



Border Violence Monitoring Network

4 April 2025

Application no. 15363/22

Mohamed Sharif Husein

AHMED against Bulgaria

**Third Party Intervention to the
European Court of Human Rights**

Judge Marko Bošnjak
President of the European Court, Grand Chamber
European Court of Human Rights
Council of Europe
F-67075 Strasbourg CEDEX
France
By FAX and post

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Third party intervention on behalf of Border Violence Monitoring Network¹
*Pursuant to the Registrar's notification dated 4 July 2022 that the President of the
Section has granted leave, under Rule 44(3) of the Rules of the European Court of
Human Rights*

¹ This submission was prepared by members of the Legal Working Group and Criminalisation Focal Point of the Border Violence Monitoring Network (BVMN): Clare Leonoff-Harris, Maria Kalochristianaki, Daryl Invernizzi-Milne, Eleni Sirri and Fezile Osum.

SUMMARY

1. BVMN is a network of non-governmental organisations situated along the Balkan and Greek migration route, whose purpose is to monitor, document and litigate human rights violations at European borders.² Since 2017, BVMN has collected more than 1,800 testimonies of pushbacks. With such evidence, BVMN produces comprehensive reports that trace and analyse patterns 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 states' use of torture during pushbacks.⁴
2. BVMN's proposed submissions would assist the Court by drawing on its database of incidents and reports of criminalisation of people on the move and to offer impartial, specific and contextualised insight regarding the treatment of refugees, asylum seekers and other migrants in Bulgaria. Criminalisation of movement in general has been important in BVMN's advocacy work since its conception in 2017. This includes monitoring and documenting formal criminalisation tactics through legislation and judicial practices, as well as informal trends through testimony collection, and observing trials against people on the move to ensure procedural

² BVMN is represented under the legal framework of Rigardu e.V., Wurzner Str. 34, 04315 Leipzig, Germany. Email: legal@borderviolence.eu - Web: <https://www.borderviolence.eu/>

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)*. 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. 2022. Submission to the UN Committee on Enforced Disappearances. Report for the 22nd Session. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCED%2FNGO%2FGRC%2F48018&Lang=en 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>

safeguards and fair trial standards are upheld. With its members and partners, the BVMN works in Bulgaria and, as a result, it has immediate knowledge of the conditions there.⁵ In this way, BVMN is in a position to assist the Court in understanding the wider context and implications of the issues subject of this application.

Definition and analysis of criminalisation practices

3. Criminalisation of people on the move is not a singular or isolated phenomenon, but a systematic practice that manifests in various forms. It operates within a broader context of political narratives and societal tendencies that target refugees, asylum seekers, migrants and stateless persons. The context in which such incidents occur is therefore crucial to assessing their implications. Criminalisation is an evolving phenomenon, aiming to frame movement of people as a security issue rather than a human rights one.⁶ By focusing efforts on the so-called prevention of irregular migration, policies and practices fundamentally aim to deter people on the move by reducing safe and legal pathways that allow individuals to claim their rights as enshrined in international law. It forces individuals to take increasingly dangerous routes to reach Europe and claim asylum, which puts them at risk of exploitation. The criminalisation of migration has led to frightening levels of stigmatisation and dehumanisation of people on the move and a stifling effect on civil society. In a landscape where illegal pushbacks have been systematised and violence at borders normalised, these developments, which leave thousands of people vulnerable to vicious attacks, threaten to undermine the rule of law and democracy in Europe.
4. Over the past decade, extensive documentation has exposed widespread human rights violations across Europe, including but not limited to, unlawful pushbacks, arbitrary

⁵ See for example: BVMN. 2024. Rule of Law Report: Bulgaria. Available at <https://borderviolence.eu/reports/2024-rule-of-law-report-bulgaria/>; BVMN. 2023. Annual Torture Report 2023. Available at <https://borderviolence.eu/reports/annual-torture-report-2023/>; BVMN. 2022. Balkan Regional Report, Feb 2022. Available at <https://borderviolence.eu/reports/balkan-regional-report-february-2022/>; BVMN. 2022. Criminalisation Report, 2022-2023. Available at <https://borderviolence.eu/reports/criminalisation-report-2022-2023/>

