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**REFUGEES AND STATE SECURITY - A COMPARATIVE APPROACH OF FINLAND  
AND BULGARIA IN THE LIGHT OF INTERNATIONAL AND EU LAW**

Master's Thesis

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## Introduction

For the longest time of human existence, the world has experienced population shifts from one place to another. Refugees have existed all around the world due to the effects of violence, conflict, religious and/or ethnic discrimination, war, and persecution.<sup>1</sup> As the reasons for refugee movements are many and the stories of refugees are different, no two situations are the same and there is not a single way to resolve them.<sup>2</sup> However, interestingly enough the term refugee has got its firm emphasis in the world of international law and global issues only in the 20th century. As a result of it being an upstanding issue in current times, it has caused the emergence of formal definitions, national legal frameworks and international tools, marking a significant cornerstone in resolving matters under a national, regional and international scope.

The goal of the thesis is to analyze the legal differences in treatment of refugees in Bulgaria and Finland in the light of European Union law, human rights law and international law in the context of national security. As both States are situated on the external borders of the European Union and their position in having primary encounters with refugees, they have been given a different and significant role in the determination of refugee status and processing of refugee applications.

Because of their membership in the European Union and adherence to the same international standards, by the initial assumption, Bulgaria and Finland are supposed to have no or minimal differences in the processing of refugees. However, there are differences. This, to identify and assess the justification for the differences, in turn, requires comparative analysis of law and practice in the States.

As national security is the main focus of this thesis, Chapter I of the thesis sets an opening to the recurring issues facing national security and its legal application by Finland and Bulgaria in the light of human rights law, international law and the national legislation of both States in the scope of refugees. Chapter I observes the different laws applicable to Finland and Bulgaria in relation to national security and paves the way for the rest of the chapters. This Chapter also delves into the matter of expulsion and literature regarding national security in the

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<sup>1</sup> Gil Loescher, *Refugees: A Very Short Introduction* (Oxford University Press 2021) 19

<sup>2</sup> *Ibid.*, p. 33.

light of irregular migration. Chapter I also reasons why national security is not specified at an in-depth level in different jurisdictions, thereby allowing flexibility at the practical level.

As a result of observations regarding national security, Chapter II of the research delves into the State practice of Finland and Bulgaria during the time of the continuous refugee movements and the international responses by examining different policies and legal frameworks that govern refugees under the increased amounts of global migration and political turmoil. To be more precise, in Chapter II, the comparison will include both Bulgaria and Finland to establish a contrast between the two states within the European Union and examine their approaches to refugee status determination. More importantly, for comparison, the research focuses on whether these two States have complied with the international norms and whether they have successfully determined refugee status. A successful status determination focused in the chapter refers to the States' compliance with the standards set by the Convention Relating to the Status of Refugees<sup>3</sup> that serves as the main international guidance for determining refugee status in different states. The methodology includes a review of EU directives, EU case law, international refugee law, human rights law as well as the analysis of policy documents from Bulgaria and Finland as well as international organizations and their role in providing guidance and aid to these states in situations of crisis.

After delving into the State practices of Finland and Bulgaria as the main subjects of comparison, the thesis focuses on and observes State practice even further in Chapter III on the principle of non-refoulement and on how it has been upheld so far and provides an analysis of the principle, which is of importance for international refugee law due to the fact that it prohibits the return of migrants to territories where they may face threats to their security. However, the chapter delves into the importance of upholding the principle of non-refoulement and focuses on the challenges faced by Bulgaria and Finland, offering a comparative approach that shows both of the countries' approaches to refugee protection in the context of human rights obligations.

In the light of the significance of upholding the principle of non-refoulement, Chapter III highlights its importance in keeping human rights and legal obligations of States in tact and functioning. However, the analysis points out considerable challenges for States in upholding the principle of non-refoulement and in particular, the chapter inspects the difficulties arising from State practice,

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<sup>3</sup> Convention relating to the Status of Refugees, 28 July 1951, adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons

which either makes it more difficult or easy for the State to adhere to the principle. This includes, examining the legal frameworks and administrative processes in the midst of prevention of refoulement.

One of the main issues for this section of the thesis is the Bulgarian Government's struggle in not only being able to provide accommodation for migrants, meaning that it does not have the necessary tools to provide clean spaces, housing, proper food and medication, but also the challenges that it has been facing in protecting migrants from refoulement. Additionally, the chapter looks into the breaches of the principle of non-refoulement by private parties such as paramilitary organizations, which is a significant issue as regards ensuring the protection from refoulement especially and most significantly resulting from government's neglect under those circumstances. The chapter aims to differentiate the practices and policies implemented by the Finnish Government to be able to uphold the principle by contrasting them with the challenges faced by the Bulgarian Government.

Chapter IV delves into the determination of refugee status under hybrid warfare situations and sets the ground for what hybrid warfare is in reality. This chapter looks at the difficulties faced by international law and its norms due to the rise of this new challenge. The chapter examines the different possibilities that a European Union Member State can take in order to deal with an orchestrated hybrid attack. Chapter IV also acknowledges that the protection of human rights is necessary when dealing with hybrid attacks, but aims to answer the question of whether the 1951 Refugee Convention and its Protocol are sufficient enough to account for orchestrated migration. The issues and challenges of hybrid warfare are disclosed in Chapter IV and their significance to modern migration is pointed out. Chapter IV concentrates on the comparative analysis of Finland and Bulgaria as the main subjects of the thesis. Their actions are considered and compared as well as the difficulties that they are facing with hybrid warfare. The responsibility of states is discussed to illustrate the weaknesses in International Refugee law.

Chapter IV is important for the purpose of establishing a realistic understanding that migration can even take place as an irregular orchestrated occurrence, which aids in pointing out the insufficiencies of international law and the legitimacy of the measures taken by States. Furthermore, Chapter IV shines light on the issue of hybrid attacks because they cause a modern form of

migration which is of high importance for the State security and national interests as well as the formation of future international norms regarding migration.

By applying a comparative research style, to compare Bulgarian and Finnish approaches to the refugee status determination through different circumstances, the thesis aims to point out deficiencies of international refugee law which are complemented by national legislations under different circumstances. The contrast between national security and legislation and international refugee law, EU directives, case law as well as human rights law, facilitates the discussion about government actions and procedures. More specifically the thesis aids in determining why a certain government acts in a given manner and does or does not fulfill its international obligations.

The thesis sheds light on the legal actions that are taken by international organizations, and states and relies upon the legal international framework of refugee law in order to answer the following questions with the aid of comparative research and analysis of case law and government processes: Why is national security of such importance? Is a state to be held accountable for the pushbacks done by private parties? Are States obliged to process asylum applications during the period of hybrid warfare?

The novelty of the thesis lies within the comparative analysis of Finnish and Bulgarian approaches to refugee status determination within their national legislations and security interests in particular. The study contributes to the scholarly debate in multiple ways. As there is a wide range of literature on international refugee law and its implementations, there are not as many studies that hold an in-depth comparative analysis of how different European Union Member States uphold their obligations under international law along with the challenges arising from their national security concerns as well as government actions. By probing into the differences between Finland and Bulgaria, the thesis provides new insights into the differences in approaches within the European Union.

The thesis also fills a gap in the scholarly discourse by examining the demands of national security and international refugee law. It contributes to a debate on the efficacy of international refugee law, European Union law, case law as well as its directives in different national contexts. By including various cases, legal analysis and policy review, the thesis provides the evidence for showing how national interests in terms of security affects the implementation of refugee status determination

procedures. The key findings and recommendations of the thesis have the possibility to provide an informative insight on the legal and policy reforms within the examined States as well as in the international community. By conducting the examination of the various factors concerning migration, the research aims to suggest different pathways in order to facilitate the strengthening of refugee protection and respecting state sovereignty along their national interests in security.

Keywords: National security, Human Rights, Refugees, Migrants, Non-refoulement, Hybrid warfare

## Chapter I - National Security versus Human Rights Protection of Refugees

States tend to have an interest in exercising control over their national security. The term “national security” for this section is defined as the protection of national interests in terms of economic and public security, although it is described as a policy that is ascribed to a nation in general and not to a specific group of people or individuals.<sup>4</sup> The reason for national security being of such importance for States is that it allows them to operate without having to face issues such as public dissatisfaction which perhaps in the long run distorts peace. However, the protection of national security creates controversy when it comes in touch with the protection of human rights for refugees, e.g., the right not to be refouled, thus being protected from torture and inhuman conditions, freedom of movement, right to life and the sole reason for this occurrence is that the nationals of a state may not be satisfied with the fact that granting refugee status can have a negative impact on the economy and national security of the state.

On the other hand, the protection of the human rights of refugees is the action of a state that happens to be a product of international law. The furthering of ideas encompassing granting human rights protection for refugees come from the 1951 Refugee Convention, which has set the basic standards for the treatment of refugees in the country of asylum. In practice, the Convention’s implementation is not as straightforward as its implementation varies from State to State. The States that are signatories to the Convention tend to lean on implementing its provisions. However, the level of implementation also matters as states lean towards following their national interests and they may limit the integration of these standards into their national laws. This is where the concepts of protecting the human rights of refugees as well and national security clash, because the national interests of states will limit the implementation of the Convention to a given extent.

As National Security in itself does not have a legal definition or an internationally recognized definition, it is important to note that it still plays a huge role in the processing of refugees. National Security is mentioned in Article 32 of the Convention and Protocol Relating to the Status of Refugees, where paragraph one clearly states that refugees shall not be expelled on any other grounds than national security.<sup>5</sup> Interestingly enough, national security has been used as a term in

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<sup>4</sup> Arnold Wolfers, “‘National Security’ as an Ambiguous Symbol” (1952), 67 (4) *Political Science Quarterly* 481, 481

<sup>5</sup> Convention relating to the Status of Refugees, 28 July 1951, adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, p. 29

describing a situation of expulsion from a given State, even though it does not have a legal definition. Therefore it does not need to have a legal definition for it to be used as an underlying for expulsion. It goes forth to express that a State could base its actions on national security when a refugee is being expelled. The reason why this term could be used by a State is because the term in itself is broad, therefore not requiring any further justification for expulsion. It would be easier to “blame” expulsion on the grounds of national security which would be based on national interests which also does not have a legal definition. Article 32 also goes on to mention that a decision for expulsion has to be reached as a result of due process of law and that a refugee shall have the possibility to clear themselves unless national security requires otherwise.<sup>6</sup> However, this could depend on the practice of different States.

Why is national security of such importance? National security is important to take into consideration within an international system that aims to promote the protection of refugee rights because it is a point of conflict. It is a point of conflict because States can decide how much they will comply with international law and, therefore, decide upon applying pressure on refugee rights granted and promoting expulsion on the grounds of national security. The claim here is not that the issue is by any means the existence of national security, but rather the steps that States are willing to take or are taking when determining a status for refugees because, when there is ill-practice of states, then the label of national security is used as a way for deterring from responsibility.

### 1.1. Laws based on National Security and Extradition Applying to Finland

First and foremost, as regards extradition on the grounds of national security, it is important to mention that Finland, just like every other State, has its ways of going about and reasons for extraditing a refugee. However, it is important to note that the specific focus here is extradition based on national security.

However, according to the Finnish Aliens Act Article 13 - Legal protection (200), whatever the reason for extradition is, Finland allows the possibility for refugees to appeal the decision for their extradition, which may grant a change in decision, however, a decision may be acted upon if the

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<sup>6</sup> *Ibid*

matter has reached the Supreme Administrative Court unless the Supreme Administrative Court has given an order not to act upon it.<sup>7</sup> It is important to keep in mind that when a decision is issued to extradite an individual, it does not mean that the decision cannot be withdrawn or reversed and that there is a possibility to appeal such decision if the individual wishes to do so.

As regards extradition, under Article 9 (148) (2) of the Finnish Aliens Act, an individual may be immediately returned if he/she has not provided adequate information regarding their identity or travel to Finland, or in a situation where they have purposely given the wrong information about both of those.<sup>8</sup> The individual may be extradited if he/she earns an income in dishonest ways.<sup>9</sup> A migrant may also be returned in case they have crossed the Finnish border when the border has been closed.<sup>10</sup> The crossing of closed borders is related to the cases of hybrid warfare, which is further discussed in a later chapter.

Concerning extradition under concerns for national security, a migrant who has been charged with a crime with a minimum of one year of imprisonment, or has been continuously charged with crimes may be extradited from Finland.<sup>11</sup> A migrant whose behavior has shown to endanger public safety<sup>12</sup> or has initiated or with previous actions or by other reasons is suspected of engaging in actions that endanger Finland's national security, may be extradited.<sup>13</sup> For the purposes of clarification, it is important to further mention that these laws do not strictly apply to refugees, but migrants in their entirety.

Interestingly enough, national security has not been delved into at a deeper level in the Finnish Aliens Act. Therefore, it is important to note that there may be many factors by which the Finnish government may use national security as a reason for extradition. This means that at the national level, Finland is capable of being flexible in making decisions for extradition on the basis of national security. However, a more explicable discussion is added later on in this chapter.

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<sup>7</sup> Ulkomaalaislaki (2004/301) § 13 [200]

<sup>8</sup> *Ibid.*, § 9, (148) (2)

<sup>9</sup> *Ibid.*, § 9, (148) (5)

<sup>10</sup> *Ibid.*, § 9 (148) (7)

<sup>11</sup> *Ibid.*, § 9 (149) (2)

<sup>12</sup> *Ibid.*, § 9 (149) (3)

<sup>13</sup> *Ibid.*, § 9 (149) (4)

In terms of European tools, one of the applicable treaty laws that apply to Finland is the European Convention on Human Rights, which has briefly mentioned national security under three rights and freedoms: Rights to respect for private and family life, freedom of expression, and freedom of assembly and association. Although national security is mentioned under those rights and freedoms, they do not concretely describe a situation where a migrant would have those rights restricted as a result of national security. In fact anyone's rights may be restricted under Articles 2, 8, 10, and 11 of the European Convention on Human Rights on the basis of national security.<sup>14</sup>

As a member of the European Union, Finland is part of the Common European Asylum System, which has set out the standards by which refugees and asylum seekers are being treated in the European Union. As a matter of national security, it has been mentioned in the Reception Conditions Directive that refugees and asylum seekers may be detained when the protection of national security requires so.<sup>15</sup> Although national security has been mentioned in the paragraph, there is no set standard as to what national security would mean and how it could be used as a justification. It is to be established that national security may be used as a vague term when justifying the detention and extradition of refugees.

The Dublin Regulation is also in line with Finland's European obligations for the responsibility of asylum applications. The Dublin regulation recognizes that no European Union Member State should shoulder a disproportionate responsibility for asylum applications.<sup>16</sup> The Dublin Regulation outlines the responsibilities that Finland has regarding asylum applications, and the regulation itself is relevant to all European Union Member States equally.

In terms of international instruments, Finland is part of the 1951 Refugee Convention and its 1967 Protocol, which define the rights of refugees and the international standards of the treatment for their protection.<sup>17</sup> Those documents are held by the UNHCR and are a tool by which the UNHCR in itself aims to assist governments in the applications and translations of the convention and protocol

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<sup>14</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 3 September 1950. LNTS 213, adopted by the Council of Europe, Articles 2, 8, 10 and 11 [hereinafter ECHR]

<sup>15</sup> Council Directive 2013/33/EU of 26 June 2013 laying down standards for the reception of applicants for international protection [2013] OJ L180/96, Art. 8 (3) (e)

<sup>16</sup> Council Regulation (EU) No 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person [2013] OJ L180

<sup>17</sup> Convention relating to the Status of Refugees, 28 July 1951, adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons

into national legislations to secure the protection of refugee rights.<sup>18</sup> In addition, although the UNHCR's UN Refugee Agency does not have an operational role in Finland, it maintains an active dialogue with the government and local authorities to ensure that the rights of persons forced to flee are safeguarded.<sup>19</sup>

## 1. 2. Laws based on National Security and Extradition Applying to Bulgaria

Bulgaria's Refugee Act underlines the matters of national security and extradition. Although national security is not defined by the national laws of Bulgaria, it has still been included in the Refugee Act. Furthermore expulsion on grounds of national security has been indicated in the Bulgarian Alien's Act, however, in a briefer manner. National security has not been specified either; however, it is still a legally applicable principle in Bulgaria.

Article 4 (3) of the Bulgaria's Refugee Act states that a foreigner, who has entered the territory of the Republic of Bulgaria with the aim to apply for international protection or received protection, may not be returned back to a country where their life and freedom could be endangered on the basis of race, religion and nationality or where they could face cruel and inhumane treatment.<sup>20</sup> However, the law in Article 4 (4) points out that international protection is no longer applicable in Bulgaria if the individual who has received protection, is viewed as a threat to national security or who has once been convicted of a serious crime that exposes a serious threat to the public.<sup>21</sup> Under these circumstances, Article 4 (4) contradicts itself with Article 4 (3) on the principle of non-refoulement because, under these provisions, Bulgaria can return individuals back to their country if they pose a serious threat to the national security even if they may face threats to their lives or inhumane treatment. However, this contradiction is based solely on Bulgaria's national law. Article 4 (5) continues with: A foreigner who has entered the territory of the Republic of Bulgaria illegally, and wants to apply for international protection, must immediately present themselves to the competent authorities and point out good reasons for having entered or stayed in the territory of the State.<sup>22</sup>

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<sup>18</sup> *Ibid.*

<sup>19</sup> Nordic and Baltic Countries: Our Work, UNHCR <<https://www.unhcr.org/neu/about>> accessed 22 April 2024

<sup>20</sup> Закон за убежището и бежанците, чл. 4, (3)

<sup>21</sup> *Ibid.*, чл. 4, (4)

<sup>22</sup> *Ibid.*, чл. 4, (5)

Furthermore, as regards national security, Article 12 (6) of the Bulgarian Refugee Act states that a refugee status is not provided if there are serious grounds to believe that a refugee poses a threat to national security.<sup>23</sup> Therefore, Article 12 (6) is about not granting refugee status to an individual that poses a threat to national security, and as a distinction Article 4 (4) is about not granting international protection for the same reason, therefore, allowing both the actions of not granting refugee status and not providing international protection in a situation where an individual poses a threat to the national security of the State. Furthermore, Article 17 (5) states that international protection may be terminated if there are serious grounds to believe that a refugee poses a threat to national security or the public.<sup>24</sup>

Additionally, Article 42 (1) of the Bulgarian Aliens Act's concludes that the expulsion of a foreigner is applied in a situation when his/her presence in the country poses a serious threat to the national security or the public order.<sup>25</sup> The Bulgarian Aliens Act has not further mentioned expulsion based on the grounds of national security as the aliens act in this aspect is broader and less specific in comparison with the Refugee Act.

