

The Anatomy of the EU Pact on Migration and Asylum:

Part 2: “Kangaroo” Asylum

The new Regulation about the international protection:
The case of Bulgaria as an EU external border



The new Regulation about the international protection: The case of Bulgaria as an EU external border

At the dawn of 2025, the clock for the fully implementation of the new EU Pact on Migration and Asylum (**EU Pact**) is ticking. As announced by the European Commission (**EC**), EU Member States were expected to prepare their respective national implementation plans by December 2024. So far, no implementation plan for Bulgaria has been made available perpetuating a trend of a backdoor process, in-transparency and isolation of the NGO sector. The silence and the attitude of “business as usual” towards the EU Pact does not correspond to the fact that the new migration rules would definitely impact the Bulgarian asylum system not only in terms of legal conditions but also regarding the system’s capacities and logistics. Regulation (EU) 2024/1348 of 14 May 2024 (**the Regulation**)¹ thus establishes a common procedure for international protection in the EU and is going to repeal Directive 2013/32/EU. As the Regulation aims “to streamline, simplify and harmonise the procedural arrangements of the Member States by establishing a common procedure for international protection in the Union. To meet that objective, a number of substantive changes are made to Directive 2013/32/EU of the European Parliament and of the Council and that Directive should be repealed and replaced by a Regulation”.² The Regulation concerns all applications for international protection made in the territory of the Member States, including at the external border, on the territorial sea or in the transit zones of the Member States, and to the withdrawal of international protection.



1. REGULATION (EU) 2024/1348 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU
2. Par. (1) from the preamble of the Regulation

I. Basic Principles and Guarantees

Crucial for asylum seekers is the right to remain in a Member State during their asylum procedure. Under the new Regulation, applicants shall have the right to remain on the territory of the Member State in which they are required to be present until the asylum authority has taken a decision on the application in the administrative procedure. Candidates are required to stay in the Member State responsible for registering and processing their asylum application. Generally, these are the Member States of first entry.

The Regulation then specifies exceptions where the applicants for international protection cannot enjoy the right to remain during the administrative procedure. Among the exceptions is the case where asylum candidates are classified as a danger to public order or national security, *“provided that applying such an exception does not result in the applicant being removed to a third country in violation of the principle of non-refoulement”*.³

Comment: Excluding asylum seekers from the right to remain when they are classified as a danger to public order or national security is classical. In this regard, the Regulation is a blanket repetition of familiar provisions failing to address critical issues, chronic to the daily practice.

Bulgarian intelligence services, for instance, perform background checks and security screening of every asylum seeker. If the intelligence agency classifies the applicant as a security threat, it issues a statement opposing the granting of international protection. Such statements are usually limited to one blanket sentence and they are not required to include justification why an applicant is determined as a security concern, providing the intelligence authorities de facto with unchecked powers.

Applicants for international protection, classified as national security threat, could be detained in a closed facility run by the Bulgarian Asylum Agency during their asylum procedure. These closed facilities are located within the area of the immigration detention centers and have prison-like conditions. Applicants are confined in small overcrowded rooms; they are highly limited to walk out in the air and even their access to sanitary rooms is controlled. Third-country nationals could thus be subjected to confinement as long as their asylum procedure is running and not finalized.



³. Art. 10, p. 4, par. (c) of the Regulation

A catch-22 situation is where those applicants decide to appeal asylum rejections. They then face the risk to be detained as long as their appeal procedure is ongoing, leading to an indefinite cycle. There are cases where applicants are detained for years just because they apply for asylum and, at the same time, are classified as a security concern. By contrast, in cases of criminal charges or immigration detention, the detention length is strictly defined by law and could not exceed a certain period. At the same time, in cases of third country nationals who apply for asylum and are simultaneously classified as a threat to national security, those applicants could be in detention for indefinite time. Moreover, applicants' decision to appeal eventual asylum rejections could prolong their detention, which could well discourage applicants from using legal remedies against negative decisions of the asylum services.