⁶ Border Violence Monitoring Network (BVMN), 'Black Book of Pusbacks: Extended and Updated Edition' Available at <https://borderviolence.eu/app/uploads/BlackBook2022-Introduction.pdf>, p.29.

detention, denial of access to asylum procedures and access to justice.⁷ These violations have taken place in parallel with the growing securitisation of migration policies at EU level, which increasingly frame migration as a threat to public order and national security. The adoption and negotiation of EU legislation, such as the Pact on Migration and Asylum, the new proposed Return Regulation and the proposed revision of the Facilitation Directive reflect a clear policy shift towards security and deterrence, often at the expense of fundamental rights. The recently adopted Pact in particular, establishes a framework that normalises and institutionalises the criminalisation of migration across the EU. By placing emphasis on narratives such as the perceived ‘danger to internal security’, ‘smuggling’ and ‘illegality’, the Pact presents movement towards the EU as an imminent security threat rather than a humanitarian issue. This framing is then used to legitimise practices such as detention under pervasive surveillance technologies and expedited returns.

Criminalisation of migration in Bulgaria

5. Criminalisation cases in Bulgaria occur within a broader context of systemic rights violations against people on the move, including violent pushbacks and inhumane detention conditions. These practices have been consistently documented by BVMN, as well as by international and national organisations.⁸ Testimonies collected by BVMN describe widespread abuse by border authorities and other official or unofficial actors during pushback operations at the Bulgarian border, frequently involving indiscriminate and excessive use of force.⁹
6. The human rights violations do not end at the border. Almost 100% of asylum seekers are placed in administrative detention immediately after crossing the border, in a practice that blurs the lines between administrative and criminal law. People on the move are held in detention centres in degrading conditions, with limited access to legal

⁷ Border Violence Monitoring Network (BVMN), 'Policy Briefing: Criminalisation of POM' <<https://borderviolence.eu/app/uploads/POLICY-BRIEFING-Criminalisation-of-POM.pdf>>

⁸ Human Rights Watch, 'Bulgaria: Pushbacks, Abuse at Borders' (20 January 2016) Available at: <https://www.hrw.org/news/2016/01/20/bulgaria-pushbacks-abuse-borders>; U.S. Department of State 'Country Reports on Human Rights Practices: Bulgaria' (2019) Available at: <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/bulgaria/#:~:text=Significant%20human%20rights%20issues%20included,involving%20violence%20or%20threats%20of>

⁹ Border Violence Monitoring Network, 'Input by civil society organisations to the EUAA Asylum Report' (2024) Available at: https://euaa.europa.eu/sites/default/files/2024-02/border_violence_monitoring_network.pdf

assistance, medical care, and basic services, reflecting a punitive approach to migration control.¹⁰

7. These practices are supported by the legal framework. Under Article 279 of the Bulgarian Criminal Code, irregular entry into the country is considered a crime punishable by imprisonment and fines.

Criminal charges used against people on the move

8. In Bulgaria specifically, criminal charges are frequently brought against individuals who cross the border irregularly or use false or forged documents, acts often committed out of necessity and in pursuit of international protection.¹¹
9. However, this is not the only manifestation of criminalisation practices targeting people on the move in Bulgaria. Deportation orders against asylum seekers are often issued on vague national security grounds, without substantive evidence. In such cases, courts routinely rely on statements from security services and deny requests for additional evidence.¹² Due to limited access to classified information and weak procedural safeguards, challenging such decisions is extremely difficult.
10. Moreover, the Bulgarian counter-terrorism framework has been criticized for granting excessive executive powers with limited judicial oversight. The 2016 Counter-Terrorism Act allows authorities to impose preventive measures—such as travel bans, assigned residency, and restrictions on movement—on individuals suspected of planning terrorist acts, without prior judicial approval. The UN Human Rights Committee has raised concerns about the vague definition of terrorism previously.¹³