Since Bulgaria is part of the European Union, it is part of the Common European Asylum System. Therefore, Bulgaria is bound to the Reception Conditions Directive<sup>26</sup> and the Dublin regulation.<sup>27</sup> The system is designed for each Member State of the European Union, so it does not differ for Bulgaria.

In addition to being part of the European Union, Bulgaria is also part of international instruments. In terms of international instruments, Bulgaria is part of the 1951 Refugee Convention and its 1967 Protocol.<sup>28</sup> Through these commitments, Bulgaria engages in the regional European framework of ensuring the protection of refugees and asylum seekers and the international framework which further aims to ensure Bulgaria's compliance with refugee protection within its territory. Furthermore, the United Nations High Commissioner for Refugees functions in Bulgaria and has the

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<sup>23</sup> *Ibid.*, чл. 12, (6)

<sup>24</sup> *Ibid.*, чл. 17, (5)

<sup>25</sup> Закон за чужденците в Република България, чл. 42, (2)

<sup>26</sup> Council Directive 2013/33/EU of 26 June 2013 laying down standards for the reception of applicants for international protection [2013] OJ L180/96

<sup>27</sup> Council Regulation (EU) No 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person [2013] OJ L180

<sup>28</sup> Convention relating to the Status of Refugees, 28 July 1951, adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons

duty to work with its Ministry of the Interior, border police, and other government bodies in order to ensure that the rights of refugees, asylum seekers, and refugees are secured.<sup>29</sup>

Additionally, Bulgaria has a main non-governmental organization that functions solely within the territory of Bulgaria. The organization is called the Bulgarian Helsinki Committee, which monitors the human rights situation in Bulgaria since 1992 and provides international institutions with reports and statements.<sup>30</sup> The Committee has been critical of the human rights situation in Bulgaria and the reports turn out relatively lengthy.

### 1.3. Differences and similarities in the Finnish and Bulgarian national laws

This section presents the distinctions between the Finnish and Bulgarian national laws in terms of national security, extradition, and refugee protection. Despite some differences in them, both States have almost common legal grounds for the return of migrants. Their presence in the European Union allows for common standards on national security and their regional and international obligations.

Article 9 (149) of the Finnish Aliens Act is similar to Article 4 (4) of Bulgaria's Refugee Act. The Finnish Aliens Act states that a migrant may be extradited from Finland if he/she has been charged with a crime<sup>31</sup>, whereas Article 4 (4) of Bulgaria's Refugee Act states that international protection is not valid in a situation where the individual has been convicted of a serious crime that exposes a serious threat to the public.<sup>32</sup> However, the distinction between these two similar laws is that the Finnish Aliens Act Article 9 (149) additionally states that the individual must be charged with a minimum of one year of imprisonment or be continuously charged with crimes in order to be extradited.<sup>33</sup> This addition does not exist in Bulgaria's Refugee Act, therefore, there is no exception in regard to the timeframe or the number of convictions, which indicates the fact that on a national level, Bulgaria is less tolerant towards the refugees that have committed the crimes and is more

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<sup>29</sup> 3A HAC, UNHCR The UN Refugee Agency-Bulgaria

<https://www.unhcr.org/bg/%d0%b7%d0%b0-%d0%bd%d0%b0%d1%81-2> accessed 22 April 2024

<sup>30</sup> WE DOCUMENT HUMAN RIGHTS VIOLATIONS, Bulgarian Helsinki Committee

<https://www.bghelsinki.org/en/> accessed 22 April 2024

<sup>31</sup> Ulkomaalaislaki (2004/301) § 9 [149]

<sup>32</sup> Закон за убежището и бежанците, чл. 4, (4)

<sup>33</sup> Ulkomaalaislaki (2004/301) § 9 [149]

prone to extraditing them, if they have been charged with a crime, no matter the period of time or the amounts of crimes committed.

Article 9 (148) (2) of the Finnish Aliens Act mentions the provision of adequate information to the Finnish authorities about the individual and how he/she may be extradited if the information is insufficient.<sup>34</sup> There is no such provision in Bulgaria's Refugee Act. However, under Article 4 (5) it has been emphasized that if an individual has entered the territory of the Republic of Bulgaria illegally and aims to apply for international protection, he/she should provide competent authorities and point out good reasons for entering the territory<sup>35</sup>, which does emphasize that relevant information regarding the migration has to be given for international protection to be granted by the Bulgarian Government. However, specifications regarding extradition and provision of the relevant information are missing in Bulgaria's Refugee Act.

Additionally, under Article 9 (148) (5) of the Finnish Aliens Act, there are further specifications about dishonest income and extradition as a result of dishonest income<sup>36</sup> which under the Bulgarian Refugee Act may not be considered to fall under Article 4 (4), where extradition is possible if the individual has been convicted of a serious crime<sup>37</sup> unless the dishonest income is to amount to a serious crime, which would then legitimize extradition based on a serious crime. According to Article 9 (148) (7) of the Finnish Aliens Act, an individual may be extradited if he/she has crossed the border when the border is closed.<sup>38</sup> This also is not separately specified in the Bulgarian Refugee Act, therefore, there is no additional distinction between a closed and an open border illegal crossing in Bulgaria.

As regards extradition based on national security, the provisions of Article 9 of the Finnish Aliens Act state that a migrant may be extradited if he/she endangers public safety<sup>39</sup> and is suspected of engaging him/herself in actions that endanger national security<sup>40</sup> are similar to Article 12 (6) of the Bulgarian Refugee Act<sup>41</sup> and fall within the same legal context. Both Finland and Bulgaria lack a proper legal definition of what national security entices. However, the articles of both the Finnish

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<sup>34</sup> *Ibid.* , § 9 (148) (2)

<sup>35</sup> Закон за убежището и бежанците, чл. 4, (5)

<sup>36</sup> Ulkomaalaislaki (2004/301) § 9 [148]

<sup>37</sup> Закон за убежището и бежанците, чл. 4, (4)

<sup>38</sup> Ulkomaalaislaki (2004/301) § 9 [148]

<sup>39</sup> *Ibid.* , § 9 (149) (3)

<sup>40</sup> *Ibid.* , § 9 (149) (4)

<sup>41</sup> Закон за убежището и бежанците, чл. 12, (6)

Aliens Act and the Bulgarian Refugee Act show that extradition may be based on national security reasons in both States.

Both Finland and Bulgaria are part of the Common European Asylum System (CEAS), which means that the Dublin Regulation and the Reception Conditions Directive apply equally to both of the States. Therefore, Finland and Bulgaria are both contributors to the collective effort to manage asylum and migration in a humane and fair manner within the European Union. As CEAS is a set of regional tools, Bulgaria and Finland also share the 1951 Refugee convention and its 1967 Protocol as a set of international tools. The 1951 Convention relating to the status of refugees also emphasizes expulsion as a measure of national security. Article 32 (1) of the 1951 Refugee convention states that refugees staying in the territory of a government shall be expelled on grounds of national security and public order.<sup>42</sup> Article 32 (2) does not leave it out and further put emphasis on expulsion. It states that expulsion shall be done only as a result of the due process of law and that unless the State's national security requires otherwise, the refugee may submit evidence to clear themselves.<sup>43</sup>

For Finland and Bulgaria, only the national tools differ and the regional, and international tools do not differ. However, this does not mean that the application of the same international and regional tools are similarly applied by both States. This could depend on many different factors, however, legally speaking the regional and international tools remain to be applied in the same way by both States.

In terms of the limited specification of national security, it could be argued that the more national security is being specified in the law, the more restrictive and preventive the methods of extradition based on national security could become, because different and new scenarios arise all the time, and the methods and solutions for extradition based on national security would have to shift drastically. This means that since the term has not been defined, it has been given a degree of elasticity and flexibility and, thus, may be used for states to exercise exceptional powers that may limit the

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<sup>42</sup> Convention relating to the Status of Refugees, 28 July 1951, adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Article 31 (1)

<sup>43</sup> *Ibid.* , Article 31 (2)

protection of fundamental rights.<sup>44</sup> Essentially national security is a tool for States to protect themselves from terrorism, espionage, and other harm to the public.<sup>45</sup>

Additionally for the application of national law under different circumstances, Bill Frelick, Director of Human Rights Watch's Refugee and Migrant Rights Division<sup>46</sup>, in his chapter "Refugees Worldwide: Regional Issues" of the book *Refugees Worldwide*, presents the argument that in terms of national security, governments tend to view migrants as a threat to public order and security when they arrive as a result of a large-scale irregular migration, as opposed to being more generous when there is a smaller amount of migrant inflow.<sup>47</sup> He specifically states in his argument that when there is a smaller number of asylum seekers entering the territory of a government, then the government has the necessary resources and time to conduct thorough screening, therefore, they tend not to view it as a threat to national security.<sup>48</sup> Whereas if the numbers are larger and unsustainable, then governments tend to view it as an issue and rather as a threat to national security.<sup>49</sup> However, the argument does not delve into specific cases and generalizes government actions as an overview of how governments act under large-scale migrant flows. The argument is logical. However, it is still a possibility that: first, governments interpret their international obligations differently, and second, they apply them differently due to different practices, circumstances, and understandings. These could be corrupt government functioning, nationalistic government motives and wrong application of international and/or regional law into action.

Bill Frelick further mentions that national security has only seen its strengthening since the terrorist attack in the United States on September 11, 2001<sup>50</sup> and that only then migration management was justified on the grounds of national security.<sup>51</sup> This strengthens the argument that national security is used when a government is feeling tensions in regards to threats from refugees. However, it is only generally speaking about the number of refugees that enter the government territory. The argument could have been phrased differently by the author: The larger the migrant inflow, the higher the possibility for terrorism occurrences. Even in accordance with Bill Frelick's argument, since

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<sup>44</sup> Research Division, 'National Security and European Case Law' (European Court of Human Rights & Council of Europe 2013), p. 4 <<https://rm.coe.int/168067d214>> accessed 22 April 2024

<sup>45</sup> *Ibid*

<sup>46</sup> 'Bill Frelick', Human Rights Watch <<https://www.hrw.org/about/people/bill-frelick>> accessed 22 April 2024

<sup>47</sup> Bill Frelick, *Refugees Worldwide: Regional Issues* (Praeger 2012), Volume: 2, p. 275

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*, p. 277

<sup>51</sup> *Ibid.*

governments have become more concerned/alerted about their national security after September 11, 2001, it naturally means that the overall disregard the numbers game because they are more alerted, and are paying more attention to national security despite the numbers. Therefore, the sustainability aspect comes separately, but can be used as a motive to claim national security for expulsion reasons.

## Chapter II - European Union, Refugee Protection, Effective Remedy

As the main focus in Chapter I is to pinpoint the laws related to the national security of Bulgaria and Finland, this chapter moves on to outline the processing and reception of Bulgaria and Finland complying with the applicable laws. The processing of refugees in different countries is a procedure that is highly distinctive depending on the sovereign states themselves and the processes vary from successful refugee status determination to neglect of human rights obligations and obligations under international and EU law. The issues that States are facing extend to, but do not limit themselves to their motive or lack of motive in processing refugees. This means that some States are more welcoming of the idea of helping refugees who are facing trouble back at home, and some States are simply incompetent or even reluctant to carry out these procedures. The issues also include State measures for accommodation of migrants, which despite the reason for expulsion based on national security and the involved potential risks for human rights violations, Bulgaria and Finland should deter from maltreatment of detainees, from not providing adequate sanitary conditions and food, and from violating Reception Conditions Directive during the time of processing asylum seekers.

In order to illustrate the differences in State approaches, it is important to create a comparison between at least two different states with different experiences and understandings of international human rights obligations. For the sake of illustration, Chapter II observes the Republic of Bulgaria and the Republic of Finland, enabling for distinction between the two States.

### 2.1. The Republic of Bulgaria

As Bulgaria is one of the states that acts as an external border of the European Union, it is bound to have primary encounters with refugees passing through the Bulgarian-Turkish border. The term “primary encounters” refers to encounters with refugees that step foot on the European Union soil for the first time. Because Bulgaria is the first country of entry, this factor becomes essential when processing refugees and determining their status. Bulgaria has to be prepared to take the first initiative to take care of those refugee issues.

As expected of one of the poorest States in the European Union, Bulgaria is facing difficulties in the aid of refugees and in their status determination. To a certain extent, the issues regarding the economic situation of the State reflect upon the living conditions in detention centers which face inadequate sanitary facilities, corrupted prison staff, and poor medical conditions.<sup>52</sup> These issues are to be addressed by the Bulgarian government and if the incentive is to detain refugees, then perhaps the living conditions should be improved. It is a recurring issue and something that turns out to be a neglected measure by the government. Even back in 2004-2005, the Bulgarian Helsinki Committee had reported that Bulgaria had the worst prison conditions after Macedonia and Serbia (that, for the record, are not part of the European Union). The report also discloses that the Bulgarian legislation does not have compulsory standards for living conditions in prisons<sup>53</sup>.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment came out with a more recent report on the Bulgarian prison conditions where it specifically noted that the Sofia Prison's conditions have remained the same, e.g., lack of natural light and ventilation, broken windows and ceilings, and moldered walls<sup>54</sup>. As in the asylum homes, the terrible prison conditions are to be taken into account, because Bulgaria has detained illegal migrants and has imprisoned them and/or placed them in detention centers which bear equally as terrible conditions. For example, as disclosed in a report written by the Bulgarian Helsinki Committee in 2022, Ali Reza, an illegal migrant was detained and placed in the Busmantsi Detention Center for six months to wait for his deportation proceedings.<sup>55</sup>

According to the Bulgarian Helsinki Committee, the conditions of the Bulgarian detention centers are generally worse than those in the prisons.<sup>56</sup> This issue has seemingly not been dealt with, which shows that the government has not shown initiative to create humane conditions in the detention centers. Despite the fact that there is a lack of government care, the number of foreign detainees has

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<sup>52</sup> United States Department of State, '2022 Country Reports on Human Rights Practices: Bulgaria' (Bureau of Democracy, Human Rights and Labor 2022)

<<https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/bulgaria/>> accessed 22 April 2024

<sup>53</sup> Ivan Popov, 'Health Promotion for Young Prisoners' (Association of Varna Organizations for Drug Prevention 2010), p. 5 <[https://www.aidsactioneurope.org/sites/default/files/hpyp\\_lit\\_review\\_in\\_bg\\_0\\_0.pdf](https://www.aidsactioneurope.org/sites/default/files/hpyp_lit_review_in_bg_0_0.pdf)> accessed 22 April 2024

<sup>54</sup> Council of Europe, Report to the Bulgarian Government on the periodic visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT/Inf (2022) 20, p. 26 <<https://rm.coe.int/report-to-the-bulgarian-government-on-the-periodic-visit-to-bulgaria-c/1680a88ec1>> accessed 22 April 2024

<sup>55</sup> Bulgarian Helsinki Committee, 'Human Rights in Bulgaria in 2022' (2022) Ch. 4, p. 23

<[https://www.bghelsinki.org/web/files/reports/174/files/BHC-Human-Rights-in-Bulgaria-in-2022-en\\_issn-2367-6930.pdf](https://www.bghelsinki.org/web/files/reports/174/files/BHC-Human-Rights-in-Bulgaria-in-2022-en_issn-2367-6930.pdf)> accessed 22 April 2024

<sup>56</sup> *Ibid.*, p. 81

increased from 2021 by 30% in 2022, with the number of foreign nationals held in custody totaling 2,117 persons.<sup>57</sup> The reason for this is the increased migration pressure and the higher number of detained illegal migrants crossing the border.<sup>58</sup> The higher number of illegal migrants detained is alarming because more people will have to face the conditions that do not meet the minimum standards of humane treatment.<sup>59</sup>

Since the Bulgarian detention centers are in terrible condition, Bulgaria is not within the limits of the set European Union standards for reception. More specifically, under Article 17 (2) of the Reception Conditions Directive 2013/33/EU, a Member State has to ensure that material reception conditions provide an adequate standard of living for applicants.<sup>60</sup> Material reception conditions included in the Reception Conditions Directive refer to housing, food, and clothing as well as financial allowances which are provided to the individuals placed in detention centers.<sup>61</sup> The aforementioned inadequate sanitary conditions in the detention centers show that Bulgaria is in breach of Article 17 (2) of the Reception Conditions Directive.<sup>62</sup>

Illegal migrants often arrive to escape armed/political conflicts, different life-threatening circumstances, and persecution. It is completely fair to establish that the measures taken for the living conditions in detention centers, being harsh and disorganized, are an unnecessary part of the difficulties that asylum seekers face in the State. However, the Bulgarian state has strived to better the reception of refugees and has aspirations to remain within the parameters of upholding European policy, but has been unsuccessful as far as political opinions on refugees stretch.

