

## **Netherlands ? Court of The Hague, 19 October 2020, NL20.15181, NL20.15183, NL20.15188 and NL20.15194**

**Country of Decision:**

Netherlands

**Country of Applicant:**

Syria

**Date of Decision:**

19-10-2020

**Citation:**

NL20.15181, NL20.15183, NL20.15188, NL20.15194

**Additional Citation:**

ECLI:NL:RBDHA:2020:10437

**Court Name:**

Court of The Hague

**Keywords:**

Access to the labour market  
Burden of proof  
Education (right to)  
First country of asylum  
Health (right to)  
Inadmissible application  
Integration measures  
Material reception conditions  
Non-refoulement  
Personal circumstances of applicant  
Vulnerable person

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**Relevant Legislative Provisions:**

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1]

Council of Europe Instruments

European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [2]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#)

[1] > [Article 3](#) [3]

European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [2] > [Article 4](#) [4]

European Union Law > [EN - Recast Asylum Procedures Directive 2013/32/EU of the European Parliament and of the Council](#) [5]

European Union Law > [EN - Recast Qualification Directive, Directive 2011/95/EU of 13 December 2011](#) [6] > [Article 2](#) [7]

European Union Law > [EN - Recast Qualification Directive, Directive 2011/95/EU of 13 December 2011](#) [6] > [Article 12](#) [8]

European Union Law > [EN - Recast Qualification Directive, Directive 2011/95/EU of 13 December 2011](#) [6] > [Article 26](#) [9]

European Union Law > [EN - Recast Qualification Directive, Directive 2011/95/EU of 13 December 2011](#) [6] > [Article 27](#) [10]

European Union Law > [EN - Recast Qualification Directive, Directive 2011/95/EU of 13 December 2011](#) [6] > [Article 29](#) [11]

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### **Headnote:**

The reception conditions for beneficiaries of international protection in Bulgaria are such that they may face severe material deprivation due to indifference on the part of the authorities (cfr. CJEU, *Ibrahim*), potentially amounting to a violation of Article 3 ECHR / Article 4 CFREU.

When the State Secretary decides that a request for international protection is not admissible, because the applicants have refugee status in Bulgaria, it is not sufficient for him to refer to the principle of mutual trust between EU Member States and to the Council of State's jurisprudence, but he is obliged to examine the applicant's individual circumstances and to obtain specific information and guarantees from the Bulgarian authorities.

### **Facts:**

The State Secretary considered the application for international protection of a Syrian woman and her children inadmissible because they were beneficiaries of international protection in Bulgaria (cfr. Article 33(2), a Asylum Procedures Directive). The applicants appeal this decision before the Court of The Hague.

The applicants forward evidence about the dire circumstances that refugees are forced to live in in Bulgaria. They did not receive any public aid and remained deprived of resources to provide for their basic necessities of life (food and living space). They specifically point to the fact that they cannot obtain an identification document in Bulgaria because they have no fixed residence place and they have no access to housing, healthcare, employment and social welfare because they cannot obtain the required identification document. Moreover, Bulgaria has not had integration facilities for beneficiaries of international protection for seven consecutive years, contrary to the Qualification Directive. Finally, they argue that they risk violation of Article 3 ECHR / Article 4 CFREU upon return to Bulgaria.

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### **Decision & Reasoning:**

First, the Court considers it proven that applicants are refugee beneficiaries of international protection in Bulgaria. Based on the principle of mutual trust between EU Member States, the State Secretary can, in principle, assume that Bulgaria honors its obligations under the

Qualification Directive. Therefore, if applicants claim that Bulgaria fails to comply with their obligations under the EU *acquis*, it is up to them to prove this.

The State Secretary's inadmissibility decision, the Court then argues, is not sufficiently motivated when it merely refers to the principle of mutual trust between EU Member States and to the Council of State jurisprudence confirming this principle in the case of Bulgaria. The State Secretary is obliged to examine whether in this specific case the principle of mutual trust between EU Member States upholds. Therefore, the State Secretary has to examine the proof that the applicants present.

From the applicants' accounts and NGO reports, The Court concludes that the applicants faced extreme deprivation in Bulgaria and that this was the result of official indifference (cfr. CJEU, *Ibrahim*). Therefore, the principle of mutual trust between EU Member States cannot be relied upon without obtaining specific information and guarantees from Bulgaria on the applicants' access to identification documents, accommodation and integration facilities upon return.