National laws on smuggling and their impact

¹⁰ Council of Europe, ‘Report of the fact-finding mission to Bulgaria by Ms Leyla Kayacik Special Representative of the Secretary General on Migration and Refugees’ (30 January 2024) Available at: <https://rm.coe.int/0900001680ae3ac0>; Euractiv ‘Bulgaria under fire for ill-treatment of asylum-seekers’ (26 June 2018) Available at: <https://www.euractiv.com/section/politics/news/bulgaria-under-fire-for-ill-treatment-of-asylum-seekers/>; InfoMigrants, ‘Migrants deprived of their “fundamental human rights” in Bulgarian detention centers’ (3 July 2024) Available at: <https://www.infomigrants.net/en/post/58185/migrants-deprived-of-their-fundamental-human-rights-in-bulgarian-detention-centers>

¹¹ PICUM, ‘Between administrative and criminal law: An overview of criminalisation of migration across the EU’ (2024) Available at: <https://picum.org/wp-content/uploads/2024/04/Betwenn-Administrative-and-Criminal-Law.pdf>

¹² Ibid.

¹³ United Nations Human Rights Committee. Concluding observations on the fourth periodic report of Bulgaria. CCPR/C/BGR/CO/4. 15 November 2018.

11. In addition to article 279, articles 280 and 281 of Bulgaria’s Criminal Code, which address the facilitation of irregular entry and stay, are key provisions frequently used to criminalise both people on the move and those who assist them. These provisions are broadly framed, blurring the line between smuggling and assistance or performance of operational tasks without seeking for benefit, as they include no humanitarian exception.
12. Over the years, counter-smuggling frameworks have increasingly been employed as tools of border control, not only in Bulgaria but across Europe, resulting in people on the move facing criminal prosecution and consequences, such as deportation.¹⁴ However, research shows that those convicted of smuggling are often not part of organised networks but individuals helping friends or family or people seeking safety themselves.¹⁵
13. Furthermore, in 2017, 15 out of 743 new border applicants (2%) were convicted for irregular entry, and another 3.5% were allegedly prevented from applying for asylum to face conviction first.¹⁶
14. In August 2023, Bulgaria amended Articles 280 and 281 to increase prison sentences and fines in a number of cases.¹⁷ Simultaneously, it retained Article 279, which criminalises irregular entry, reflecting a broader policy orientation that prioritises criminalisation over protection.
15. Building on this trend, a further amendment proposed in early 2024 seeks to remove the requirement of a financial or material benefit in facilitation offences. This proposal raises concerns about the potential expansion of criminal liability, further targeting people on the move and those providing humanitarian assistance.
16. Bulgaria’s legal framework and migration enforcement practices demonstrate a systemic approach to the criminalisation of migration—targeting both people on the move and those who support them. Rather than upholding fundamental rights, this

¹⁴ PICUM, ‘Between administrative and criminal law: An overview of criminalisation of migration across the EU’ (2024) Available at: <https://picum.org/wp-content/uploads/2024/04/Between-Administrative-and-Criminal-Law.pdf>

¹⁵ Migration Policy Centre, ‘Five misconceptions about migrant smuggling’ (May 2018) Available at: https://cadmus.eui.eu/bitstream/handle/1814/54964/RSCAS_PB_2018_07.pdf?sequence=1&isAllowed=y

¹⁶ The Tripartite Working Group: Bulgarian Helsinki Committee, UNHCR and GDBP, ‘2017 Annual Border Monitoring Report: Bulgaria’ Available at: https://www.bghelsinki.org/media/uploads/special/2017_annual_report_access_to_territory_and_asylum_procedure_en.pdf

¹⁷ Council of Europe, ‘Report of the fact-finding mission to Bulgaria by Ms Leyla Kayacik Special Representative of the Secretary General on Migration and Refugees’ (30 January 2024) Available at: <https://rm.coe.int/0900001680ae3ac0>

system constructs a narrative that frames people on the move as security threats, whether through the criminalisation of irregular entry, broad anti-smuggling provisions or vague national security allegations.