On the other hand, the issues are connected to the authorities' refusal to act on the processing of illegal refugees. Not only that the authorities refused to process, but they have also violated human rights in doing so. In 2022 it was reported that asylum seekers were beaten, stripped, robbed, and attacked with police dogs after which they were pushed back to Turkish soil. According to the

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<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*, p. 82

<sup>60</sup> Council Directive 2013/33/EU of 26 June 2013 laying down standards for the reception of applicants for international protection [2013] OJ L180/96, Art. 17 (2)

<sup>61</sup> *Ibid.*, Art 2 (g) & Art 4

<sup>62</sup> *Ibid.*

Bulgarian Helsinki Committee, only in the first half of 2022, 27 742 detained persons' rights were violated.<sup>63</sup>

Prior to the slight reform in the procedural practices, as a result of a disconnect between domestic and international law, the practice of the authorities in the country was mainly focused on detaining illegal migrants. Evidently, this can occur in situations where the personnel are not clearly informed about the procedural measures to be taken and view an illegal migrant as a criminal instead of someone who is seeking asylum. Perhaps the domestic laws of the country suggest that anything illegal is to be reported as it should. Thus, the State Agency for Refugees has been reporting to the police whenever refugees have managed to arrive at the agency without being caught on the border or on their way to the agency.<sup>64</sup> It is an issue because, instead of the State Agency for Refugees having to process refugees and function on its intended purpose, it informs the police, which is not the adequate government body that deals with refugee status determination. Hence, refugees get treated as criminals, rather than people who seek asylum.

Article 6 (1) of the EU's Asylum Procedures Directive states that the Member States have to make sure that, in order to ensure that applicants know how and where to apply for international protection, the authorities, such as police, border guards, immigration authorities and their personnel are required to have the necessary level of training.<sup>65</sup> In reference to Article 6, it is evident that the State Agency of Refugees does not bear the necessary level of training, since they immediately inform the police about illegal migrants and even though the police is being informed of this, the police does not have the necessary level of training either to provide information on how application proceedings are to ensue. Quite on the contrary, the police have shown violence towards the illegal migrants, and the provision of adequate information is far from what the police intends to do.

This creates distress for refugees who have taken the opportunity and made the effort to travel through unsafe places of the world in order to get to safety because of having to hide themselves

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<sup>63</sup> United States Department of State, '2022 Country Reports on Human Rights Practices: Bulgaria' (Bureau of Democracy, Human Rights and Labor 2022)  
<<https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/bulgaria/>> accessed 22 April 2024

<sup>64</sup> Adela Kachaunova and others, 'ПРАВАТА НА ЧОВЕКА В БЪЛГАРИЯ ПРЕЗ 2022 г.' (Bulgarian Helsinki Committee, 2022), p. 105  
<[https://www.bghelsinki.org/web/files/reports/171/files/BHC-Human-Rights-in-Bulgaria-in-2022-bg\\_issn-2367-6930.pdf](https://www.bghelsinki.org/web/files/reports/171/files/BHC-Human-Rights-in-Bulgaria-in-2022-bg_issn-2367-6930.pdf)> accessed 22 April 2024

<sup>65</sup> Council Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection [2013] OJ L180/60, Art. 8 (1)

within the borders of the European Union. Furthermore, rather than finding peace, this creates an incentive for refugees to flee from Bulgarian territory. This happens to be the case for the illegal migrants entering the Bulgarian territory, due to their unknown presence based on not being documented and the discovery of their presence previously discussed, they are titled as criminals. This issue happens to result from the lack of democratic values upheld by people in powerful positions in government, thus creating problems in the adequate protection of human rights.<sup>66</sup>

## 2.2. The Republic of Finland

Finland is one of the countries in the European Union that is positioned on the external border with Russia that extends to 1340 kilometers. Although Finland shares such a long border with Russia, most of the illegal migrants tend to be from elsewhere. Finland is known for its welcoming approach to refugees, and it has previously set an example for other States with its well-established system for not only prioritizing human rights but also for its commitment to securing welfare.

Finland, like many other countries, is also known for having adopted an “Integration Act” which promotes the integration of immigrants and refugees in the State. Over time, Finland has worked on integrating policies in order to facilitate the improvement of the immigrant as well as refugee integration process. Its Integration Act encompasses the provision of basic information about the Finnish society, labor market, and other services such as teaching the Finnish language and employment support, ensuring that refugees are knowledgeable of their rights within the State. It is important to keep in mind that the duration and effectiveness of the measures and services depend on the cooperation of the immigrants.<sup>67</sup>

Finland has been successful in upholding the processing of refugees, but because there has been a concern that the Finnish legislation excludes beneficiaries of subsidiary protection from family reunification. In order to facilitate family unification, the United Nations High Commissioner for

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<sup>66</sup> Yelis Erolova Ahmedova, ‘Refugee Integration in Bulgaria: Conditions and Challenges’ UDC 314.742(497.2) (Bulgarian Academy of Sciences 2019), p. 562

<sup>67</sup> The Act on the Promotion of Immigrant Integration guides integration work, Centre of Expertise in Immigrant Integration, <<https://kotoutuminen.fi/en/the-act-on-the-promotion-of-immigrant-integration-guides-integration>> accessed 22 April 2024

Refugees has even urged the State to keep advocating for human rights and grant 1951 Convention refugees and beneficiaries of subsidiary protection equal access.<sup>68</sup>

However, in general, immigration in Finland has been promoted in the past, and so has the government promoted it until this day. In fact, the promotion of integrating people into Finnish society has partially been the state's incentive because of the need for better economic well-being. It is a fact that Finland's population with knowledge and skills is in decline. Therefore the economic well-being is experiencing issues in growth. Over 100 000 workspaces are left out every year according to the Ministry of Economic Affairs and Employment of Finland.<sup>69</sup> On the one hand, it could be argued that Finland has managed to provide such accommodation to illegal and legal migrants due to the lack of workers in the country, however, on the other hand, it could be argued that the process is not based on economic reasons. On the other hand, however, the provision of accommodation of illegal migrants cannot simply be based on economic initiative, but rather for tolerance reasons for having the initiative of protecting Human Rights from which the economy is projected to strive as an outcome.

However, this does not mean that Finland grants asylum to each refugee that knocks on its door. It is important to note that there are different strategies that asylum seekers have tried to take to be granted asylum in Finland. One of the main strategies that turned out to be a hot topic of discussion as well as a controversial one was the asylum seeker's conversion to Christianity. The strategy with conversion works as such that a refugee claims to have been baptized, not only by claiming but by showing proof of it, followed by the idea that he/she could not be returned to their country of departure because he/she would face serious consequences, e.g., prosecution from the government for their religious conversion. This tends to occur in the case of people arriving from Iraq, Iran, Syria, or Egypt which all are Muslim-majority states. Specifically in Iran, under the leadership of President Hassan Rouhani, there is targeted persecution of Christians who have converted from Islam to Christianity.<sup>70</sup>

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<sup>68</sup> United Nations High Commissioner for Refugees, 'UNHCR recommendations to Finland on strengthening refugee protection in Finland, Europe and globally' [2019], p. 3

<sup>69</sup> Työperusteinen maahanmuutto vaalikaudella 2023-2027, Elinkeinoelämän keskusliitto, p. 5.  
<[https://ek.fi/wp-content/uploads/2023/03/EK\\_Tyo%CC%88pera%CC%88inenMaahanmuutto\\_230307.pdf](https://ek.fi/wp-content/uploads/2023/03/EK_Tyo%CC%88pera%CC%88inenMaahanmuutto_230307.pdf)> accessed 22 April 2024

<sup>70</sup> Huma Haider, 'The Persecution of Christians in the Middle East' (University of Birmingham 2017), p. 7

This ties perfectly with the strategic conversion to Christianity by Muslim refugees who seek asylum in Finland, because it ties in with the principle of non-refoulement in international law. The Finnish Immigration Service, however, states that Christian-convert asylum seekers are not automatically granted asylum or a residence permit because of their conversion.<sup>71</sup> Even though it has been a controversial topic for a long while, the government institution does not have the exact number of cases (specifically statistics) that regard conversion to Christianity as a reason for seeking asylum. However, it continues by stating that such cases with statements regarding conversion have amounted to several hundred.<sup>72</sup> There are no facts to indicate that conversion to Christianity with the aim of not being expelled is being exploited by asylum seekers, but it is important to note that it is possible and surely must have been exploited at a given point.

In 2021 the Supreme Administrative Court of Finland issued a decision regarding conversion to Christianity. There had been an Iraqi citizen who had his application for asylum denied by the Immigration Service and the Administrative Court on the basis that they had been unsure of the person's conviction and found that there had been no indication that the individual would face prosecution upon his return to Iraq.<sup>73</sup> In the case KHO:2021:195, the Supreme Administrative Court referred its actions to the European Union Court of Justice and assessed the situation of the applicant in terms of his convictions as well as the possibility of prosecution upon his return to Iraq.<sup>74</sup> It turned out that the individual had actively been involved in Church activities for several years prior to the hearing at the Administrative Court. Therefore, the Supreme Administrative Court had established that the applicant should not be expected to live contrary to his conviction or to hide it so that he does not get prosecuted in Iraq.<sup>75</sup> This turns out to be the correct choice made by the Supreme Administrative Court as its primary objective under such circumstances should not be to expose people to potential violations of their human rights, but rather to protect them.

It is important to note that in the case KHO:2021:195<sup>76</sup>, Finland's Supreme Administrative Court did this correctly by adhering to the European Court of Justice by allowing room for investigation on the individual's convictions on religion as well as by establishing whether that person would face

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<sup>71</sup> 'How does converting to Christianity affect asylum applications?' (Finnish Immigration Service, 12 June 2017) <<https://migri.fi/en/-/miten-kristinuskoon-kaantyminen-vaiuttaa-turvapaikkapaatokseen->> accessed 22 April 2024

<sup>72</sup> *Ibid.*

<sup>73</sup> Tuomio 31.12.2021, KHO:2021:195, Korkein hallinto-oikeus <<https://www.kho.fi/fi/index/paatokset/vuosikirjapaatokset/1640846713813.html>> accessed 22 April 2024

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*

consequences upon his return to Iraq. This is because Finland shows to have complied with the European Union standards of procedure in refugee status determination and acknowledged that it is essential to do so, because, despite its State sovereignty and own political will, it is part of the European Union.

Specifically, in terms of EU instruments, Finland has worked in accordance with Article 10 (b) of the Qualifications Directive 2011/95/EU, which states that, before determining whether the individual qualifies for refugee status or subsidiary protection, a Member State has to take persecution based on grounds of religion into consideration.<sup>77</sup> Finland has also complied with Article 10 (3) (d) of the Procedures Directive 2013/32/EU Requirements for the examination of applications, which states that Member States are required to ensure that the determination of applications for international protection are made after an appropriate examination regarding religious issues that a migrant may face upon their return.<sup>78</sup> Therefore, Finland has found that the religious conversion of the individual has been legitimate and that it could have endangered him in his own country upon return. Thus, the determination of the refugee status was necessary in accordance with the aforementioned European Union Directives.

Additionally, the fact that some states like Finland are following the European Union standards of procedure, shows that there is a unification between sovereign States that are able to function in accordance with the law in common. Because they are part of the standards that keep the European Union Member States unified through legislative procedure, it is important to do so.

### 2.3. Bulgarian and Finnish adherence to International Refugee Protection

Under the light of comparison of both Bulgaria and Finland, at first sight, it is evident that the Bulgarian government has issues with providing proper treatment of migrants arriving to its territory. On the one hand, the Bulgarian authorities are not showing any willingness to process refugee applications, which, as such, speaks for the government's international commitments in

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<sup>77</sup> Council Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted [2011] OJ L337/9, Art. 10 (1) (b)

<sup>78</sup> Council Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection [2013] OJ L180/60, Art. 10 (3) (d)

granting refugee status. More concretely, in addition to the Common European Asylum System, by not processing applications or even enabling the possibility for asylum applications, Bulgaria has been falling short with its international obligations according to the Universal Declaration of Human Rights Article 14 (1) which states that everyone has the right to apply for asylum from persecution in other countries.<sup>79</sup> On the other hand, the Finnish government has shown willingness by its actions of processing illegal migrant applications.

In regard to national security, the fact that Bulgaria does not process refugee applications accordingly, does not change its attitude towards its international obligations. In regard to international obligations, Bulgaria has been found violating international law, but that does not have an impact on its national interests. In terms of legal obligations, what the Bulgarian government could do is to gradually invest in its capabilities of processing applications and conduct government procedures in protecting refugee rights similarly to the Finnish government. This would further reduce the possibilities of Bulgaria being in breach of international and European treaties, significantly, the 1951 Refugee Convention<sup>80</sup> and the European Convention on Human Rights<sup>81</sup> even as a consequence of neglect and would enhance its capabilities of protecting human rights such as the right to an effective remedy for acts violating the fundamental rights of an individual in Article 8 of the 1951 Refugee Convention<sup>82</sup>, which Bulgaria has not provided, noting, as stated previously in the chapter, that the illegal migrants have not been informed about their position and their rights by trained personnel. Additionally, upon expulsion of a refugee, Bulgaria may be breaching Article 5 of the 1951 Refugee Convention, which states that no one shall be subjected to torture or inhuman or degrading treatment.<sup>83</sup> The breach of Article 5 relates to the principle of non-refoulement, which is the topic of the next chapter. Similarly, to the principle of non-refoulement, Bulgaria may be found in breach of Article 3 of the European Convention on Human Rights.<sup>84</sup> Similarly to the 1951 Refugee Convention, Bulgaria is in violation of the right to an effective remedy as it has been written in Article 13 of the European Convention on Human Rights.<sup>85</sup>

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<sup>79</sup> Universal Declaration of Human Rights, Paris, 10 December 1948 [hereinafter UDHR], Article 14 (1)

<sup>80</sup> Convention relating to the Status of Refugees, 28 July 1951, adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons

<sup>81</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 3 September 1950, Council of Europe

<sup>82</sup> Convention relating to the Status of Refugees, 28 July 1951, adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Article 8

<sup>83</sup> *Ibid.*, Art. 5

<sup>84</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 3 September 1950, Council of Europe, Article 3

<sup>85</sup> *Ibid.*, Art. 13

One of the major concerns for such investments is the slow growth and struggling economy of the State which is limitedly able to sponsor such plans. The only temporary solution for this problem is to welcome European subsidies and realistically invest with those subsidies into a system which would fund the adequate accommodation of migrants and the processing of applications. This would include bettering living conditions at detention centers. Finland has had no complaints concerning the living conditions. This means that the Finnish government has provided all the necessary facilities and equipment accordingly in order to accommodate refugees when needed. Interestingly enough according to the Finnish Red Cross, people seeking **temporary** protection in Finland will be also eligible for reception services.<sup>86</sup> Such services do not exist in Bulgaria which further emphasizes on the differences of the two States in question.

All in all, on comparison to the Finnish one, it is fair to mention that the Bulgarian government is in its primary phase of being able to function according to its international obligations. Finland's competences and experiences in the field of international refugee law are far beyond the point of its beginnings. Finland is so far developed in the field that it has the capabilities to discuss specific matters, e.g., religious conversion, in situations of refoulement. It is a rather impressive milestone which does indeed set an international example to other European Union Member States. The Finnish government has managed to use migration as a strength for development and innovation rather than an obligation, contrary to the Bulgarian government, but this has been the outcome of a strong economy and adequately structured government bodies.

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<sup>86</sup> 'The Finnish Red Cross maintains reception centres in different parts of Finland' (Finnish Red Cross, 7 December 2022) <<https://www.redcross.fi/our-work/help-for-immigrants/reception-of-asylum-seekers/>> accessed 22 April 2024

## Chapter III - Principle of Non-Refoulement, Extradition and Human Rights Violations

Chapter III delves into the principle of Non-Refoulement for the purposes of covering the topic of refugee status determination. The principle of Non-Refoulement raises an important discussion in regard to issues as to who may be returned back to his/her State of departure and who may not be returned unless there is a breach of the principle. The discussion raises technical and legally challenging arguments which are tied to the breach of human rights in the context of the principle of non-refoulement. The principle of non-refoulement also plays a major role in determining refugee status and is the backbone to protection of refugee human rights. Thus Chapter III on non-refoulement in relation to Chapter I and II is a vital part of the topic of national security since it considers the limitations of it and furthers the discussion on the application of national security under its scope.

### 3.1. Principle of Non-Refoulement

The principle of non-refoulement is a fundamental principle in the field of international refugee law, which allows the refugees to travel to a state or territory from which they would not be transferred to a country where they are at risk of prosecution, torture, punishment or degrading treatment. The principle is mainly applied for situations where refugees go to a certain country and they cannot be returned due to the possible issues that they could face in the country of their departure, but can also be applied for other migrants as well under given circumstances.

The principle of non-refoulement has its legal foundations imbedded into international treaties and instruments which include the 1951 Convention Relating to the Status of Refugees (Refugee Convention), Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (widely known as CAT) and practically in the International Covenant on Civil and Political Rights (ICCPR).

The 1951 Convention Relating to the Status of Refugees states it in the first paragraph of Article 33 as such

*“1. 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”.*<sup>87</sup>

This follows up with an exception to the given principle in the same article in the second paragraph as such:

*“2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country”.*<sup>88</sup>

There are a few particular things to be kept in mind when discussing about the principle of non-refoulement and its use under international law. One of those things derives from Article 33 (1) which states that an individual shall not be expelled to the territory where his/her life or freedom is in danger. This point is to be kept in mind as it serves as a legal argument in refugee status determination; however, it will be brought up on a later note. The other important point derives from the second paragraph of the same article, which states in simple terms that the individual who has been convicted by a final judgment as being a danger to the community can be expelled. These two points are to be kept in mind as a later reference.

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in Article 3 (1), prohibits the expulsion, return or extradition of an individual to another State where there are no **substantial** grounds to believe that he would be in danger of being a subject to torture.<sup>89</sup> Due to the use of terminology, it could be argued that the given article works as an addition to the Refugee Convention of 1951. The article evidently uses the same idea borrowed from the Refugee Convention, but specifies that there has to be a “substantial” ground for believing that there is a danger for the individual where he/she would be in danger of torture which seems vague at first

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<sup>87</sup> Convention relating to the Status of Refugees, 28 July 1951. LNTS 189, adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Article 33

<sup>88</sup> *Ibid.*, Art 33 (2)

<sup>89</sup> United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 10 December 1984. LNTS 1465, Article 3

hand, however, that does not in itself encompass any specific situation in which the grounds are not substantial in nature.

