a need for Bulgaria to implement policies able to ensure its respect, including measures to guarantee that the perpetrators of illegal pushbacks are held accountable for their actions in breach of national law and the Convention. The effective enhancement of such kinds of policies would be a deterrence that would prevent this illegal practice and ensure the respect for fundamental rights of people. In this sense the Bulgarian authorities should seek to expand the role of national human rights mechanisms and implement border monitoring procedures.

D. Capacity building, training of border police

16. The case under consideration, like other cases, signals the need of addressing the root cause which led to a deviation from legal procedures and therefore to the ill treatment of D. in detriment of his rights.
17. Depending on whether the foreigners have requested international protection or not, the police should have transferred D. to the relevant authorities. **Only the State Agency for Refugees can determine whether an application for protection should be examined on the merits.** It is, therefore, crucial to stress the importance of intensifying efforts in human rights education, providing the necessary training for border police officers **to enable them, first and foremost, to detect and understand asylum requests, even in cases where asylum seekers were not in a position to clearly communicate their intention to seek asylum.**
18. Bulgaria should make efforts to guarantee that legal procedures are enforced during border control activities and border police work in line with its domestic law while respecting the freedom of movement and observing human rights.
19. In order to prevent the systematic denial of people's rights, it is pivotal to reinforce a better understanding of law enforcement's obligations by organizing training workshops on topics related to police actions in multi-ethnic circles, human rights and the right to asylum. **More precisely: a) understand how to recognize a person willing to apply for international protection; b) in such cases, understand that that person has the right to be informed about procedures; c) understand that that person has the right to a translator; d) understand that that person has the right to legal aid access; e) understand that that person must be transferred to the competent authorities.**

E. Independent border monitoring procedures

20. The action taken by border police must be considered and addressed by implementing **effective and independent border monitoring procedures.**

²⁹ Bulgaria: Pushbacks Escalate as Government Discusses Reinforcements at Borders, ECRE weekly bulletin, 10th September 2021. Available at: <https://ecre.org/bulgaria-pushbacks-escalate-as-government-discuss-reinforcements-at-borders/> [Accessed 03/05/2022]

21. As the majority of documented unlawful practices take place outside official border crossings, police facilities, or formal procedures, as well as deep inside of the country's territory, any geographic or procedural limitations on border monitoring would create blind spots and enable violations to continue.
22. To ensure that the mechanism is credible and effective, it must involve **independent institutions or organizations with a human rights expertise or mandate** – such as civil society organizations, and national human rights institutions – that are financially independent of the government.
23. Any border monitoring mechanism should be independent in law and practice and have sufficient resources and a robust mandate to monitor border-related operations anywhere on the territory of a state. It should be capable of ensuring that all documented human rights violations are promptly and thoroughly investigated and of effectively pursuing accountability for those responsible for violations and access to justice for every person whose rights are violated.

IV. Conclusions and recommendations to the Committee of Ministers

24. BVMN calls on the Committee of Ministers to:
 - Upgrade the case from standard to **enhanced procedure** due to a recorded **systematic and widespread practice of pushbacks without individual assessments** at the Bulgarian-Turkish border.
 - Ensure that Bulgaria introduces in its asylum procedure **a compulsory individual assessment for asylum seekers with regards to Turkey being a safe country of origin**. The assessment should be **always** applied to Turkish nationals applying for asylum.
 - Ensure that **illegal pushbacks and violence** perpetrated by police officers in breach of the law **are investigated** and that measures are taken to ensure that perpetrators of illegal push-backs are **effectively held accountable**.
 - Call on Bulgaria to **implement border police training**, in terms of knowledge and awareness for border police officers on protecting and promoting human rights.
 - Call on Bulgaria to allow **effective and independent border monitoring procedures**.