The new Regulation about the international protection thus fails to address such crucial cases from the reality especially when it comes down to applicants for international protection determined as a security concern. Given that the Regulation has a direct binding effect to all Member States, it turns out to be a serious failure not to specify the conditions in which asylum applicants, who are considered security concern and excluded from the right to remain, could be kept, how long they could be detained, how their detention refers to immigration detention, how it refers to the screening also introduced by the new EU Pact⁴, where third country nationals will be preliminarily kept and checked for security reasons.

The new Regulation further stipulates that the exclusion from the right to remain should not end in violating the principle of non-refoulement. The Regulation again fails to address what happens to applicants for international protection who are excluded from the right to remain but, at the same time, could not be removed due to the non-refoulement principle. It is not clear under what conditions such applicants could remain on the territory of Member State. The Regulation also fails to specify how the fundamental principle of non-refoulement will be ensured and enforced and what consequences authorities should face if they violate it.



4. Regulation (EU) 2024/1356 of the European parliament and of the Council of 14 May 2024.

II. Access to (Free) Legal Aid



1. Granting access to (free) legal aid

The new Regulation includes extensive provisions on access to legal. Applicants for international protection shall have the right to consult, in an effective manner, a legal adviser or other counsellor. The access to legal aid refers to both the administrative and appeal procedure.

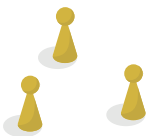
The Regulation also specifies conditions for providing free legal aid. Generally, the applicants will have the right to request free legal aid in the administrative and appeal procedural stages.

For the administrative procedure, access to free legal aid could be excluded when

- the application is a first subsequent application considered to have been lodged merely in order to delay or frustrate the enforcement of a return decision which would result in the applicant's imminent removal from the Member State;
- the application is a second or further subsequent application;
- the applicant is already assisted and represented by a legal adviser;

For the appeal procedure, provision of free legal aid could be excluded if

- the applicant, who shall disclose his or her financial situation, is considered to have sufficient resources to afford legal assistance and representation at his or her own cost;
- it is considered that the appeal has no tangible prospect of success or is abusive;
- the appeal or review is at a second level of appeal or higher as provided for under national law, including re-hearings or reviews of appeal;
- the applicant is already assisted or represented by a legal adviser.



The Regulation specifies that free legal counselling, assistance and representation shall be provided by legal advisers or other counsellors, admitted or permitted under national law to counsel, assist or represent the applicants or by non-governmental organisations accredited under national law to provide legal services or representation to applicants.

Comment: Access to (free) legal aid is crucial for those seeking international protection. The role of effective legal assistance becomes even greater as the EU Pact introduces more stages to the asylum procedure and makes it more complicated and bureaucratic. It will be vital for the applicants to navigate through maze of new rules and know what happens with their status as asylum seekers.



As the applicants are highly restricted in their free movement, they could also be placed in facilities such as detention and transit centers, far from major urban infrastructure or because of language barriers, it lies with the administrative authorities to ensure access to legal aid. It is also up to the authorities to give lawyers and legal counsellors access to asylum seekers. The responsible authority will be the one to decide about access to legal assistance. Still, the Regulation fails to provide for any material consequences in case that the authorities fail to provide or deny access to legal aid.

Access to free legal assistance also plays a crucial role for applicants to seek and enforce their rights. Costly legal counsel and procedures could well discourage people from seeking legal advice or going to court. Still, the Regulation refers to exceptions from free legal aid in cases where administrative authorities consider among others a first subsequent application to have been “*filed merely in order to delay or frustrate the enforcement of a return decision which would result in the applicant’s imminent removal from the Member State*”⁵ or an appeal is considered to have “*no tangible prospect of success or is abusive*”.⁶ The Regulation again defines no clear criteria for what, for example, an “abusive” appeal means here. The right to appeal is a fundamental right and its exercising could not be seen as “abusive”. The Regulation again furnishes the authorities with the sole discretion to determine if an applicant “misuses” procedures by just accessing them.