Articles 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR)<sup>90</sup> also hint to the protection of right to life, the right not to be subjected to torture, cruel, inhuman or degrading treatment, which can in itself be interpreted for the application of the principle of non-refoulement. It can be interpreted in such a way that if a State decides to extradite a refugee, knowing that he/she will face prosecution back in the State of his/her departure, then it is subjecting the refugee to prosecution. Although in a court case, Articles 6 and 7 from the ICCPR will not be the primary source of law to look into, whether an interpretation can be made or not. However, it is important to mention of its existence and importance in the field of refugee law.

In order to establish a clarification, it is important to define the scope and application of the principle of non-refoulement. Even though the principle of non-refoulement has been created to protect refugees, its application has broadened. The courts that advocate for human rights have enlarged the scope of protection in order to regard different types of cases in which individuals can be endangered from their human rights being violated in situations of refoulement to their country of departure or another country. It is important to mention that, regardless of the way an individual or a group has entered a State, e.g., in an irregular manner or without any documentation to show the authorities of that State, in terms of application, due to the fact that the principle is primarily and mainly used to protect all individuals, the principle is being applied.

However, despite the intended focus of application of the principle of non-refoulement, its interpretations by the States can create various challenges. These given challenges may include disagreements in the midst of differences in interpretation of e.g., substantial risk to human rights violations, the balance between sovereignty of states, national security (border control) and the protection of individual human rights. It is important to note that there is no specific way to interpret the principle of non-refoulement. However, despite their interpretation of the principle of non-refoulement, the State parties to the given treaties are to uphold the protection of human rights. In that way, the principle will be upheld, and the different interpretations will not play a role in

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<sup>90</sup> International Covenant on Civil and Political Rights, New York, 16 December 1966. LNTS 999 [hereinafter ICCPR], Art 6 and 7

breaching human rights but would rather support individuals that are at risk of losing their lives or being tortured by their country of departure or another country that they are being extradited to.

When specifically examining the Member States of the European Union, it is important to point out the Common European Asylum System (CEAS) that provides standards for the treatment of refugees. The set of directives in the CEAS includes protection from refoulement. The Qualification Directive (Directive 2011/95/EU) has a specific Article, Article 21 for the protection from refoulement whose first paragraph states that Member States are to respect the principle of non-refoulement in compliance with international obligations.<sup>91</sup> Article 21 (2) states that Member States are allowed to refoule a refugee in a situation where there are reasonable grounds for considering him/her a danger to the national security of the Member State or if he/she has committed a particularly serious crime and constitutes a danger to that Member State.<sup>92</sup>

The Asylum Procedures Directive (Directive 2013/32/EU) of the CEAS refers to the principle of non-refoulement in situations of granting and withdrawing international protection. The given directive ensures that the principle of non-refoulement is particularly respected in situations of asylum procedure and applications examination. Article 38 (1) mentions the concept of a safe third country to which a refugee can be returned, and, in that, one of the possibilities upon return of the refugee to that country encompasses that that safe third country respects the principle of non-refoulement in accordance with the Geneva Convention.<sup>93</sup>

The Dublin Regulation (Regulation (EU) No 604/2013) sets out the criteria for determining which European Union Member State is responsible for examining refugee applications and potentially grant refugee status. The Dublin Regulation ensures that refugee applications are being processed only in one European Union Member State in order to ensure that refugees are not being sent back to states where they face a threat to their human rights. Article 3 of the Dublin Regulation mentions that the Member State in which a refugee applies for, should process the application.<sup>94</sup> The Dublin

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<sup>91</sup> Council Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted [2011] OJ L337/9, Art 21

<sup>92</sup> *Ibid.* Art. 21 (2)

<sup>93</sup> Council Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection [2013] OJ L180/60, Article 38

<sup>94</sup> Council Regulation (EU) 604/2013 of 26 June 2013 establishing criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person [2013] OJ L180, Art. 3



location during the time of travel in the Bulgarian territory and that he only found out that he had been situated on the Bulgarian-Romanian border at the time the trailer doors were opened and a border guard flashed a light on them and told them to get out.<sup>98</sup>

The Bulgarian government had argued that the applicant did not exhaust all the possible domestic legal remedies of the State, meaning that he did not submit a request for international protection in Bulgaria, basing it on Article 4 of the Bulgarian Refugee Act.<sup>99</sup> Article 4 of the Bulgarian Refugee Act states that a foreign national that has irregularly entered the territory of Bulgaria with the intention to request protection, is obliged to immediately present him/herself to the competent authorities and provide valid reasons to justify his/her entry in Bulgaria.<sup>100</sup> The government had further stated that the individual in question did not show any signs of intention to claim protection via the Bulgarian authorities and that the applicant was given the opportunity to exhaust all the legal remedies in Bulgaria.<sup>101</sup>

The applicant had claimed that he attempted to register his request for international protection, However, due to him being in detention, his requests failed to get forwarded to the National Refugee Agency, and, furthermore, he had not been allowed to get assistance from a lawyer, an interpreter, or a non-governmental organization who could have taken charge of his legal protection, but was returned to Turkey by the Bulgarian authorities.<sup>102</sup> According to the applicant, the Bulgarian authorities had given him documents in the Bulgarian language to sign, which he claimed that they have no validity to waive his request to international protection in Bulgaria due to the fact that he did not understand what was written in the documents.<sup>103</sup>

The Court dismissed the objections of the Bulgarian government on the matter. The Court also concluded that, since the applicant has expressed the fears of ill-treatment that he might suffer upon return to Turkey, the Bulgarian government did not take the necessary measures to examine the request for international protection, thus finding Bulgaria in violation of Articles 3 and 13 of the European Convention on Human Rights.<sup>104</sup> Article 3 of the Convention is about prohibition of

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<sup>98</sup> *Ibid.* , para 35

<sup>99</sup> *Ibid.* , para 89

<sup>100</sup> *Ibid.* , para 57

<sup>101</sup> *Ibid.* , para 90

<sup>102</sup> *Ibid.* , para 91

<sup>103</sup> *Ibid.* , para 92

<sup>104</sup> *Ibid.* , para 137

torture. Article 13 is about the right to effective remedy, which means that an individual who knows that his/her rights and freedoms are guaranteed by the European Convention on Human Rights have been violated even by the government authorities of the State, he/she is able to seek and obtain a remedy through the competent authority of that State.<sup>105</sup>

The case of *D v. Bulgaria* illustrates an example where the Bulgarian system has been built to protect the rights and freedoms of individuals; however, it shows the dysfunctionality in processing refugee applications. It is important to note that not only have the Bulgarian authorities not processed refugee applications, but, as a result of that, have managed to place an innocent refugee into a position of prosecution from their own State authorities. It is fair to mention and argue that the case encompasses a situation where Bulgaria aims to justify a breach of the European Convention on Human Rights by pointing out to its national legislation and its regulations in regard to the Bulgarian Refugee Act. It comes out as a source of failure to comply with international obligations on the basis of its own legislation.

Due to its nature of breach of the principle of non-refoulement by the Bulgarian Government, the case is specifically important and, furthermore, to point out the unofficial procedures of expulsion that are being conducted by groups and collectives in the State, that are being actively disregarded by the Bulgarian government. There are multiple reports which point out to the groups in question, but the government does not enforce any of its laws against them and it turns out as if they are rather protected by the government than questioned about their legality in regard to their activities. The point is that, even if it is not necessarily the government that is in breach of the principle of non-refoulement directly, it does not monitor activities of private groups that conduct such procedures unofficially.

In order to outline the connotation that national security has on the principle of non-refoulement, it is also important to examine another case, which is based on national security reasons. The following case is the Case of *Auad v. Bulgaria* in the European Court of Human Rights.<sup>106</sup>

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<sup>105</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 3 September 1950. LNTS 213, adopted by the Council of Europe, Article 13 [hereinafter ECHR]

<sup>106</sup> *Auad v Bulgaria* App no 46390/10 (ECtHR, 11 October 2011)

### 3.4. Case of Auad v. Bulgaria

In 2011, a stateless Palestinian from Lebanon was a refugee in Bulgaria. The Bulgarian authorities had planned to expel him to Lebanon on the grounds of national security. The reasoning behind the expulsion had been that the person, Ahmed Jamal Auad, had ties with Hamas and/or other terrorist groups which have been in opposition to the establishment of the Israeli government. Mr Auad had been caught trying to enter Greek territory from Bulgaria with official documentation issued to another person, thus resulting in the expulsion procedure by the Bulgarian authorities. Mr. Auad argued that the evidence supporting his expulsion from the state was falsified and that the expulsion would violate the principle of non-refoulement.<sup>107</sup>

The European Court of Human Rights held that Bulgaria had violated Article 13 of the European Convention on Human Rights, regarding the right to an effective remedy in time when a person's rights and freedoms can be violated.<sup>108</sup> Furthermore, Bulgaria was found responsible for violating Article 5 (1) of the Convention, regarding the right to liberty and security of an individual and the act of detention and unlawful arrest.<sup>109</sup> The Court had concluded that, if Bulgaria was to carry out the expulsion of Mr Auad, then it would be in violation of Article 3 prohibition of torture.<sup>110</sup>

The case of Auad v. Bulgaria indicates the lack of measures that the Bulgarian authorities should have taken. The court had made the decision without further investigation, not taking into account the appeal of Mr Auad, who had stated that the information regarding him is not true and should not set the ground for his expulsion. Fortunately, for him, the case had been brought to the European Court of Human Rights and Bulgaria had not violated Article 3 of the Convention. It can be argued that Bulgaria used national security as a shield for negligence in the procedure because the authorities did not carry out further investigation on the matter. More specifically, Bulgaria used Article 4 (4) of its Refugee Act, which states that international protection is no longer applicable in Bulgaria if the individual is viewed as a threat to national security or poses a serious threat to the society.<sup>111</sup> Justifying its actions with national security had not necessarily been the wrong move in

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<sup>107</sup> *Ibid.*

<sup>108</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 3 September 1950, Council of Europe, p. 13

<sup>109</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 3 September 1950, Council of Europe, p. 9

<sup>110</sup> Auad v Bulgaria App no 46390/10 (ECtHR, 11 October 2011)

<sup>111</sup> Закон за убежището и бежанците, чл. 4 (4)

this situation because it would have been enough if the established facts had been sufficient enough; however, that had not been the case.

### 3.5. Bulgarian Private Organizations in connection to the Principle of Non-Refoulement

By “private organizations” in this section refers to those organizations which are not part of the Bulgarian Government and do not enact government duties or act under any sort of government supervision. These are organizations that patrol the Bulgarian-Turkish border in order to catch migrants with the main aim to push them back to Turkish territory. That is the underlying aim of the organizations, however, the issue of lack of protection and neglect for human rights in those instances has been heavily disregarded by the Bulgarian authorities.

One of these groups is called Shipka Bulgarian National Movement, which is a paramilitary nationalist organization.<sup>112</sup> Biasedly, assuming that some, if not all of the migrants stepping foot in Bulgarian territory are terrorists, the organization has claimed to have created its own elite anti-terrorist squad that has been trained by professionals in the field of counterterrorism and security.<sup>113</sup> This raises a concern about the justifications to illegally detain migrants at the border and violate the non-refoulement principle, because the organization has been functioning by justifying its actions with being “helpful” to the Bulgarian authorities or simply by showing solidarity towards national security, which, in this context, disregards protecting individuals from refoulement.

The issue with the existence of these organizations, regardless of the number of acceptable affairs that they conduct, when the authorities decide to turn a blind eye to their illegal activities, there are bound to be violations of refugee human rights. As it has been indicated earlier that the Bulgarian authorities occasionally involve themselves in violating the principle of non-refoulement at its borders, it is not questionable if these sorts of organizations do the same. In fact, there are cases where migrants were returned to Turkish territory without any official government actions, but rather by private organizations. This means that the organizations themselves do not leave room for the government to at least uphold the principle of non-refoulement because the migrants are being

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<sup>112</sup> Nadya Stoyanova and Rositsa Dzhekova, ‘VIGILANTISM AGAINST ETHNIC MINORITIES AND MIGRANTS IN BULGARIA’ (LCCN 2019025761, Routledge 2019), Ch. 10, p. 169

<sup>113</sup> *Ibid.* , p. 170

pushed back without giving them a chance to file in for international protection, meaning that their cases and situations are not heard and their human rights are being endangered.

In 2016, Boyko Borisov, the Prime Minister of Bulgaria, even publicly and personally expressed gratitude towards the refugee-hunting vigilante groups.<sup>114</sup> One of the most known people to return migrants to Turkish territory is Dinko Valev, who actively “hunted” them and either reported them to the authorities or made them cross the border again. Dinko was offensive to the migrants by calling them terrorists, jihadists, criminals, etc. and reportedly by several news outlets in Bulgaria, violent towards them. He had filmed migrants that were caught several times and in one of the videos, ordered them to “Go back to Turkey”, saying “No Bulgaria for you”. The lack of government involvement and undertaking of the necessary precautions to ensure that migrants do not unofficially get returned from Bulgaria is completely unacceptable by international law as it is a neglect on granting human rights protection and in this case, specifically of upholding the principle of non-refoulement.

Is the Bulgarian government responsible for violating the principle of non-refoulement under the actions of these paramilitary groups? Most definitely. Due to the fact that a blind eye has been turned on issues regarding violations of the principle of non-refoulement, the Bulgarian authorities should be held responsible. Furthermore, the Bulgarian Government has been praising such organizations for their actions because they “help” the authorities by easing their work, thus there are no court cases about it internally yet.

The violation of the principle can be based on several different reasons. There is the government endorsement of such actions in the form of public statements of gratitude and a lack of prosecution which clearly means that Bulgaria has failed to uphold its international obligations. When the Bulgarian government is turning a blind eye to these organizations, it indirectly restricts the access of asylum seekers to its territory and, therefore, contradicts Article 14 of the Universal Declaration of Human Rights that states that: “Everyone has the right to seek and enjoy in other countries asylum from persecution.”<sup>115</sup> Furthermore, the government is indirectly not allowing some migrants to use this right, when they are being returned over the border. The Bulgarian Government has also

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<sup>114</sup> ‘PRESS RELEASE: Prosecutors in Sredets Find That Dinko Valev Incited Discrimination, Hatred and Violence against Refugees, Forwards the Case to the Sofia Regional Prosecutor’s Office’ *Bulgarian Helsinki Committee* (7 July 2016) <[www.bghelsinki.org/en/news/20160707-press-dinko-valev-en](http://www.bghelsinki.org/en/news/20160707-press-dinko-valev-en)> accessed 22 April 2024

<sup>115</sup> Universal Declaration of Human Rights, Paris, 10 December 1948 [hereinafter UDHR], Article 14 (1)

failed on its duty to protect by allowing non-state actors to enact border control duties without any government supervision, which further implies its accountability for breaching the principle of non-refoulement.

The Bulgarian criminal law does not prohibit detention of criminals. In fact, Article 17 (2) of the Bulgaria Criminal Act states that when a perpetrator is detained by a citizen, then that person has to be immediately handed over to the nearest authority and, if impossible, then the competent authorities must be immediately notified.<sup>116</sup> The law allows for citizen's arrest, which is by no means faulty in essence. However, this particular law can be subject to violations. Especially the part where Article 17 (1) states that it does not pose a threat to the public if the apprehension of the offender that has been found on the crime scene or immediately after having committed an act and the damages caused to the perpetrator were necessary for the capture and to the appropriate to the circumstances of the capture.<sup>117</sup>

Article 17 (1) in connection to the second paragraph is specifically dangerous for the apprehension of refugees by private parties because they are not being supervised by a competent authority midst their actions in detaining migrants with the permission of the Bulgarian Criminal Act for civilian arrests. In fact, that is the basis enabling this kind of action to be taken by private parties in the first place. It could be argued that this is the sole reason for human rights to be violated by private parties in terms of beatings, robbings, and even refoulement without procedure. Since there is no supervision, it is impossible for the competent authorities or even NGO's to prove that such illegal actions are not taking place before, during or after the apprehension of refugees (before arrival of the competent authorities), because the law permits that, if necessary for the given circumstances, damage to the perpetrator can be dealt, since it does not pose a threat to the public. Under these terms, when it comes to refoulement by third parties, due to the fact that there is no existence of a supervisory body over them, it is nearly impossible to prove that it has been done and specifically by whom it has been done.

The only reason why apprehension of refugees by third parties is legal in Bulgaria is because the act of crossing the border in such a way is illegal in itself. It is being treated as an illegal action as it should. However, the fact that the action is being held as illegal should not intervene with the human

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<sup>116</sup> Наказателен кодекс, чл. 17, (2)

<sup>117</sup> *Ibid.*, чл. 17 (1)

rights of the perpetrators of an illegal act. This is where there is a problem when, whether directly or indirectly, the government emphasizes on punishment and disregards the principle of non-refoulement for the sake of punishment.

It cannot be said that the issues that migrants face in Bulgaria are solely based on government neglect, but it is fair to claim that national security plays a huge role in these procedures. Additionally, it is to be argued that the Bulgarian Government has not adopted international law to its fullest potential. It does not play by the book, but rather around it. Having been held accountable for multiple cases, does not mean that the government will act accordingly in the light of international law. However, that does not exclude the fact that its judicial system is developing and abiding to the law is becoming something detrimental as the government is aiming to “Europeanize” and fall in tact with international law.