'Security threat' decisions and access to justice

17. People on the move have been facing expulsion decisions based on alleged security grounds in Bulgaria. There is a trend that such decisions are often not supported by factual grounds and the judicial review is insufficient. In the decisions based on individuals representing a security threat, the justifications are not supported by legal evidence, as such reasoning is not shared by the authorities. Thus, this practice makes it impossible to understand the justifications behind such decisions and assess proportionality of the expulsion.
18. In several Court decisions against Bulgaria, it was found that Bulgarian authorities violated several rights, due to such decisions being made without providing factual grounds and without access to justice. First, the domestic courts had not thoroughly examined the claims made by the executive. Second, they failed to assess whether the interference with the applicant's rights was justified by an urgent societal need and whether it was proportionate to the legitimate goal being pursued.¹⁸ Such expulsion orders expose people on the move to return to their countries of origin, where they would be at risk of ill-treatment or persecution.
19. Such a decision was taken against a Syrian national in 2015, when the National Security Service ordered the applicant's expulsion from Bulgaria, citing a potential "*serious threat to national security*". The applicant was not provided with factual grounds, as the content of the proposal underlying the decision was classified. The order was immediately enforceable but subject to judicial review. However, this judicial review was dismissed by the Supreme Administrative Court (SAC) on the grounds that the order for expulsion was lawful. As such, the applicant's access to justice, though formally possible, was impeded upon.¹⁹ The Court held that the Bulgarian authorities violated Article 8, in conjunction with Article 13, as the applicant was not provided with excerpts of the documents on which the decision for

¹⁸ *C.G. and Others v. Bulgaria* (Application no. 1365/07) (European Court of Human Rights, 24 April 2008) para.59-64.

¹⁹ *Bou Hassoun v. Bulgaria* (Application no. 59066/16) (European Court of Human Rights, 6 October 2020).

his expulsion was based, nor is it clear whether he was aware of the specific facts alleged against the applicants.

20. In other similar decisions, the Bulgarian authorities were convicted of violating Article 8 in conjunction with Article 13. In those cases, the expulsion orders were based on broad, ambiguous national security claims (e.g., involvement in criminal activities or alleged extremism). The Court found that expulsions based on national security grounds did not meet the required standards. Specifically, Bulgaria's laws, procedures and practices did not provide sufficient protection against arbitrary decisions.²⁰ The grounds were not fully shared with the applicants or their lawyers, were often unfounded and lacked any substantive proof, hindering a meaningful judicial review process. Furthermore, the Court highlighted in its decisions that the deficiencies in judicial review proceedings in Bulgaria were found in similar previous cases based on the following: First, the SAC had not thoroughly examined the claims made by the executive. Second, they failed to assess whether the interference with the applicant's rights was justified by an urgent societal need and whether it was proportionate to the legitimate goal being pursued.²¹
21. In another case, the Bulgarian authorities took the decision to expel five Muslim Uighurs based on national security grounds. The Court found that the Bulgarian authorities had failed to assess the real risk the applicants would face if returned to China, where Uighurs were subjected to arbitrary detention, ill-treatment, and even death under the guise of anti-terrorism measures.²² The Bulgarian Supreme Administrative Court did not properly examine their claims of potential persecution. Furthermore, there were no safeguards ensuring that the applicants would not be indirectly sent to China via a third country without proper risk assessment. Thus, the Court held that the expulsion of the applicants would result in violation of Article 2 and 3.²³
22. The denial of judicial review by the SAC indicates a pattern of violating these individuals' rights to access to justice. Once an individual is accused of posing a

²⁰ *Kurilovich and Others v Bulgaria* (Application no. 45158/09) (European Court of Human Rights, 1 June 2017) para.22, *Grabchak v Bulgaria* (Application no. 55950/09) (European Court of Human Rights, 1 June 2017) para. 35.

²¹ *C.G. and Others v. Bulgaria* (Application no. 1365/07) (European Court of Human Rights, 24 April 2008) para. 59-64.

²² *M.A. and Others v Bulgaria* (Application no. 5115/18) (European Court of Human Rights, 20 February 2020).

²³ *Ibid.*

threat to national security, the order for expulsion is treated as legitimate under national legislation (Art. 42(1) of the Foreigners in the Republic of Bulgaria Act). Furthermore, no judicial review of any substantive evidence of these claims need be made nor of the threat such an expulsion could pose to the life and wellbeing of the person.