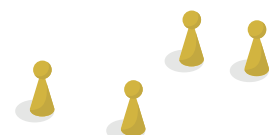
The specification about the eligibility criteria for legal professionals and organizations to provide free legal counsel remains ambiguous. For instance, as lawyers are free to access and represent clients with criminal charges in prisons, in the same way, they should be free to access and represent applicants for international protection. For NGOs providing free legal assistance to asylum seekers and migrants, the Regulation is quite unclear what it means under organizations “*accredited under national law to provide legal services or representation to applicants*”.⁷ At the same time, the access to free legal aid should be enhanced and strengthened by freely and without any specific authorities’ accreditation, letting legal professionals and organizations to provide services, especially when applicants are placed in facilities far from main urban infrastructure, detention, at the border or transit centers.

2. Access to Legal Aid and Classified Information

Professionals, who legally represent the applicants, shall have access to the applicant’s file. The Regulation however stipulates that access to the information or to the sources in the applicant’s file may be denied in accordance with national law where the disclosure of information or sources would i.e. jeopardise national security. In that case, the determining authority shall:

- make access to such information or sources available to the courts or tribunals in the appeal procedure;
- ensure that the applicant’s right of defence is respected.

5. Art. 16, p.3, par. (a) of the Regulation
6. Art. 17, p.2, par. (b) of the Regulation
7. Art. 19, p. 1 of the Regulation



Regarding the right to defence, Member States shall grant access to information or sources to a legal adviser who legally represents the applicant and who has undergone a security check, in so far as the information is relevant for examining the application or for taking a decision to withdraw international protection.

Comment: As a whole, the new EU Pact seems to be obsessed with the concept of national security that makes it impossible for a person classified as a security concern to break from a vicious circle. The Regulation again provides applicants with no remedy to challenge the accuracy and intransparency of classified information. There are no means to hold intelligence authorities accountable.

The insertion that lawyers and legal advisers could also undergo a security check in order to access their clients' classified file is another manifestation of absurdity. By contrast, criminal defenders or criminal lawyers do not undergo security checks to access their clients' cases. At the same time, for clients, classified as a security risk within an administrative procedure without criminal accusations, lawyers could be made to meet higher conditions in order to access their clients' files. Lawyers and legal professionals should not be subjected to security checks with reference to their clients' representation even if the file contains classified information. These security complications could also well discourage legal professionals from taking cases of asylum seekers considered as a security threat.

III. Die Administrative Procedure

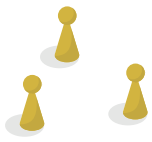
1. Making an Application and Relevant Timeframes

An application for international protection shall be considered to have been made when a third-country national or stateless person, including an unaccompanied minor, expresses in person to a competent authority a wish to receive international protection from a Member State. Where officials from the competent authority have doubts as to whether a certain declaration is to be construed as an application for international protection, they shall ask the person expressly whether he or she wishes to receive international protection.

The competent authorities have to register an application for international protection promptly and, in any event, **no later than five days** from when it is made.

Where an application is made to an authority entrusted with the task of receiving applications for international protection, which is not responsible for registering applications, that authority shall promptly and at the latest **within three working days** from when the application was made inform the authority responsible for registering applications. The authority responsible for registering applications shall register the application as soon as possible and no later than five days from when it has received the information.





Where there is a disproportionate number of third-country nationals or stateless persons who make an application within the same period of time, making it unfeasible to register applications within the deadlines above, the application shall be registered **no later than 15 days** from when it was made.

After the registration, the competent authority issues a registration document. The document will be valid for up to 12 months or until the applicant is transferred to another Member State. When that document is issued by the Member State responsible, the validity of the document shall be renewed so as to cover the period during which the applicant has a right to remain on its territory.

Comment: Applicants for international protection will be able to express their wish to receive international protection informally and orally. Again, it is entirely up to the authorities “not to overlook” and take seriously the expressed wish of third-country nationals to receive international protections. There is a certain practice in Bulgaria where the Bulgarian asylum services instead of registering applicants and initiating a procedure for international protection, first involved the Migration Office so that applicants ended up in detention or even were reportedly removed to neighbouring countries.