### 3.6. Bulgaria’s access to the Schengen Area

The issue of Bulgaria’s negotiation with the European Union regarding entering the Schengen area is in fact contradictory and currently an alarming topic. This topic clearly ties within the scope of migrant protection and accommodation, specifically with integration of migrants in Bulgaria that are returned from Austria. Thus, this makes the case here different because it concerns migration within the European Union. More specifically, the situation concerns Bulgaria’s entry into the Schengen area for a price of receiving migrants from Austria, which is not only raising public concerns in the political discourse, but certain contradictions to the principle of non-refoulement and the protection of human rights.

The number of migrants returned from Austria to Bulgaria is reported by the Council of Ministers of The Republic of Bulgaria on 2 January 2024 to be 193, among which 69 are from Syria, 24 from Afghanistan, 17 from Morocco, 1 from Iran, 1 from Turkey, and 1 stateless person.<sup>118</sup> Although there have been several claims that the minimum of migrants that are to arrive in Bulgaria is going

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<sup>118</sup> ‘Фалшивата новина: България се е съгласила да приеме 6000 сирийци и афганистанци в сделка по нови условия на Австрия за вдигане на вето за Шенген’ “Council of Ministers of the Republic of Bulgaria, 2 January 2024. <[www.gov.bg/bg/prestsentar/novini/falshivata-novina-balgariya-se-e-saglasila-da-prieme-6000-sirytsi-i-afganistantsi-v-sdelka-po-novi-usloviya-na-avstriya-za-vdigane-na-vetoto-za-shengen](http://www.gov.bg/bg/prestsentar/novini/falshivata-novina-balgariya-se-e-saglasila-da-prieme-6000-sirytsi-i-afganistantsi-v-sdelka-po-novi-usloviya-na-avstriya-za-vdigane-na-vetoto-za-shengen)> accessed 22 April 2024

to be higher. Thus, the Council of Ministers denies that the minimum of arrivals will be 6000 (which was claimed to be false information throughout the social media).<sup>119</sup>

Bulgaria's entry into the Schengen Zone, which only encompasses entry via air and maritime routes, means that Bulgaria has a greater responsibility under the Dublin Regulation as it is becoming part of the zone in which the free movement of asylum seekers is granted. This indicates to the fact that the Bulgarian Government should facilitate the efficiency in processing and registering asylum applications. In the application of the Dublin Regulation, the EU aims to ensure that Bulgaria is fitting in with the Schengen area standards which aim to maintain trust and security within the zone. By the wording of the Council of the European Union, the whole procedure is about the strengthening of the collective security of the European Union borders, which entices Bulgaria's commitment to the application of the Dublin Regulation in full, thus making Bulgaria responsible of taking back asylum seekers that it had been responsible in the first place.<sup>120</sup> The whole plan is about ensuring the message that asylum seekers cannot choose their country of destination and that they will be processed by the responsible State.<sup>121</sup>

Interestingly enough, if the commitments to the implementation of this plan goes as expected, Bulgaria will have the possibility to open its land borders as well.<sup>122</sup> The plan works as a precondition for Bulgaria to better its integration strategies. Also it shows to put out some weight in terms of refugee accommodation and processing from Austria.

In terms of refugee integration into Bulgaria, it is a major step for the European Union to invest in these procedures. This would enhance cooperation for the EU Member States and most importantly would enhance conformity with the Dublin Regulations. However, there is no data that shows how much the European Union, and specifically Austria, cooperate with the Bulgarian government in those issues and under those circumstances. In fact, this is where the issue arises for the Bulgarian government. Even though the government is taking upon the initiative to better its relations in terms of entering the Schengen area by land, the government is not in form to take upon this process as it has been established in the previous chapters.

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<sup>119</sup> *Ibid.*

<sup>120</sup> Commission, 'Council Decision on the full application of the Schengen acquis in the Republic of Bulgaria and Romania' CM 5950/23 (2023), p. 3

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*

Additionally, and most importantly, the hypocrisy arising from this case lies under the abilities of Bulgaria to undertake measures in processing refugee applications and accommodate refugees. More specifically, despite the criticisms of the Bulgarian Helsinki Committee and the European Union as well as other NGO's, Austria is willingly returning refugees to Bulgaria. There has not been any sort of communications in regard to the principle of non-refoulement. Especially when Bulgaria has been factually speaking portrayed (as it is) incapable of providing accommodation on a EU standard.

Because the case is new, there is no clear information about the accommodation tactics. However, it deserves criticism concerning the principle of non-refoulement. Even if the plan is for Bulgaria to integrate standards at the EU level, the fact is that, the Austrian government under these circumstances should be questioned, relating to the principle of non-refoulement. If refugees have been beaten, robbed and sent over the Bulgarian borders and their human rights have been infringed, then that should raise concerns at the EU level. In fact, the Austrian government is experimenting and setting the bar for Bulgaria to be able to join the Schengen area by land if it betters its habits. From this point, it even seems impossible for the Bulgarian Government to better its capabilities with or without any subsidies and supervision by the European Union for such a short period of time, as it is expected to happen in 2024.

Public dissatisfaction also plays a role and national interests have the possibility to interfere with the process of integration. The Bulgarian public is often dissatisfied with the Bulgarian political decisions. This often means that there will be a shift in voting for different and alternative political parties, which may become an issue for refugees.

One major example of a political party that has been on the rise in the Bulgarian parliament for the past four years and has gained up to 20 times of popularity since 2020 is the political party "Rebirth". The party advocates for right-wing politics and is anti-European Union. The party is strongly against migration, and this is where the issue arises from. The party's political leader, Kostadin Kostadinov has made few remarks on the issue of returning refugees from Austria into Bulgaria by which he has mentioned that if the political party comes into power, they will be extradited from Bulgaria, and there will be no migrants on Bulgarian territory. This would definitely be a breach of the principle of non-refoulement. Interestingly enough, the party leader has also

labeled the incoming refugees as mostly consisting of criminals, i.e., rapists, murderers, and drug dealers.<sup>123</sup>

Since such a political party exists in the Bulgarian parliament, it should be the EU's primary concern to have the refugees returned to the Bulgarian territory. The European Union should not only be critical of Bulgaria's breaches of the principle of non-refoulement, but should not refoule refugees to a territory (Bulgaria in question) which will infringe their human rights, especially in a situation where Bulgaria has been established to not treat refugees with dignity and in accordance with protecting their human rights. This issue has been heavily disregarded in the process of Bulgarian integration into the Schengen zone, and some light should be shined upon it, because it may turn out to be a disaster. It also is highly hypocritical that the European Union claims to protect human rights (as it does for the most part). However, it pressures Bulgaria to do the same, even though the EU itself has not internally created any risk-evaluation, especially in the sense of the non-refoulement principle.

### 3.7. Finland's Actions Under the Principle of Non-Refoulement

As previously established, Finland has the capabilities and the willingness to accommodate refugees that are in need of international protection. This entices its willingness and capabilities to uphold the principle of non-refoulement even under the most extreme circumstances. Finland has also been raising concerns about the principle of non-refoulement and has shown its standing in the international efforts to uphold human rights.

On 4 December 2024, the Minister of the Interior of Finland had raised major concerns in a letter regarding the potential breaches of the principle of non-refoulement. The letter stated that there is a major concern on the breaches of the principle of non-refoulement in regards to the closing of Finland's eastern border with Russia.<sup>124</sup> The letter also mentions that the Finnish Government is

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<sup>123</sup> Kostadin Kostadinov, 'Убиват България - не ни връщат просто мигранти, а изнасилвачи, убийци и наркопласьори' *Възраждане* (28 February 2024)

<https://vazrazhdane.bg/%D0%BA%D0%BE%D1%81%D1%82%D0%B0%D0%B4%D0%B8%D0%BD-%D0%BA%D0%BE%D1%81%D1%82%D0%B0%D0%B4%D0%B8%D0%BD%D0%BE%D0%B2-%D1%83%D0%B1%D0%B8%D0%B2%D0%B0%D1%82-%D0%B1%D1%8A%D0%BB%D0%B3%D0%B0%D1%80%D0%B8%D1%8F/>  
accessed 22 April 2024

<sup>124</sup> Dunja Mijatović, 'Letter to the Minister of Interior of Finland concerning the human rights of refugees, asylum seekers and migrants' (CommHR/DM/sf 034-2023, Council of Europe [2023]), p. 1

aware of the orchestrated migration allocated to Finland by Russia and agrees that this may place vulnerable people in human rights emergencies, while the burden is placed on the receiving State.<sup>125</sup> However, the letter continues by stating that the member states of the Council of Europe should still act in accordance with their human rights obligations even during the times of challenging situations at their borders.<sup>126</sup>

The Finnish constitution prohibits denial of admittance in situations where the subject could face death penalty, torture, persecution or other treatment violating human dignity upon return to such area.<sup>127</sup> It is important to note that despite the fact that the Finnish Government is in a situation facing difficult challenges at its eastern border, the government is still raising concerns about the principle of non-refoulement. This means that Finland is careful and committed to upholding its international obligations and does not compromise its written laws in any way.

### 3.8. Case of KKO:2019:26

This case is significant for the Finnish actions based on the principle of non-refoulement. The case concerns a citizen of Lithuania who has fled Turkey due to being sentenced to 10 years of imprisonment in Turkey.<sup>128</sup> In fact, he has been in the prison for about three years and has managed to escape the prison in 2016.<sup>129</sup> The Finnish Ministry of Justice had decided upon the individual's extradition, which was then challenged by the individual on the grounds that the person would be subjected to inhuman treatment and that the Turkish prisons have deficient prison conditions.<sup>130</sup> The Ministry of Justice had requested the Supreme Court to set out an opinion about the extradition of the individual. Consequently, the Supreme Court set out legal questions that whether the individual has an EU citizenship and may be extradited under those circumstances, and whether there had been a risk of inhuman and degrading treatment in the Turkish prison.<sup>131</sup>

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<https://rm.coe.int/letter-to-the-minister-of-interior-of-finland-concerning-the-human-rig/1680adab75>> accessed 22 April 2024

<sup>125</sup> *Ibid.*

<sup>126</sup> *Ibid.*

<sup>127</sup> Laki ulkomaalaislain muuttamisesta (1214/2013) § 9 [147]

<sup>128</sup> Tuomio 19 March 2019, KKO:2019: 26, Korkein oikeus <<https://www.finlex.fi/fi/oikeus/kko/kko/2019/20190026>> accessed 22 April 2024

<sup>129</sup> *Ibid.*

<sup>130</sup> *Ibid.*

<sup>131</sup> *Ibid.*

Since the individual had only been visiting Finland for work purposes, their EU citizenship could not protect the individual from extradition to Turkey.<sup>132</sup> The Supreme Court had also concluded that the humane treatment of the individual could not be granted upon extradition and by the Report of the European Committee against torture indicates that if the person was placed in prison, he/she would be at risk to face ill-treatment and inhumane conditions.<sup>133</sup> Therefore, there were no grounds by which extraditing the individual would have been a possibility.<sup>134</sup>

The case outlines the facts in question, this is, Finland has been careful with the decision-making in such situations. It has investigated the facts, which entice whether the individual could be facing serious consequences upon return to Turkey. Most importantly, the Finnish government acted in accordance with the principle of non-refoulement. Interestingly enough, the Finnish Ministry of Justice initially decided for the extradition of the individual. As for Turkey, there was no communication with regards to the prison conditions. Fortunately, the Finnish Supreme Court has functioned in accordance with Finland's international obligations and has decided to not extradite the individual.

### 3.9. Case of N.A. v. FINLAND

As the previous case concerned the national procedures of the Finnish Government, this case concerns the European Court of Human Rights. It is important, because it shows a violation by the Finnish Government and illustrates how the Finnish government could also be found at fault, although it is one of the best EU Member States to uphold human rights and specifically the principle of non-refoulement. The case of N.A. v. Finland concerns a matter in which the applicant N.A.'s father, had applied for international protection in Finland.<sup>135</sup> However, in 2016, the application was rejected by the Finnish Immigration Service which even ordered the expulsion of the individual back to Iraq.<sup>136</sup> Upon rejecting the decision of the Finnish Immigration Service to the Administrative Court, the Court had established that there are no true indicators that the individual would be at risk for his life due to his work history in Iraq.<sup>137</sup> After the appeal to the Administrative

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<sup>132</sup> *Ibid.*

<sup>133</sup> *Ibid.*

<sup>134</sup> *Ibid.*

<sup>135</sup> N.A. v Finland App no 25244/18 (ECtHR, 14 November 2019)

<sup>136</sup> *Ibid.*, para 14

<sup>137</sup> *Ibid.*, para 16

Court, the man requested a leave to the appeal and a stay on his removal from the Supreme Administrative Court,<sup>138</sup> with the consequence that the Supreme Administrative Court did not order a stay on removal and had refused the man's leave to appeal.<sup>139</sup> In 2017, the applicant had learned that her father had been killed in Iraq, thus submitting the photocopies and a Finnish translation of the death certificate, photocopies, and translations of the police reports.<sup>140</sup>

The Finnish Government argued that the applicant had returned to Iraq before lodging his appeal and requesting a stay on the execution of the Administrative Court's decision.<sup>141</sup> Due to the voluntary departure from Finland, the government claimed that it had not exposed him to ill-treatment, therefore, there had not been any verification upon his death being caused by a subsequent expulsion.<sup>142</sup> Finland also claimed that a Sending State can only be found responsible of the breaches of Articles 2 and 3 of the Convention (Right to life and Prohibition of torture) when the case does not concern a voluntary leave from the State and when the State has initiated and carried out expulsion.<sup>143</sup> The Government also argued that due to the voluntary departure by itself put an end to his victim status and that he himself has agreed that none of the Finnish agencies could be held liable or responsible if the individual has been killed.<sup>144</sup>

The applicant disagreed with the arguments of the government and argued that her father did not return to Iraq voluntarily and that he left as a result of execution of an enforceable expulsion order.<sup>145</sup> The further argument had been that if he did not cooperate with the authorities, he could have been at risk of being detained and thus her father had chosen to "voluntarily" return, rather than being returned by force.<sup>146</sup> The applicant also argued that the Finnish government is liable and responsible for the breaches of Articles 2 and 3 of the Convention due to the fact that it had issued an order for expulsion even though the situation of the individual was assessed prior to the decision.<sup>147</sup>

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<sup>138</sup> *Ibid.* , para 17

<sup>139</sup> *Ibid.* , para 18

<sup>140</sup> *Ibid.* , para 22

<sup>141</sup> *Ibid.* , para 45

<sup>142</sup> *Ibid.*

<sup>143</sup> *Ibid.*

<sup>144</sup> *Ibid.* , para 46

<sup>145</sup> *Ibid.* , para 48

<sup>146</sup> *Ibid.*

<sup>147</sup> *Ibid.* , para 49

The Court declared that Finland is liable and responsible for violating Articles 2 and 3 of the Convention.<sup>148</sup> The Court held that Finland has to pay the applicant EUR 20 000 as well as EUR 4 500 for the Court expenses along with the taxes on both sums.<sup>149</sup> The Court dismissed the rest of the applicant's claims.<sup>150</sup>

This case is specifically interesting, because there is no direct expulsion of the applicant's father in question. It is a fact that, despite the given circumstances, the departure from Finland was on a voluntary basis. Interestingly enough, the Finnish Immigration Service has filed the individual for expulsion even though the circumstances and the conditions in Iraq had been established. It is as if the Finnish Government had turned a blind eye to the situation in Iraq, and, therefore, decided to initiate an expulsion order.

It is completely wrong that the Finnish Immigration Services decided to expel the individual to Iraq even under the given circumstances. The claim that the individual "voluntarily" left the State further indicates the disregard by the Finnish government because the order for expulsion was already issued and the person had already been killed after arriving in Iraq. There could be many potential reasons for why the individual had left to Iraq. However, for security reasons, it may have just been the optimal choice to go without State supervision.

Due to the fact that the Finnish government did not carry out expulsion proceedings, the principle of non-refoulement has not been necessarily mentioned in this case. However, the principle in itself is a ground for the case, because it underlines the expulsion and, in the end, it would have been a breach of the principle. What is most important to note about this case is that the Finnish government began to violate the principle of non-refoulement by issuing an expulsion order even though the facts have shown that the individual could have faced serious harm to their health or death as he did in the end.

As regards the KKO:2019:26 case, an internal case, where the Finnish government was careful in making the decision after establishing whether it had been safe to expel the individual to Turkey, the case of *N.A. v. Finland* shows that, despite knowing of the consequences upon return of the individual, the Finnish government was not careful in making the decision and can be at fault in

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<sup>148</sup> *Ibid.*

<sup>149</sup> *Ibid.*

<sup>150</sup> *Ibid.*

situations. It could not be claimed that there is a bias on the fact that the first case involves an EU citizen and the second one involves an Iraqi citizen, thus favoring the case of the EU citizen in terms of granting protection from ill-treatment and death. Although there are no indicators as to why the second case has been heavily disregarded. The Finnish government could have acted differently in this case and could have granted temporary accommodation to the individual until the facts were finalized. However, the fact that the Finnish government decided to expel the individual in and of itself indicates that it was on its way to violate the principle of non-refoulement.

### 3.10. Finland's tightening of International Protection

Even though the Finnish Government found to be inclined to establish refugee status to those in need, it is only appropriate that it has its limits due to sustainability purposes. In other words, it is unsustainable for the Finnish Government to continue in a similar manner especially when it is dealing with issues such as hybrid warfare, caused by the Russian Federation. Despite the fact that Finland may be concerned about the expenses for maintaining a similar migratory process, it could be argued that the government is taking the correct steps to ensure that the migration process is as quick and efficient as possible.