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**Outcome:**

Appeal granted.

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**Subsequent Proceedings :**

The State Secretary has to take a new decision, taking into account this court decision. The decision has not yet been brought before the Council of State.

**Observations/Comments:**

The Court's reasoning is similar to the reasoning used by the Council of State when it decided on a similar case, concerning Hungary (Council of State, Administrative Law section, 22 April 2020, 201904529/1/V3).

The reception conditions for beneficiaries of international protection in Bulgaria are such that the principle of mutual trust between Member States can no longer be taken for granted. It is likely that this judgment will impact the possibility of the State Secretary to transfer asylum seekers under the Dublin regulation to Bulgaria.

In the Council of State's jurisprudence so far the reception conditions in Bulgaria were considered difficult but not such that removal to Bulgaria would entail the risk of a breach of Article 3 ECHR. In this case the Court departs from this jurisprudence and it very carefully examines the applicants' accounts, NGO reports and CJEU and ECtHR jurisprudence to support the conclusion that removal to Bulgaria can entail a breach of Article 3 ECHR.

This summary was written by Roel Styne, Law student at Ghent University.

**Attachment(s):**

[7 ECLI\\_NL\\_RBDHA\\_2020\\_10437 Bulgaria statusholders.pdf](#)[12]

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**Other sources cited:****Domestic Case Law Cited**

Council of State, 6 August 2015, ECLI:NL:RVS:2015:2621

Council of State, 9 May 2017, ECLI:NL:RVS:2017:1253

Council of State, 30 May 2018, ECLI:NL:RVS:2018:1795

Council of State, 30 May 2018, ECLI:NL:RVS:2018:1793

Council of State, 12 February 2019, ECLI:NL:RVS:2019:442

Council of State, 28 August 2019, ECLI:NL:RVS:2019:2961

## **Reports**

ECRE, ?Housing out of reach? The reception of refugees and asylum seekers in Europe?, 29 May 2019

Schweizerische Flüchtlingshilfe, ?Bulgarien: Aktuelle Situation für Asylsuchende und Personen mit Schutzstatus?, 30 August 2019

AIDA, ?Bulgaria: country report?, 21 Februari 2020

Vluchtelingenwerk Nederland, ?Veelgestelde vragen - Dublinterugkeerders en statushouders Bulgarije?, April 2020

## **National / Other Legislative Provisions:**

[Article 30a \(1\) Aliens Law](#) [13]

[Aliens Decree](#) [14]

[3.106a Aliens Circular](#) [15]

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## **Links:**

[1] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[2] <https://www.asylumlawdatabase.eu/node/453>

[3] [https://www.asylumlawdatabase.eu/node/195#toc\\_12](https://www.asylumlawdatabase.eu/node/195#toc_12)

[4] [https://www.asylumlawdatabase.eu/node/453#toc\\_29](https://www.asylumlawdatabase.eu/node/453#toc_29)

[5] <https://www.asylumlawdatabase.eu/node/3946>

[6] <https://www.asylumlawdatabase.eu/node/4038>

[7] [https://www.asylumlawdatabase.eu/node/4038#toc\\_70](https://www.asylumlawdatabase.eu/node/4038#toc_70)

[8] [https://www.asylumlawdatabase.eu/node/4038#toc\\_176](https://www.asylumlawdatabase.eu/node/4038#toc_176)

[9] [https://www.asylumlawdatabase.eu/node/4038#toc\\_273](https://www.asylumlawdatabase.eu/node/4038#toc_273)

[10] [https://www.asylumlawdatabase.eu/node/4038#toc\\_279](https://www.asylumlawdatabase.eu/node/4038#toc_279)

[11] [https://www.asylumlawdatabase.eu/node/4038#toc\\_287](https://www.asylumlawdatabase.eu/node/4038#toc_287)

[12]

[https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/7%20ECLI\\_NL\\_RBDHA\\_2020\\_10437%20Bu](https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/7%20ECLI_NL_RBDHA_2020_10437%20Bu)

[13] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/article-30a-1-aliens-law>

[14] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/aliens-decree>

[15] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/3106a-aliens-circular>