There was also a case before the European Court of Human Rights (**ECHR**) against Bulgaria, where a Turkish journalist, fleeing Turkey in the aftermath of the coup-d'état, was refused registration and initiation of an asylum proceeding, and removed to Turkey by the Bulgarian authorities.⁸

The fixed timeframes for registration are relevant for

- starting the administrative procedure;
- the right to remain;
- receiving registration documents for the time of the procedure;
- accessing social services, healthcare, accommodation, the labor market;

The new Regulation will impact the registration deadlines fixed in the Bulgarian provisions and case law.

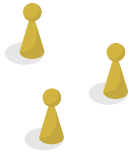
The Regulation thus stipulates that the application for international protection has to be registered **no later than five days** from when it is made. Currently, in Bulgaria, this deadline is **three working days**.

Under the Regulation, if the application is made to another authority entrusted with the task of receiving applications for international protection but is not responsible for registering them, that authority shall promptly and at the latest within three working days from when the application was made inform the authority responsible for registering applications. The authority responsible for registering applications shall register the application as soon as possible and no later than five days from

⁸ D. vs Bulgaria, application No 29447/17, available at: [D v. Bulgaria](#).

when it has received the information. Currently, in Bulgaria, in case of forwarding the application, the deadline for the authority responsible for its registration is not later than six working days as of the initial filing of the application.

Furthermore, the new Regulation stipulates that if the competent authorities receive disproportionate number of applications, they can extend the registration deadlines until 15 days. Again, the Regulation endorses unclear and vague hypothesis, giving the authorities the sole discretion to determine what disproportionate number of applications means so that they could, at their sole consideration, extend the registration deadlines.



2. Lodging Application

Applicants will be required to lodge the application with the competent authority of the Member State where the application is made as soon as possible and no later than 21 days from when the application is registered.

The application needs to be lodged in person at a designated date and place and, where communicated, time.

Member States may use an option to provide in national law for the possibility for the applicant to lodge an application by means of a form, including where he or she is unable to appear in person owing to enduring serious circumstances beyond his or her control, such as imprisonment or long-term hospitalisation. The application shall be considered to have been lodged if the applicant submits the form within the time limit of 21 days and if the competent authority concludes that the conditions under this paragraph have been met. In such cases, the time limit for the examination of the application starts to run from the date on which the competent authority receives the form.

If a disproportionate number of third-country nationals or stateless persons make an application for international protection within the same period of time, making it unfeasible to give each applicant an appointment within the time limit of 21 days, the applicant will receive an appointment to lodge his or her application at a date no later than two months from when the application is registered.

Member States may organise the access to the procedure in such a way that making, registering or lodging take place at the same time.

Comment: The new Regulation de facto introduces the lodging of application as an additional administrative phase, separate from the application registration. In this way, the Regulation primarily distinguishes between making, registering and lodging an application. It also imposes the obligation on the applicant to lodge the application as designated by the competent authority within the time limit of 21 days. This makes the administrative procedure for international protection more complicated and bureaucratic for applicants to navigate through the different administrative phases. The Regulation also provides for no sufficient safeguards for applicants to lodge an application if they are objectively unable to appear in person for filing the application.

Currently, in Bulgaria, making, registering and filing an application take place de facto at the same time. Given the Regulation's differentiating, Bulgarian authorities should explicitly clarify if the current status will remain as it is.

IV. Access to the procedure in detention facilities and at border crossing points



Where there are indications that third-country nationals or stateless persons in detention facilities or present at border crossing points, including transit zones, at external borders, may wish to make an application for international protection, the competent authorities have to provide them with information on the possibility to do so.

Where an applicant makes an application in a detention facility, in prison or at a border crossing point, including transit zones, at external borders, the competent authorities have to make arrangements for interpretation services to the extent necessary to facilitate access to the procedure for international protection.

Organisations and persons permitted under national law to provide advice and counselling shall have effective access to applicants held in detention facilities or present at border crossing points, including transit zones, at external borders. Such access may be subject to a prior agreement with the competent authorities. Member States may impose limits on such access by virtue of national law, where they are objectively necessary for the security, public order or administrative management of a border crossing point, including transit zones, or detention facility, provided that access is not severely restricted or rendered impossible.