The Ministry of the Interior of Finland has publicly proposed some provisions on the entries in the Government Programme.<sup>151</sup> The provisions would impose that the refugee status would be reduced from the current period of four years down to three years, which, by the statements of the Ministry of the Interior, would make it possible to carry out way more frequent assessments of whether international protection is needed.<sup>152</sup> The Ministry of the Interior claims that the principle of non-refoulement will not be violated and also claims that a residence permit on the basis of subsidiary protection could be refused if the foreign national is considered to endanger national security.<sup>153</sup>

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<sup>151</sup> 'Proposal to tighten the provisions on international protection sent out for comments' (Ministry of Interior, 20 February 2024

<<https://valtioneuvosto.fi/en/-/1410869/proposal-to-tighten-the-provisions-on-international-protection-sent-out-for-comments>> accessed 22 April 2024

<sup>152</sup> *Ibid.*

<sup>153</sup> *Ibid.*

This further shows that national security is a concern of the Finnish government and it shows the ability of the government to be able to balance both its national security and upholding its international obligations. The fact that the time periods are being shortened, means that the procedures will be faster, however, that does not make it any easier for the Finnish government. Considering the case of *N.A. v. Finland*, where a breach of international obligations has been done, it is important to note that the Finnish government has not been perfect with the previous time frame either. It is true that the timeframe has not played a role in that case as much, however, it is important to note that it is possible that the reduction in the time frame will definitely cause some issues in the government and have the potential to result in individuals' refoulement cases.

Due to the fact that the proposition may be the result of the recent change in government and it does contain concerns about the National Security of Finland, it can be argued that the decisions is mainly political. Therefore, it means that some international attention should be raised about the issues that may arise in terms of violating the principle of non-refoulement. The change may result in some serious breaches, and, yet again, there could be an outweigh by the national security over human rights. The issue is not truly alarming, considering the fact that Finland has a great record in the field of refugee law, and this might prevent the unnecessary amounts of individuals that arrive through the Finnish Russian border by illustrating that the system is tightened, thus discouraging arrival to Finnish territory. The effects of this could only be speculative due to the point of development of this new proposition. However, it should be kept in mind that this could lead to breaches on the principle of non-refoulement. But a more detailed discussion on hybrid warfare is displayed in Chapter IV.

### 3.11. The Non-Refoulement Principle in Comparison between Bulgaria and Finland

Upon examining the cases of *D v. Bulgaria*, where a Turkish journalist had been extradited from Bulgaria and *N.A. v. Finland*, in which an Iraqi national was "forced" to return to Iraq, where he died, there is a clear distinction in the procedures done by the Bulgarian and Finnish Government. The Bulgarian procedure did not include the translation of the documents that had to be signed by the individual, thus making them void in the eyes of the Court. This as a difference to the case in Finland, the Iraqi national had been fully aware of the circumstances and the procedures done by the Finnish Government at all times. Thus, there had not been anything hidden by the individual in terms of procedure.

Even though the Iraqi citizen left Finnish territory and had died upon his return to Iraq, it does not mean that the Finnish Immigration Service was necessarily wrong in the initial assumption that there were no threats that the person could have faced. Furthermore, the Finnish case was on its way to breach the principle of non-refoulement at first hand. However the procedures were not finalized, and perhaps the individual could have been informed that the procedure is not finalized and that the case could be brought to a higher body to decide. Even though in the case of *D v Bulgaria*, the individual was not killed as an aftermath, the case was clearcut in terms of breaches of exposing him to inhumane treatment.

As a difference to the Finnish ones in the case KKO:2019:26, The Bulgarian authorities did not investigate the situation in the Turkish prisons. Finland did conduct a search on the prison conditions in Turkey and concluded that the individual could have been exposed to ill-treatment and terrible prison conditions. If the Finnish Government were to extradite the individual to Turkey, then it would have violated the principle of non-refoulement almost in the same way that the Bulgarian Government did. Almost similar due to the fact that the Bulgarian authorities did not take the initiative to investigate the conditions in Turkey and then extradited the individual without any reasons.

Regarding the expulsion done by private parties. Expulsion is only done by the authorities in Finland and there are no private entities such as groups or individuals that would forcibly detain refugees and push them back to the State they had come from. Geographically, this occurrence happens naturally in Bulgaria because of the amounts of migrant flows arriving through Turkey. However, this does not make it permissible under Bulgaria's international obligations, and something that the Bulgarian Government should invest in, is the enhancement of the authorities' capabilities to conduct such procedures (as it should) and prohibit private entities of doing so because it is often breaching the principle of non-refoulement due to the fact that there is no processing of paperwork and evaluation of the situations of these individuals. They could be facing serious consequences and the government is fully unaware of it. The Finnish government has been functioning accordingly under its international obligations and, despite of its circumstances, Bulgaria should follow the same model.

So is a State to be held accountable for the pushbacks done by private parties? National security would be a fair reason for the expulsion of refugees in such situations where they are not at risk of facing torture, inhumane treatment or death. This should equally apply to both States, Bulgaria and Finland. However, the difference with Bulgaria is that it indirectly allows private parties to expel refugees under the radar. And, if there is any reason to claim that the procedures should be tightened, the international community and specifically the European Union should shine light on the fact that things are happening under the radar. Additionally, the main difference in the Bulgarian and Finnish procedures, even if there is a violation of the principle of non-refoulement, is that the Finnish authorities do investigate the issues thoroughly, meaning that they are not evading responsibility, whereas the Bulgarian Government evades responsibility, and the lack of investigation and neglect of third-party action causes it to violate its international obligations and most definitely violate the principle of non-refoulement, thus having to be held accountable for the pushbacks done by private parties.

## **Chapter IV - Challenges of Hybrid Warfare**

Oftentimes migration might seem like an unexpected occurrence and most of the time it is. An unexpected occurrence means that refugees are pursuing their trip away from terror on their own initiative and that there is no higher body, such as a government or an organization, planning the migration process. People are moving because of the conditions back in their country of departure where they may be facing unfair trial, prosecution, torture, or death. In this case, it is natural as the people are migrating by their own will and purposes. This chapter enhances the topic of systemic migration as it is relevant to the determination of refugee status and does have an impact on it. This kind of migration can be also referred to as migration arising from hybrid warfare. Chapter IV as the final chapter, in relation to the previous chapters, refers to national security and its application under the circumstances of hybrid warfare and is a detrimental addition to the previous chapters as national security plays a vital role in the recently emerged issue of hybrid warfare pointing at the European Union.

In 2020, a hybrid warfare was launched by the Belarusian Government, which brought migrants from the Middle East to Latvia, Lithuania, and Poland through the territory of Belarus where they had access to Europe.<sup>154</sup> Since the migrants are not allowed to enter through the eastern border of the European Union and were not allowed to enter back into Belarus, they were being left in a so-called gray zone in which they face humanitarian concerns, such as hunger and lack of medical care.<sup>155</sup> Here is where the issue lies, because people are being baited by the Belarusian Government with the perception that they will enter the European Union through the territory, while they end up in these in-between borders gray areas that leave them in worse conditions than they would have been in before leaving Belarus.

A report by a Special Rapporteur on the human rights of migrants, who has traveled to Belarus to investigate the situation of the migrant flow concluded that both Poland and Belarus have denied breaching human rights. However, the testimonies gathered by the Special Rapporteur established

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<sup>154</sup> Natalia Barszcz, 'Exercising Shared Competence on the EU's External Borders of Poland, Latvia, and Lithuania Amidst the Recently Increased Irregular Migration on the Border with Belarus' (European Horizons University of Amsterdam 2022), Vol. 1, Issue 1, p. 91.

[www.europeanhorizonsamsterdam.org/files/ugd/79a695\\_dbd76026a17f488ea00cae358bfebe8d.pdf#page=94](http://www.europeanhorizonsamsterdam.org/files/ugd/79a695_dbd76026a17f488ea00cae358bfebe8d.pdf#page=94)  
accessed 22 April 2024

<sup>155</sup> *Ibid.*, p. 92

that migrants were pushed back by the border guards of both States by threatening them with weapons, using attack dogs, and intimidation.<sup>156</sup> The situation contains various breaches of human rights, and it is important to acknowledge that such breaches from the side of Poland are not conforming to the standards of the European Union on the treatment of migrants. It is important to note that the situation on the Polish-Belarusian border from the side of Poland is not clear either, because the state aims to defend itself from irregular migration and counter the Belarusian intended hybrid attacks instead of settling down with them. This does not necessarily mean that Poland is unable to process migrants and that it is not willing to do so, but rather that Poland is not willing to comply with the issue initiated by Belarus in the first place.

So, could it be said that Poland is in breach of human rights? It can be argued that Poland is not directly in breach of human rights as its main objective in this situation is to counter Belarus' doings. However, even though Poland is rightfully defending its borders as a sovereign State and in fact, presents to Belarus that its tactics of hybrid warfare are not going to work as planned, the ECtHR has already managed to take the position that the Polish Border guard has ignored asylum applications which holds the government liable for a violation of the European Convention on Human Rights.<sup>157</sup> On the other hand, Poland is defending its borders at which cost? Even though there is a breach of human rights, it does not cover up the fact that there are ongoing violations that are to be addressed.

The issue is that the easiest way for Poland to deal with the issue is to push the migrants back into the so-called gray zone. Opening the borders would mean that they would have to be processed by the State authorities which would lead to establishing refugee status. In this situation, Poland will not be able to send the migrants back to Belarus or their initial state of departure due to the principle of non-refoulement, of course depending on the circumstances of each individual case. In order to ensure that Poland is not in breach of its regional obligations, and, therefore, not to further be in breach of international obligations, as a Member State of the European Union it could process applications in an accelerated manner or at the gray zone as it has been suggested in Article 31 (8)

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<sup>156</sup> Felipe González Morales, 'Visit to Belarus: Report of the Special Rapporteur on the human rights of migrants' (A/HRC/53/26/Add. 2, United Nations General Assembly 2023), p. 8

<sup>157</sup> Maciej Grześkowiak, 'The "Guardian of the Treaties" is No More? The European Commission and the 2021 Humanitarian Crisis on Poland–Belarus Border' *Refugee Survey Quarterly* [2023], Volume 42, Issue 1 p. 88 <<https://doi.org/10.1093/rsq/hdac025>> accessed 22 April 2024

(h) of the Procedures Directive<sup>158</sup>, which states that Member States may provide an accelerated examination procedure of an application for international protection when the applicant has entered the territory unlawfully, has prolonged his/her stay or has not informed the authorities about their stay in the territory of that Member State.<sup>159</sup> Although it is not a form of counter-measure, the accelerated procedure still guarantees that applications are processed and the merits are considered.<sup>160</sup> Thus, it does save time for processing since it is accelerated. However, it can be further argued that Poland will be the only “losing” side of these hybrid attacks for having to conduct processes on applications of illegal migrants crossing its borders.

Is it worth it? For the sake of circumventing death, and inhumane and torturous conditions, it is worth it for Poland to take a humanitarian approach and process the migrants. That would be the obvious answer. However, it is important to look at the situation from a critical standpoint and acknowledge that Belarus is knowledgeable of the existing tolerance of the European Union that arises from the aim to protect human rights as much as possible and that Belarus uses this as an advantage to strategically create a crisis in not only Poland but the European Union through systemic migration. It is more than evident that Belarus is aware of this, therefore, in 2021, the European Union and Poland accused President Alexander Lukashenko of purposely encouraging thousands of migrants to enter the European Union illegally.<sup>161</sup>

It is fair to mention that systemic migration is a relatively new form of migration that has been rising in relevancy in the past 4 years. It is certainly not surprising that Russia and Belarus are attempting to destabilize the economy of the European Union as much as possible by conducting these hybrid warfare. The situation of Poland and Belarus is connected to the hybrid attacks launched at Finland and Bulgaria as it is an issue for the European Union and the case of Poland paves the way for hybrid warfare in both Finland and Bulgaria, although not necessarily setting the right example.

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<sup>158</sup> *Ibid.*

<sup>159</sup> Council Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection [2013] OJ L180/60, Art. 31 (8) (h)

<sup>160</sup> Maciej Grześkowiak, ‘The “Guardian of the Treaties” is No More? The European Commission and the 2021 Humanitarian Crisis on Poland–Belarus Border’ *Refugee Survey Quarterly* [2023], Volume 42, Issue 1 p. 88 <<https://doi.org/10.1093/rsq/hdac025>> accessed 22 April 2024

<sup>161</sup> Mukesh Shankar Bharti, Shreesh Kumar Pathak & Aakriti Mathur, ‘Belarusian - Polish Border: The Diplomacy of Cross Border Migration’ (Transnational Press 2023), p. 140 <<https://bordercrossing.uk/bc/article/view/2836/1599>> accessed 22 April 2024

## 4.1. Hybrid Attacks in Finland

As hybrid attacks happen to be a common strategic occurrence in the European Union, Finland is not to be taken out of the equation as it is one of the countries that borders Russia and is bound to face consequences of these actions in a similar manner as Latvia, Lithuania, Poland and even Estonia. Recently in 2023, Finland has faced a new set of challenges regarding migration and that happens to be the outcome of these hybrid attacks.

In November of 2023, the Finnish region of Salla, bordering Russia, received a group of 35 migrants from the Russian side with bicycles and scooters. The Finnish border guard, upon conducting checks on the individuals, had established that they were from Syria, Afghanistan, and Iraq. None of the individuals had any ties to Russia in terms of nationality or citizenship.<sup>162</sup>

Unfortunately, there is no solid evidence supporting that Russia has been actively conducting hybrid attacks pointing at Finland, but that does not exclude the factors in play. Them being that none of the migrants were Russian and that they had arrived through the border with bicycles and scooters in the middle of November. This leads to the presumption that the bicycles and scooters have been given to the migrants, rather than them having acquired them by other means.

On 14 December 2023, the Finnish border guards had accounted for 93 individuals who crossed the border again with bicycles. Of them, 10 were women, 2 were children, and the rest were men. The information shows that the individuals were from Somalia, Syria, and India.<sup>163</sup> It is interesting that the same factors come into play in this situation similar to November, where the migrants have arrived with bicycles and that they do not have a Russian nationality.

On the next day, 15.12.2023, 84 migrants had similarly crossed the borders. Again none of them had any ties to Russia and they had all arrived on bicycles. The migrants were from Syria, Somalia, and

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<sup>162</sup> 'SALLAN RAJANYLITYSPAIKALLE SAAPUI 35 TURVAPAIKANHAKIJAA' (Border Guard, 20 November 2023) <<https://raja.fi/-/sallan-rajanylityspaikalle-saapui-35-turvapaikanhakijaa>> accessed 22 April 2024

<sup>163</sup> 'NIIRALAN RAJANYLITYSPAIKALLE SAAPUI 93 TURVAPAIKANHAKIJAA' (Border Guard, 14 December 2023) <<https://raja.fi/-/niiralan-rajanylityspaikalle-saapui-93-turvapaikanhakijaa>> accessed 22 April 2024

India.<sup>164</sup> The number of migrants is irregular during the winter period, especially in those parts of Finland. However, unlike Poland, Finland did process the migrants and did not push them back to Russia or into the so-called gray zone. The Finnish Immigration Service has mentioned that they had actively provided services for migrants who arrive from the Eastern border in the same way that migrants arrive from other areas and that asylum seekers had the right to asylum procedures in Finland, and that is the reason why it processed applications.<sup>165</sup>

Although the migrants that enter Polish territory are still pushed back to the gray zone, Finland has a different approach to the situation. Refugees are not given the right to procedure at the Finnish-Russian border.<sup>166</sup> This means that procedures are only limited to the Finnish-Russian border. If individuals have managed to cross the border either by air or sea, then the Finnish government has allowed for procedures<sup>167</sup> which means that the Finnish government has limitedly took the necessary action and allows room for an accelerated processing of applications which conforms with Article 31 (8) (h) of the Procedures Directive.<sup>168</sup> However, this does not mean that refugee status is granted to everyone. In addition to the air and sea border crossing, Finland has declared that the air and water-ways are going to be closed as well from 15 April 2024.<sup>169</sup>

Finland has aimed to act accordingly to its European and international obligations during hybrid warfare. In terms of the closing of air and sea borders, Finland has taken such a measure, especially by closing the sea border due to the changes in temperature, which means that more individuals will be traveling through sea.<sup>170</sup> However, the Finnish government is not allowing for processing of refugee applications after 15 April 2024, because it could endanger refugees seeking asylum both by monetary exploitation, and it could risk their lives.<sup>171</sup>

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<sup>164</sup> ‘NIIRALAN KANSAINVÄLISELLÄ RAJANYLITYSPAIKALLA HAKI TURVAPAIKKA 84 HENKILÖÄ’ (Border Guard, 15 December 2023)

<<https://raja.fi/-/niiralan-kansainvalisella-rajanylityspaikalla-haki-turvapaikka-84-henkiloa>> accessed 22 April 2024

<sup>165</sup> ‘Usein kysytyt kysymykset Suomen itärajan tilanteesta’ (Finnish Immigration Service)

<<https://migri.fi/ukk-itarajan-tilanne#itaraja>> accessed 22 April 2024

<sup>166</sup> ‘Valtioneuvoston päätös SM/2023/27’ (Valtioneuvosto, 14 December 2023)

<<https://valtioneuvosto.fi/paatokset/paatos?decisionId=491>> accessed 22 April 2024

<sup>167</sup> ‘Itärajan tilanne: Miten turvataan ihmisten oikeus hakea kansainvälistä suojelua’ (Ministry of Interior, 15 December 2023) <<https://intermin.fi/ajankohtaista/itarajan-tilanne>> accessed 22 April 2024

<sup>168</sup> Council Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection [2013] OJ L180/60, Art. 31 (8) (h)

<sup>169</sup> ‘Itärajan tilanne: Miten turvataan ihmisten oikeus hakea kansainvälistä suojelua’ (Ministry of Interior, 15 December 2023) <<https://intermin.fi/ajankohtaista/itarajan-tilanne>> accessed 22 April 2024

<sup>170</sup> *Ibid.*

<sup>171</sup> *Ibid.*

As States have the responsibility to protect individuals from violation of their human rights, since Finland is closing its border by sea, it is preventing accidents with the loss of lives. If Finland was to allow border crossing by sea and people would face death in the process of doing so, Finland could be found liable for not protecting the right to life which by Article 2 (1) of the European Convention on Human Rights states that the right to life is to be protected by law.<sup>172</sup> Therefore, by closing its borders by sea, Finland is protecting these individuals' right to life, since it minimizes the amount of individuals which are planning to take that route. Additionally, Article 4 of the EU Regulation 2016/399 encourages Member States to approach their migration policies by prioritizing fundamental human rights.<sup>173</sup> In this case, Finland is undoubtedly approaching its migration policies with the prioritization of the right to life.