Comment: Crucial for applicants in detention, border and transit centers etc. is to have access to asylum procedure. Those applicants are usually cut from major urban infrastructure making it more complicated also for lawyers and organizations to access those applicants. The Regulation makes it again entirely up to the authorities to switch the access to procedure off and on at their will without foreseeing any consequences for them if they fail to enable people to apply for international protection. The relevant provisions furnish the authorities with the sole discretion to decide and set the criteria when such access could be limited. The authorities could thus unilaterally control the access to legal aid and administrative procedure without any accountability.



V. Special Procedures

1. Accelerated examination procedure

The competent authorities will accelerate the examination on application's merits where applicants:

- present facts irrelevant to the subject of the examination;
- make clearly inconsistent or contradictory or clearly false or obviously improbable representations or representations which contradict relevant and available country of origin information, thus making his or her claim clearly unconvincing;
- intentionally mislead the authorities by presenting false information;
- make an application merely to delay, frustrate or prevent the enforcement of a decision for his or her removal from the territory of a Member State;
- could return to a third country considered to be a safe country of origin for the applicant;
- is considered a danger to the national security or public order of the Member States or the applicant had been forcibly expelled for serious reasons of national security or public order under national law;
- made a subsequent application which is not inadmissible;
- entered the territory of a Member State unlawfully or prolonged his or her stay unlawfully and, without good reason, has either not presented himself or herself to the competent authorities or has not made an application for international protection as soon as possible;
- entered the territory of a Member State lawfully and, without good reason, has not made an application for international protection as soon as possible, given the grounds of his or her application; this point is without prejudice to the need of international protection arising sur place; or
- have a nationality or, in the case of stateless persons, they are former habitual residents of a third country for which the proportion of decisions by the determining authority granting international protection is, according to the latest available yearly Union-wide average Eurostat data, 20% or lower, unless the determining authority assesses that a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or that the applicant belongs to a category of persons for whom the proportion of 20 % or lower cannot be considered to be representative for their protection needs, taking into account, inter alia, the significant differences between first instance and final decisions.



The accelerated examination procedure may be applied to unaccompanied minors where:



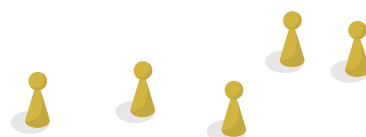
- the applicant comes from a third country that may be considered to be a safe country of origin;

- there are reasonable grounds to consider the applicant as a danger to the national security or public order of the Member State or the applicant had been forcibly expelled for serious reasons of national security or public order under national law;
- the application is a subsequent application which is not inadmissible;
- the applicant, after having been provided with the full opportunity to show good cause, is considered to have intentionally misled the authorities by presenting false information or documents or by withholding relevant information or documents, particularly with respect to his or her identity or nationality, that could have had a negative impact on the decision or there are clear grounds to consider that the applicant has, in bad faith, destroyed or disposed of an identity or travel document in order to prevent the establishment of his or her identity or nationality; or
- the applicant is of a nationality or, in the case of stateless persons, a former habitual resident of a third country for which the proportion of decisions granting international protection by the determining authority is, according to the latest available yearly Union-wide average Eurostat data, 20 % or lower, unless the determining authority assesses a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or that the applicant belongs to a category of persons for whom the proportion of 20 % or lower cannot be considered to be representative for their protection needs, taking into account, inter alia, significant differences between first instance and final decisions.

Comment: The new Regulation extends the list of the grounds for accelerated examination as compared to the statutory list in the current Bulgarian law. This is the case, for instance, where according to the Regulation, applicants considered national security threat will be subjected to accelerated procedure.

Moreover, the new Regulation **opens the door for unaccompanied minors to be subjected to accelerated examination procedure.** By contrast, current Bulgarian law does not allow applications of unaccompanied minors to be examined in an accelerated procedure so that undermining this legal principle is a serious setback on fundamental children's rights, child's best interest, basic procedural safeguards for children who apply for international protection. The Regulation thus undermines the fact that unaccompanied minors are a special vulnerable group, cutting fundamental guarantees for them.

Moreover, introducing accelerated examination procedure for an accompanied minor because of national security concerns is an extremely alarming trend. It will place children in a grave situation where they will be not able to defend themselves and exercise their basic rights. It basically deprives unaccompanied minors of their status of children, vulnerable persons, and looks down on their special needs.



2. Asylum Border Procedure

2.1. General rules

The Regulations stipulates the special case of the asylum border procedure. Authorities could apply it to third-country nationals who have undergone the screening under the new Screening Regulation (EU) 2024/1356 and have not yet been authorized to enter Member States' territory.

The asylum border procedure could take place following:

- an application made at an external border crossing point or in a transit zone;
- apprehension in connection with an unauthorised crossing of the external border;
- disembarkation in the territory of a Member State after a search and rescue operation;
- relocation of an applicant from another Member State.

As a general principle, applicants subject to the border procedure shall not be authorised to enter the territory of a Member State. The procedure predominantly disables the right to remain. A Member State will mandatorily apply the border asylum procedure in the cases where an applicant:

- is considered to mislead the authorities given the information he or she provides;
- is considered a national security threat;
- comes from a place, where the chances to receive an international protection are lower than 20% according to Eurostat data.



During the border procedure, a Member State will require the applicants to reside at or in proximity to the external border or transit zones as a general rule or in other designated locations within its territory, fully taking into account the specific geographical circumstances of that Member State.

2.2. Application of the border procedure to unaccompanied minors


The border procedure could be applied to unaccompanied minors when they are considered a national security concern. In case of doubt as to the applicant's age, the competent authorities shall promptly carry out an age assessment under the conditions set by the Regulation.

2.3. The so-called adequate capacity

Member States will have a cap of border procedures, the so-called adequate capacity of a Member State. The adequate capacity at Union level will be considered 30 000. The adequate capacity of a Member State will be estimated with a formula defined in the Regulation. Member States reaching the cap of border procedures could notify the Commission and the other Member States accordingly and then be exempt from carrying out border procedures.

2.4. Exemptions from asylum border procedures

Member States shall not apply or shall cease to apply the border procedure at any stage of the procedure where:

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- the determining authority considers that the grounds for rejecting an application as inadmissible or for applying the accelerated examination procedure are not applicable or no longer applicable;
 - the necessary support cannot be provided to applicants with special reception needs, including minors;
 - the necessary support cannot be provided to applicants in need of special procedural guarantees;
 - there are relevant medical reasons for not applying the border procedure, including mental health reasons;
 - the guarantees and conditions for detention laid down in Articles 10 to 13 of Directive (EU) 2024/1346 are not met or no longer met and the border procedure cannot be applied to the applicant without the use of detention.

In the cases set out for exempting applicants from the asylum border procedure, the competent authority shall authorise the applicant to enter the territory of the Member State.

Comment: The asylum border procedure as it is defined in the Regulation has nothing to do with asylum principles. From that point, calling it asylum procedure is quite misleading. Basic asylum safeguards are cancelled especially as the non-entry fiction applies throughout the procedure. Applicants subjected to asylum border procedure could well be cut from the asylum fundamental principles, safeguards and access to legal aid.

The Regulation basically endorses the trend of providing authorities with indiscriminate discretion to decide about the procedure's types and their performance. It cements authorities' practices making it almost impossible for them to be legally challenged and sanctioned in case of human rights violations. The only tool the Regulations offers to human rights is the so-called fundamental rights mechanism in relation to the border procedure.

The fundamental rights mechanism is just a monitoring mechanism. Monitoring mechanisms are hollow as they have no leverage to seek accountability for human rights violations, and, thus, turn out to be just bureaucratic camouflage. The fundamental rights mechanisms as foreseen in the Regulation are not enough to compensate the risks the border asylum procedure may pose to the fundamental rights of applicants for international protection.