Ultimately, the question is about access to the European Union in order to have an accepted refugee status, rather than access to a safe territory where a refugee status could be accepted. In this instance, Russia is not necessarily a dangerous territory for refugees. It does not mean that Russia is going to accept refugee applications due to the fact that human rights do not have the same connotation as they do in the European Union, but Russia has already accepted these individuals within its territory, and without any bias, it could be said that Russia is not a misery in terms of living. Russia also has the capabilities to accommodate and process migrants. According to the Russian Law on refugees, Article 1 (4) refers to Russia having a place of temporary maintenance, which is a place for an individual seeking recognition as a refugee to temporarily stay<sup>174</sup>. Furthermore Article 4 (2) of the Russian Law on refugees, states that a person who applies for the recognition as a refugee is a person who is not a citizen of the Russian Federation.<sup>175</sup> Therefore, according to Russian national law, it does have a system which enables applications for refugee status as well as accommodation of these individuals. Thus, Finland having blocked migrants at its borders would legally speaking mean that Russia should provide them with an adequate application procedure.

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<sup>172</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 3 September 1950, Council of Europe, Article 2 (6)

<sup>173</sup> Council Regulation (EU) 2016/399 of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) [2016] OJ L77/1, Art. 4

<sup>174</sup> Law of the Russian Federation on Refugees, No. 4528-1, 19 February 1993 (Russian Visa Services, 19 February 1993) (with the Amendments and Additions of June 28, 1997, July 21, 1998, August 7, November 7, 2000, June 30, 2003, June 29, August 22, 2004), Article 1 (4)

<sup>175</sup> *Ibid.*, Art 4 (2)

There are many arguments that would support Russia's safety for migrants' rights, but the question is about Finland's responsibility. Since Finland had decided to periodically take responsibility for processing refugee applications, its options would be to continue in a similar manner. However, the State is not obliged to do so, specifically, because it is the product of hybrid warfare and because, as mentioned above, Finland aims to protect the right to life by closing its sea border. Thus, the Polish approach would not be appropriate under these circumstances because as the ECtHR has already established, the Polish approach causes breaches of human rights. Thus, Finland's actions can be viewed as rather deflection tactics than counter-measures as opposed to the Polish approach.

Finland has worked on closing its Eastern border because of the out-of-hand migrant situation. The Finnish State Council had decided to close the Eastern border as well as prohibit granting international protection to refugees that have crossed in from Russia starting from 30 November 2023. According to the State Council, after the given date, such applications are not going to be processed and the applications for international protection will be processed only for refugees that arrive by air as well as sea.<sup>176</sup> On 11.2.2024, the Finnish State Council decided that until 11.2.2024, the Eastern border will be closed. However, these decisions are temporary.<sup>177</sup>

The intentions of the Finnish government in dealing with this issue stretch further than the aforementioned protection of human rights. The borders are being temporarily closed and access to international protection is not necessarily granted, since the government authorities are still processing applications, however, for the most part, the applications are being rejected and the individuals are being blocked at the border entry points and practically sent back to their country of departure. The only way that Finland can protect itself from these hybrid attacks is by closing the borders and even that is partially a temporary measure. Therefore, in addition to the intentions of protecting human rights, the Finnish Ministry of Interior also mentions that the influx of migration is causing and bringing disproportionate crime to the country.<sup>178</sup> Furthermore, the Ministry of Interior has mentioned that closing these borders is a measure which is inevitable in order to protect the national security of Finland.<sup>179</sup>

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<sup>176</sup> 'Koko Suomen itäraja suljetaan' (Valtioneuvosto, 29 November 2023)

<https://valtioneuvosto.fi/-/1410869/koko-suomen-itaraja-suljetaan> accessed 22 April 2024

<sup>177</sup> 'Itärajan tilanne' (Ministry of Interior, 2023 <<https://intermin.fi/ajankohtaista/itarajan-tilanne>> accessed 22 April 2024

<sup>178</sup> 'Koko Suomen itäraja suljetaan uudelleen' (Ministry of Interior, 14 December 2023)

<<https://intermin.fi/-/koko-suomen-itaraja-suljetaan-uudelleen>> accessed 22 April 2024

<sup>179</sup> 'Itärajan tilanne: Millaisin keinoin Suomi reagoi?' (Ministry of Interior, 4 April 2024)

<<https://intermin.fi/ajankohtaista/itarajan-tilanne>> accessed 22 April 2024

In this case Finland is using its national law, in order to protect its national security. Article 9 (148) (7) of the Finnish Aliens Act mentions that a migrant may be returned in case he/she has crossed the Finnish border when it has been closed.<sup>180</sup> This is an essential measure derived from the Finnish national law to ensure that national security is protected. As mentioned above, since the Finnish Ministry of Interior views the influx of migration to bring and cause disproportionate crime to the country, the laws on national security may be used accordingly as it is. Since the concept of national security has not been further specified in the Finnish law, it has allowed room for flexibility around it. In this instance Article 9 (148) (7) talks about extradition after crossing a closed border. However, in this situation Finland is closing its borders and thus returning the refugees already at the border. But, in a situation where illegal migrants have crossed the closed border, this law will apply accordingly. Furthermore, in relation to national security, the Finnish Aliens Act enables Finland to invoke Article 9, (149) (4) which states that a migrant who by other reasons is suspected of engaging in actions that endanger the national security of Finland, may be extradited.<sup>181</sup> This provision of the Act also applies as Finland is suspecting the high influx of refugees to endanger national security as they are highly likely to bring disproportionate crime, therefore, endangering the Finnish national security.

In fact, Bill Frelick's argument presented in Chapter I of the thesis, in terms of national security, that governments tend to view migrants as a threat to the public order and security when they arrive as a result of a large-scale irregular migration holds to be true.<sup>182</sup> Finland is a prime example as it mentions that the large-scale irregular migration is threatening the national security of Finland. This is why hybrid warfare is regarded as an issue of national security.

As Finland is part of the Convention and Protocol Relating to the Status of Refugees, the situation is not limited to the internal actions of the State but rather extended to an international level because it is part of the Convention. Article 31 of the Convention Relating to the Status of Refugees states that refugees who come directly from a territory where their life or freedom was threatened, should not be returned there by the contracting state.<sup>183</sup> In this context, Russia is the State that the refugees have

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<sup>180</sup> Ulkomaalaislaki (2004/301) § 9 (148) (7)

<sup>181</sup> *Ibid.*, § 9 (149) (4)

<sup>182</sup> Bill Frelick, *Refugees Worldwide: Regional Issues* (Praeger 2012), Volume: 2, p. 275

<sup>183</sup> Convention relating to the Status of Refugees, 28 July 1951, adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, p. 29

been arriving from which for Finland means that Russia does not pose a threat to the refugees in terms of their life or freedom. As a matter of fact, it should not be of any concern to Finland. The refugees are not directly coming from the country of their departure which also means that Finland is able to return them to Russia and not have to deal with processing refugee applications. Additionally, in terms of international obligations, as previously mentioned, Russia does have a system for processing refugees and establishing refugee status, therefore, if measures to return refugees to Russia are taken, then Finland would legally speaking not be breaching Article 31 of the Convention Relating to the Status of Refugees, which states that refugees who come directly from a territory where their life or freedom was threatened, should not be returned there by the contracting State.<sup>184</sup>

An orchestrated hybrid attack can cause a crisis in the target country. The field of hybrid warfare is relatively new, therefore, it is difficult to accustom the norms of international law as well as the Convention and Protocol Relating to the Status of Refugees. It is difficult to do so, especially regarding Article 31 of the Convention where it has been clearly stated that

*“The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming **directly** from a territory where their life or freedom was threatened...”*<sup>185</sup>

There is no specification to the word “directly” for such a case, because, in this scenario, the refugees are arriving through Russia. That would imply that Russia is the State that refugees come from directly. By this logic, if they are sent to Russia, then Finland should not be held responsible for acting against the Convention. However, this does show that International Refugee Law has gaps in it.

In the light of European Union law, as a manipulative approach, hybrid warfare partially challenges the considerations of the Common European Asylum System. Specifically, Article 3 (1) of the Dublin regulation on the accessing of procedures for examining applications for international protection states that Member States are to examine any applications for international protection on

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<sup>184</sup> Convention relating to the Status of Refugees, 28 July 1951, adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Article 31

<sup>185</sup> *Ibid.*

its territory or on the border and transit zones.<sup>186</sup> The Dublin Regulation has been challenged by Russia, since it is sending migrants on a large scale. In this case, Finland is facing disproportionate responsibilities in regard to the Dublin regulation, which means that, although the regulation requires Finland to examine applications, it falls short because the amounts are disproportionate.

In terms of effects on human rights, despite of Finland's aim to protect the right to life by closing its sea-borders, if Finland was to process refugee applications, then hybrid warfare and more specifically the sending of migrants on a larger scale could bring Finland to breach its international obligations, specifically Article 31 (1) of the 1951 Convention relating to the Status of Refugees, which states that Contracting States shall not send refugees back to a state where their life or freedom was threatened.<sup>187</sup> It could bring Finland to a breach of the principle of non-refoulement if the refugees are sent back to the country they come from initially due to the mistakes resulting from mass processing of applications. However, in the light of Article 31 (2), which states that Contracting States shall apply restriction on movement of refugees until their refugee status has been confirmed in that State or in another country,<sup>188</sup> As of 15 March 2024, the Ministry of Interior of Finland has proposed changes in legislation regarding the procedures conducted by the Finnish government in terms of refugee applications. The proposition states that in the situations of hybrid warfare, migrants would be blocked off at the Finnish borders and would be redirected to a State which grants the processing of refugee applications, which would not have an effect on the processing of applications for international protection in other instances.<sup>189</sup> This concrete change in legislation would conform with Article 31 (2), thus being a measure which in regards to human rights would protect Finland from breaching the principle of non-refoulement in a situation of hybrid warfare.

As the Dublin regulation and the Refugee Convention of 1951 are not consistent with situations of hybrid warfare, it is to be claimed that Finland's approach to blocking migrants at its borders, not only with the aim of protecting the human right to life during hybrid warfare situations, but also with protecting its national security during a large influx of migrants, is the legally correct measures

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<sup>186</sup> Council Regulation (EU) 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person [2013] OJ L180, Art 3 (1)

<sup>187</sup> Convention relating to the Status of Refugees, 28 July 1951, adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Article 31 (1)

<sup>188</sup> *Ibid.*, Art 31 (2)

<sup>189</sup> 'Lakiluonnos välineellistetyin maahantulon torjumiseksi lausunnolle' (Ministry of Interior, 15 March 2024) <<https://intermin.fi/-/lakiluonnos-valineellistetyin-maahantulon-torjumiseksi-lausunnolle>> accessed 22 April 2024

to be taken, since international human rights law, international law and the Common European Asylum System are not developed enough to direct State possibilities during hybrid warfare. The Polish approach to returning migrants to Belarus, leaving them in gray zones, does not fall close to the measures taken by the Finnish government and, seemingly, the intentions of the Polish Government are not based on protecting human rights, but rather only its national security.

## 4.2. Hybrid Attacks in Bulgaria

The Republic of Bulgaria does not fall further from the issue of hybrid warfare even though, most recently, it has been conducted by Russia and Belarus. The state has its own problems in regard to refugees, but the approach is often different and not so humanitarian-focused as in the cases of Finland and Poland. In fact, the question of hybrid warfare targeted toward the southeastern border had been discussed way earlier than the situation of Russia and Belarus, though not framed with the same terminology. The main factor that plays a role in this issue is migrants fleeing to the Greek islands from Turkey. The issue is that Bulgaria has not been taken into account in the deals that have been conducted by the European Union.

As previously established in Chapter II, Bulgaria is one of the portals for migration to the European Union. The situation happens to be theoretically partially different, but practically similar in the case of Bulgaria, because it encompasses the EU-Turkey deal which is a deal signed between the European Union and Turkey that in fact gave Turkey the upper hand and the leading role in the matter concerning the European refugee crisis.<sup>190</sup> The issue with the deal is that it solely encompasses the return of migrants from the Greek islands to Turkey and does not have a connotation on the effects that could take place on the Bulgarian borders. The most logical reasoning for this is that the EU-Turkey deal had been signed solely because it is difficult for Greece to protect its sea borders.

However, this does not mean that the issue is not to be classified as hybrid warfare, even if there is no direct incentive for the Turkish Government to allow migrants to cross the borders of the

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<sup>190</sup> Gerda Heck and Sabine Hess, 'Tracing the Effects of the EU-Turkey Deal, The Momentum of the Multi-layered Turkish Border Regime' (Journal for Critical Migration and Border Regime Studies 2017), Vol. 3, Issue 2, p. 37 <<https://movements-journal.org/issues/05.turkey/movements.3-2.turkey-migration-regime-full.pdf#page=36>> accessed 22 April 2024

European Union. In fact, on 27 February 2020, the government of Turkey declared that it would not stop Syrian migrants from entering the territory of the European Union.<sup>191</sup> Previously, Turkish President Erdogan had expressed in his statements regarding the issue that Turkey can easily open the Bulgarian and Greek borders anytime and put migrants in buses, unless a deal is made.<sup>192</sup> The repeated use of threats about Turkey holding Syrian migrants and it being able to open the borders to the European Union was even used as leverage by President Erdogan in order to accomplish the given deal.<sup>193</sup>

The only difference in the situation between Turkey and Bulgaria in comparison to the Belarusian and Russian hybrid migration is that Turkey has aimed to use migrants as a tool to benefit its economy. As for the Russian and Belarusian orchestrated migration, the case of irregular migration in the Balkans is the same, orchestrated. Furthermore in regards to hybrid warfare, it can be claimed that Turkey does conduct it with the means of threatening not only Bulgaria or Greece, but the European Union with letting in migrants through the borders which ultimately results in a situation of crisis. Ioannis Kotoulas and Wolfgang Pusztaï argue this issue in their article regarding the migration crisis. They have stated that Turkey has been using mass migration as a weapon against the European Union.<sup>194</sup> Additionally, the article has list of President Erdogan's objectives, in which one and the main one of them is to obtain additional generous funding from the European Union.<sup>195</sup> After establishing this, the issue remains in the hands of human rights protection, national security and international obligations of the Bulgarian government. As for Turkey, it is highly concerning that it has a leading role in migration to the European Union in a situation where the state by itself is not a Member State of the European Union, but has the possibility to impact Bulgaria and the European Union through hybrid warfare.

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<sup>191</sup> Dogachan Dagi, 'The EU-Turkey Migration Deal: Performance and Prospects' (Kluwer Law International BV 2020), p. 1 <<https://kluwerlawonline.com/api/Product/CitationPDFURL?file=Journals\EERR\EERR2020019.pdf>> accessed 22 April 2024

<sup>192</sup> *Ibid.*, p. 210

<sup>193</sup> *Ibid.*

<sup>194</sup> Ioannis Kotoulas and Wolfgang Pusztaï, 'The 2020 Migration Crisis on the Greek-Turkish Border' (National and Kapodistrian University of Athens 2020), p. 177 <[www.researchgate.net/publication/343344332\\_Ioannis\\_E\\_Kotoulas\\_Wolfgang\\_Pusztaï\\_The\\_2020\\_Migration\\_Crisis\\_on\\_the\\_Greek-Turkish\\_Border](http://www.researchgate.net/publication/343344332_Ioannis_E_Kotoulas_Wolfgang_Pusztaï_The_2020_Migration_Crisis_on_the_Greek-Turkish_Border)> accessed 22 April 2024

<sup>195</sup> *Ibid.*, p. 178

Moving on to the entry of illegal migrants, interestingly enough, since 2017, the Bulgarian Ministry of Interior has not been disclosing the number of prevented entries to the public.<sup>196</sup> Thus the only information that can be accessed about Migration is through the border monitoring bodies UNHCR and the Helsinki Committee.<sup>197</sup> There is no information on why this decision to not disclose has been taken, but only assumed that the State has tried to prevent leaks of information about potential human rights violations. Since the government has been working on re-bordering, it means that it is attempting to exclude asylum seekers as a result of national security.<sup>198</sup>

The issue regarding hybrid warfare in Bulgaria majorly concerns the detention of migrants mainly in the detention centers situated near the border with Turkey and the blocking of illegal migrants on the borders. The places where migrants are being detained in Bulgaria are not named “Detention Centers” by the Law on Asylum and Refugees, but “Special Homes for Temporary Accommodation of Foreigners” and the action of detaining asylum seekers is not called “detention”, but rather “accommodation”.<sup>199</sup> The reason for the existence of these detention centers is that migrants are typically set for removal from the country rather than having them “accommodated” in these centers.