It is again alarming that the Regulation extends border asylum procedures to unaccompanied minors on national security grounds. The accumulation of being classified as a national security concern and subjected to a border procedure indiscriminately limit unaccompanied minors to defend and claim their fundamental rights. It merits consideration that even criminal law differentiates between

minors' age when it comes down to criminal responsibility. By contrast, the way the new administrative migration rules apply the concept of national security to unaccompanied minors, could be seen as criminalizing children, who seek international protection. It could also be considered as a serious substandard in the principles of child justice as enshrined in the Convention on the Rights of the Child. For the case where the adequate capacity of a Member States is overwhelmed it remains unclear if applicants will be relocated or referred to another type of procedure. The scenario could also in a way stimulate Member States to exhaust their quotes and apply asylum border procedure as much as possible.

For the cases where the asylum border procedure shall not be applied, the Regulation again gives the authorities the indiscriminate discretion to decide about activating the exemptions. The Regulation just fails to foresee any mechanisms for holding authorities accountable if they fail to exempt the applicants from the asylum border procedures. Being not subject to the border procedure will be crucial for the applicants because, at minimum, the fiction of non-entry will be not valid anymore and applicants will receive the authorization to enter the territory of a Member State.

VI. Appeal Procedure



In case of rejecting applicants from international protection, they will have the right to appeal the negative decisions. Rejections of international protection will be generally issued jointly with return decisions. If the return decision is issued as a separate act, it shall be issued at the same time and together with the decision rejecting the application for international protection or without undue delay thereafter.

Applicants will be required to appeal the rejection and the return decision together before the same court or tribunal, within the same judicial proceedings and the same time limits. Where a return decision is issued as a separate act, it may be appealed in separate judicial proceedings.

In general, the appeal will automatically suspend the applicant's return and the right to remain on the territory of a Member State will apply as long as the appeal procedure is ongoing. However, the suspensive effect of an appeal will not apply in case of:

- rejections for international protection issued in an accelerated procedure even in view of unaccompanied minors;
- border procedure except for unaccompanied minors;
- certain decisions where the application is considered inadmissible;
- a decision which rejects an application as implicitly withdrawn;
- a decision which rejects a subsequent application as unfounded or manifestly unfounded;



In cases where the appeal has no suspensive effect, the appeal courts will have the power to decide, given the case circumstances and upon applicant's request that he/she would be allowed to remain on the Member State's territory.

Comment: The appeal procedure in Bulgaria treats application rejections and return decisions in separate court proceedings. Also, appeals against application rejections issued in an accelerated procedure currently have suspensive effect under the Bulgarian law.

The new Regulation will now cut the suspensive effect of the appeals against negative decisions taken in accelerated procedures, depriving those applicants from the right to remain for the time of the appeal procedure. The constellation between application rejection in an accelerated procedure and the lack of suspensive effect of an appeal filed against it before a court will severely limit applicants in their defence and the right to remain.

Moreover, it is quite alarming that this constellation is extended to unaccompanied minors. Extending the accelerated examination procedure to unaccompanied minors and, then, denying the suspensive effect of an eventual appeal procedure significantly undermines fundamental safeguards of children's protection. It basically allows for unaccompanied minors to be cut from the right to remain in a Member State during a pending procedure. In this way, the Regulation basically strips unaccompanied minors from their status of special vulnerable group. It increases the risk for minors to be removed and subjected to procedural sub-standards and lack of defence.



VII. Conclusions

The new Regulation about the international protection could well give authorities, lawyers and judiciary hard time to figure it out. It is poorly structured and packed with sub-exceptions and ambiguities. At the same time, the mess of a poor structure and ambiguities cement the trend of furnishing the authorities with unlimited unchecked discretion in their decisions about the access to procedure, basic legal and social services as well as the type of the procedure they will apply to applicants. The Regulation makes substantial cuts in procedural safeguards by extending the scope of the accelerated examination procedure and introducing sub-standard procedures like the asylum border procedures. In these procedures, the applicants will have less tools and remedies to defend their rights.

Most importantly, the Regulation severely undermines the protection of unaccompanied minors. In particular, by extending the concept of national security threat and enabling the application of accelerated and border procedure to unaccompanied minors, the new EU Pact opens the door for criminalization of children, seeking international protection.



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Author: Desislava Todorova, Advocacy Expert

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