Despite the fact that the issue of mass migration has been solved by the Bulgarian government already in 2018, with government officials having taken pride in the protection of national security of the country by building a 237 kilometer fence on the Bulgarian-Turkish border, the issue with human rights breaches continue, whether it is the detaining of migrants and pushing them back to the Turkish side of the border.<sup>200</sup> In a situation where Turkey has been established to conduct hybrid warfare on Bulgaria, Bulgaria has acted on protecting its borders by building the fence and closing its border as a result of national security concerns. However, in terms of the Dublin regulation Article 3 (1) on the accessing of procedures for examining applications for international protection states that Member States are to examine any applications for international protection on its territory

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<sup>196</sup> Plamen Ralchev, ‘In the EU and Out of the Schengen Area: Bulgaria’s Experience and Challenges in Securing the EU’s External Border’ (BordEUr New European Borderlands 2022), Ch. 6, p. 106  
<<https://events.ceu.edu/sites/default/files/media/attachment/fences-refugee-boats-full-pdf.pdf#page=102>> accessed 22 April 2024

<sup>197</sup> *Ibid.*

<sup>198</sup> *Ibid.*, p. 108

<sup>199</sup> Valeria Ilareva, ‘Advocacy Report on the “Red Line” Detention of Asylum Seekers upon Entry in Bulgaria’ (Foundation for Access to Rights 2018), p. 15  
<[www.farbg.eu/sites/default/files/publications/files/07\\_Bulgaria-Red-Line-Advocacy-Report.pdf](http://www.farbg.eu/sites/default/files/publications/files/07_Bulgaria-Red-Line-Advocacy-Report.pdf)> accessed 22 April 2024

<sup>200</sup> *Ibid.*

or on the border and transit zones,<sup>201</sup> the applications of migrants are not being processed either on the territory or the border by Bulgarian authorities as it has taken the measures of building a fence in order to block illegally entering migrants from entering Bulgaria. This means that Article 3 (1) as a responsibility of Bulgaria has not been upheld, and the blocking at the borders, resulting from hybrid warfare, has led to the protection of national security as the Bulgarian Government has reasoned it.

Regarding the effect on human rights, it is important to look at the process of pushing back illegal migrants to Turkey. In the cases of unnecessary detention, the human rights of those individuals can be endangered and that just indicates that simply national security cannot be used as a precondition to detaining individuals unless there is a plan for their expulsion from the Bulgarian Government under Article 4 (4) of Bulgaria's Refugee Act, which states that international protection is no longer applicable to persons who are viewed as a threat to its national security.<sup>202</sup> Furthermore, regarding detained persons, under Article 16 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, State parties are obliged to prevent in its territory any acts regarding cruel, inhuman or degrading treatment or punishment.<sup>203</sup> As mentioned in Chapter II, the Bulgarian Government has terrible detention center conditions, but on top of that, individuals are being detained even though this is happening during a time of hybrid warfare.

Thus, if the Bulgarian Government's intentions are to block illegal migrants from irregularly entering its territory because of hybrid warfare, then it could solely do that by declaring a state of hybrid warfare and block migrants from entering. Otherwise, Bulgaria is not saving itself the trouble of violating human rights. Although the Universal Declaration of Human Rights does not address hybrid warfare, when Bulgaria blocks its border entrances with the aim to not process refugee applications, it may be found in breaches of the right to seek asylum according to Article 14 (1) of the Declaration, which states that everyone has the right to seek asylum from persecution<sup>204</sup> because the government has built a fence, thus refusing to process refugee applications for illegal migrants without declaring a situation of hybrid warfare. Furthermore, the Bulgarian Government could be in

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<sup>201</sup> Council Regulation (EU) 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person [2013] OJ L180, Art 3 (1)

<sup>202</sup> Закон за убежището и бежанците, чл. 4, (4)

<sup>203</sup> United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 10 December 1984. LNTS 1465, Article 16 (1)

<sup>204</sup> Universal Declaration of Human Rights, Paris, 10 December 1948 [hereinafter UDHR], Article 14 (1)

breach of the right to non-refoulement, which is prohibited by Article 33 of the Convention relating to the Status of Refugees<sup>205</sup> if these individuals are refouled during processing. Additionally if illegal migrants who have managed to cross into Bulgarian territories are detained, then Bulgaria could be found in violation of Article 3 of the European Convention on Human Rights, stating that no one shall be subjected to torture or inhuman, or degrading treatment or punishment.<sup>206</sup>

Regarding Article 3 of the European Convention on Human Rights<sup>207</sup>, detainees have complained about the mistreatment by the staff in the detention centers. These mistreatments have included physical assaults, pushing and verbal aggression.<sup>208</sup> The Bulgarian Helsinki Committee had also conducted interviews of refugees in order to gather more information on their mistreatment and according to the data, 32.6% of the individuals who had been brought to detention centers or to police stations, have faced the use of physical force on them.<sup>209</sup> There is no further information on how accurate the percentages are. However, they could be over or under. Most important is that these kinds of violations of human rights still take place, are unmonitored, and require further attention from the European Union. Bulgarian disengagement related to establishing a situation of hybrid warfare should be questioned. And if the government declares that there is hybrid warfare, in terms of national security and protection of human rights, blocking of borders should be conducted, so that breaches of illegal migrants' human rights are minimized as much as possible.

So is the Republic of Bulgaria obliged to process asylum applications when it is dealing with hybrid warfare? Bulgaria is not obliged to process asylum applications of illegal migrants arriving as a consequence of hybrid warfare, because it has the similar option as Finland to declare that irregular migration is alarming to the national security of the State and therefore act upon protecting its national security. In the process of doing so, the only thing that Bulgaria is obliged to do is to protect the human rights of the individuals that have managed to cross into its territory or are being blocked off at the border by declaring a situation of hybrid warfare and minimizing situations where human rights could be violated as previously mentioned.

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<sup>205</sup> Convention relating to the Status of Refugees, 28 July 1951, adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Article 33

<sup>206</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 3 September 1950, Council of Europe, Article 3

<sup>207</sup> *Ibid.*

<sup>208</sup> Bulgarian Helsinki Committee, 'Human Rights in Bulgaria in 2022' (2022) p. 10

<[www.bghelsinki.org/web/files/reports/174/files/BHC-Human-Rights-in-Bulgaria-in-2022-en\\_issn-2367-6930.pdf](http://www.bghelsinki.org/web/files/reports/174/files/BHC-Human-Rights-in-Bulgaria-in-2022-en_issn-2367-6930.pdf)> accessed 22 April 2024

<sup>209</sup> *Ibid.*

### 4.3. Finland and Bulgaria within the Scope of Hybrid Warfare

As mentioned earlier in the chapter, there is a hybrid warfare conducted by Russia on Finland in order to challenge the European Union regulations and international obligations encompassing the Finnish government. The concrete motive of the Russian State for conducting hybrid warfare is unknown and unspoken of on the Russian side. Similar to the Russian-Finnish situation, Bulgaria and more broadly, the European Union, are faced with the Turkish hybrid warfare. However, the motive behind the Turkish government has been clear as it concerns receiving more money from the European Union.

Notably, the Finnish Government has been closing its border crossings in different places by providing specific statistics on the number of people entering its land border on a regular basis. Contrary to the informativity of the Finnish government, the Bulgarian government does not disclose much of its information regarding the amounts of illegally entering migrants. However, as previously mentioned, the task to compile reports is done by non-governmental organizations.

There are no specific cases regarding violations of refugee human rights in Finland under the circumstances of hybrid warfare. However, the government has been taking measures as to not violate the human right to life by closing its sea borders and to further minimize the chances of violating the principle of non-refoulement by planning to send asylum seekers resulting from hybrid warfare to States that accept processing of applications.<sup>210</sup> As previously mentioned, this conforms with Article 31 (2) of the 1951 Refugee convention with restricting the freedom of movement until the refugee status has been confirmed in the State or another State.<sup>211</sup> Additionally, regarding the principle of non-refoulement, the Finnish government aims to minimize the possibilities of breaches of this principle so that it conforms with Article 31 (1) of the 1951 Convention relating to the Status of Refugees.<sup>212</sup>

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<sup>210</sup> 'Lakiluonnos välineellistetyn maahantulon torjumiseksi lausunnolle' (Ministry of Interior, 15 March 2024) <<https://intermin.fi/-/lakiluonnos-valineellistetyn-maahantulon-torjumiseksi-lausunnolle>> accessed 22 April 2024

<sup>211</sup> Convention relating to the Status of Refugees, 28 July 1951, adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Article 31 (2)

<sup>212</sup> *Ibid.*, Art 31 (2)

On the contrary, the Bulgarian government has not taken any measures towards hybrid warfare as the government has not established a situation of hybrid warfare. The reasons for this are unknown, but, based on broader speculations, it could be that the government is not willing to allocate its resources into a hybrid warfare, thus having just built a fence or it is just letting migration work as before, by partially knowing that illegal migrants are not willing to remain in the Bulgarian territory and thus will continue their way to Western Europe. However, if Bulgaria were in an established hybrid warfare, not breach the principle of non-refoulement, it could similarly follow the Finnish measures according to Article 31 (2) of the 1951 Refugee convention<sup>213</sup>, by cooperating with another State that is willing to process refugee applications, If Bulgaria takes such measures, as mentioned, it could minimize the number of breaches of Article 16 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in its detention centers.<sup>214</sup>

During the period of hybrid warfare, neither Finland nor Bulgaria is obliged to process asylum applications and provide asylum seekers with refugee status as illegal migrants arrive as a result of a hybrid attack that will result in the implementation of the State's national laws regarding national security. As Bill Frelick has argued in his book, States tend to view migrants as a threat to national security when they arrive en masse.<sup>215</sup> It can be concluded that even if Bulgaria is not in an established hybrid warfare, when it faces irregular migration, it applies national security into the spectrum of protecting itself. The circumstances are the same in Finland, with the conclusion that, in the light of hybrid warfare, national security is automatically an option that the States refer to as a result of irregular migration.

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<sup>213</sup> *Ibid.*

<sup>214</sup> United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 10 December 1984. LNTS 1465, Article 16 (1)

<sup>215</sup> Bill Frelick, *Refugees Worldwide: Regional Issues* (Praeger 2012), Volume: 2, p. 275

## Conclusion

All things considered, the comparison of Bulgaria and Finland, both European Union Member States, shows that Finland's and Bulgaria's national laws on national security are fairly similar, and that they have committed to the same regionally and internationally applicable laws regarding refugees. However, in the light of detention of refugees, application processing, the principle of non-refoulement and hybrid warfare, the comparison shows a high contrast in both States' practice. Furthermore, because both States are situated on the external borders of the European Union, they have a different and significant role in processing of refugees and establishment of "primary encounter" refugee status.

Chapter I of the thesis dealt with the differences and similarities between the Finnish and Bulgarian laws regarding national security. In terms of national security, the chapter also outlines other applicable regional and international instruments that remain at the disposal of both States. By introducing the instrument of national security, Chapter I enables to perceive a clearer understanding of the possibilities for a State to apply national security, specifically in situations where there are threats to security. However, the chapter has established that national security is not further specified in national, regional and international legislations, making it a flexible instrument for States to use under different circumstances, e.g., refoulement and hybrid warfare.

So, why is national security of such importance? National security is of importance when measuring a State's capabilities and willingness to process refugees and establish refugee status. National security is important, because it regulates and balances State action under the International Refugee Law and sets its own limits. It plays a major role in State sovereignty. However, the issue with national security is that if it is heavily insisted on, it can lead to breaches of human rights. This is shown in the situation of Bulgaria, where national security outweighs human rights protection of refugees. Finland has succeeded to balance both, which indicates its compliance not only with its national law, but also with European, international, and human rights law.

As concluded in Chapter II, Bulgaria does not have the necessary resources to deliver proper accommodation to migrants in terms of facilities and staff, resulting in an added issue to its government measures. Refugee applications are often left out without processing; therefore, the

1951 Refugee convention and human rights are being violated. As stated, the main goal of the Bulgarian authorities has been to detain refugees and treat them as criminals, not as individuals who are fleeing torture, punishment and/or death. The Bulgarian authorities heavily expect its nationals to report to the authorities if they have witnessed refugees entering Bulgarian territory or if there are any suspicions of refugees illegally remaining in its territory.

On the other hand, Finland has adopted the “Integration Act”, which it has taken seriously and has worked upon integration of illegal migrants into the State. The accommodation (Integration Act) includes teaching the refugees about the Finnish society, labor market and other services provided by the government, as well as learning the Finnish language. This demonstrates that Finland cares about refugee integration and ensures that it is being done with precision and care for human rights.

There have been no complaints from NGOs for refugees about the accommodation granted in the Finnish facilities for refugees. However, the Bulgarian facilities have been reportedly dirty, left unattended, often lack proper food and sanitation facilities, and the staff members are inattentive to the refugees’ basic needs. Due to the fact that they do not share the same language, there is also a lack of understanding between the staff and the refugees, and no interpreters or translators are provided at sight. Another notable fact is that Finland provides a possibility for temporary protection of refugees, whereas the Bulgarian Government is far from creating such a system.

As the protection of human rights is closely connected to national security, Chapter II expresses the importance of the role of national security in the light of International Refugee Law. It has been stated that States often lean towards strengthening national security as it is part of the national interest, which can interfere with the protection of human rights to a certain extent or fully in some instances. For instance, Bulgaria has been working on detaining refugees and treating them as criminals, which Chapter II claims to be the result of heavily insisting on national security. This has led to the numerous cases of human rights violations of refugees.

Chapter III focuses on the principle of non-refoulement as it is the backbone principle of International Refugee Law. By having looked through different case law concerning Bulgaria and Finland, the chapter has established that both States could be found at fault as it is normal. Notably, the case of *N.A. v. Finland* proves that it is possible for a refugee to willingly leave the State as a result of a preliminary decision done by that State to expel him from its territory. Even though the

Finnish government was not held accountable for violating the principle of non-refoulement, it had been evident that the State was on its way to violate the principle.

The difference between Bulgaria and Finland, described in the chapter by analyzing the cases, shows that Finland does conduct investigations of applicants before expulsion and Bulgaria does not. The issue with Bulgaria ties in with the fact that it does not process applications and does not act according to its international obligations and permits expulsion without proper investigation as well as on the grounds of national security. The other major issue, which has been addressed is the existence of private parties which detain, mistreat and expel refugees on the border without government supervision. The Bulgarian government has been and is turning a blind eye to this issue and, therefore, neglects the violations of the principle of non-refoulement. Chapter III has contributed to the finding that the international community has not focused on Bulgaria in these regards and has not done anything about it so far. To the contrary, expulsion and detaining of refugees can only be carried out by the authorities in Finland. It is evident that, in such a way, the principle of non-refoulement is not being breached, either directly or indirectly, by the government. Thus Chapter III concludes that a State that breaches the principle of non-refoulement, even by neglect or lack of investigation on breaches of the principle done by private parties, should be held accountable for these actions.

Chapter IV illustrates the current situation of orchestrated migration. Hybrid warfare in terms of orchestrated migration has been an issue for many European Union border States, such as Latvia, Lithuania, Poland as well as Finland and Bulgaria. Countering orchestrated migration can cause indirect violations of human rights, as illustrated, the example of gray zones, where refugees are getting trapped on the border between Poland and Belarus. Fortunately, Finland has taken a different approach in protecting its national security.

Finland has been facing hybrid attacks caused by Russia, , but those hybrid attacks have not caused much chaos to the Finnish Government. However, as it is a new form/cause of migration, Finland, along with the European Union have been raising concerns on the issue. For some time, Finland has been accepting refugees for status applications at certain border crossings and has aimed to facilitate the process of not violating human rights. Finland has also closed its borders and has planned to close its air and sea borders in the near future. Chapter IV also establishes that, in order to evade

unnecessary responsibility as an outcome of hybrid warfare, the Finnish Government has aimed and has so far been successful in strengthening its borders.

Chapter IV has also established the reason why States are not obliged to process asylum applications during hybrid warfare. An example of this is the Finnish Government's plans to send refugees arriving as a result of hybrid warfare to a State that receives applications and grants international protection, in order for their human rights to not be violated. Furthermore, the Chapter establishes that, as there is no description of a hybrid warfare situation in the applicable international or regional legislations, there are gaps in the International Refugee Law.

In the case of Bulgaria, hybrid warfare has existed for a longer period of time. The main issue that Chapter IV has encountered is the confusion about why Bulgaria has not declared that there is a situation of hybrid warfare conducted by Turkey. Chapter IV shines light on this issue, because it has not been largely touched upon in the scholarly debate of International Refugee Law, International Human Rights Law, or European Union law. It describes how the Turkish government has threatened, not only Bulgaria but also the whole European Union, by sending migrants, unless a deal is being made with the State. The Chapter describes how Turkey's main role in the European migration system is problematic to the European Union. In comparison to the situation with Finland and Russia, the Turkish-Bulgarian hybrid attack has been similar, however, the motive for Turkey has been to gain from a deal and the motive for Russia has been to weaken the Finnish system.

Finland has also shown signs of support in the form of processing refugee applications so far by aiming to be innovative during the time of hybrid warfare. Finland has been open about its border actions and has not attempted to hide any of it, which shows that it is aiming to be clear in the light of international standards for refugee and human rights law and is balancing that with its enhancements on national security.

The future will show further challenges and contradictions regarding European Union, human rights and International Refugee Law. Especially the tightening of asylum seeking processes in Finland as well as the Bulgarian entry into the Schengen zone by land will act as major contributors to the future attitude of these states towards International Refugee Law. Further contradictions will arise among the orchestrated migration and those will create new challenges for the international community to tackle. With the Bulgarian entry into the Schengen zone, the scholarly discourse will

enhance in the direction of Bulgaria's standing with the European standards and norms regarding refugee law as recently, slowly more and more attention has been brought to it.

Lastly and most importantly, it has been of importance to shine light on Bulgaria and Finland as both States have been heavily disregarded in the scholarly discourse. The role of national security is notable in both States' actions, especially in Bulgaria. However, Finland has seemingly found the balance between national security and protection of refugee human rights under the light of international protection. Bulgaria is to yet follow a similar model as Finland, which will strengthen its ties with International Refugee Law and its possibilities to function in the Schengen area similarly to the other European Union Schengen zone Member States. As there are many similarities concerning the laws encompassing national security, and the regional and international instruments are the same for both Bulgaria and Finland, the practice shows to be different although both States are in the European Union. Thus, the conclusion is that a State which has found the balance between upholding national security and protection of refugee rights, is stable in the eyes of the continuously growing international community and human rights law.

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