



# HELP ON THE ROUTE

REFUGEE RIGHTS: NATIONAL AND  
INTERNATIONAL STANDARDS VIS-À-VIS  
THE SITUATION ON THE GROUND



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## CONTENT

<b>INTRODUCTION .....</b>	<b>2</b>
- Crisis Situation .....	2
- Closing the Borders .....	2
- Transit Camps.....	3
- Smuggling and Robbery .....	3
<b>NATIONAL FRAMEWORK ANALYSIS .....</b>	<b>4</b>
- Access to Territory and Asylum Procedure .....	5
- Detention .....	5
- Asylum procedure .....	6
- Conclusion .....	8
<b>VIOLATIONS OF THE RIGHTS OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS</b> .....	<b>10</b>
- Obligation to Respect Human Rights .....	10
- Right to Life .....	10
- Prohibition of Torture .....	10
- Prohibition of Slavery and Forced Labor .....	11
- Right to Liberty and Security .....	12
- Right to Fair Trial .....	12
- Right to Respect for Private and Family Life.....	13
- Religious Freedom .....	13
- Lack of an Effective Remedy.....	14
- Prohibition of Discrimination .....	14
- Prohibition of Collective Expulsion of Aliens.....	15
- Violation of the Principle of Non-refoulement .....	15
- Conclusion .....	16

## Introduction

Starting from the end of 2014 to date, the Republic Macedonia has witnessed a previously unseen influx of refugees in transit from the country's territory to the EU member countries. Since the beginning of registration process conducted by the country, starting from June 2015 to the end of the year, 388,233 refugees were registered to have passed through the country.<sup>1</sup> During 2016, from the beginning of the year until March<sup>2</sup>, 89,623 refugees were registered to have passed through the territory of the Republic of Macedonia.<sup>3</sup> The majority of refugees were citizens of Syria, Afghanistan and Iraq. Considering the fact that the registration process started in June 2015, and prior to that a large number of refugees had been allowed to enter the country unregistered for over a year as well as the large number of illegal crossings through the country, the actual number of refugees and immigrants who entered Europe between 2014 and 2015 is much higher than the official one, i.e. over 1 million of refugees and immigrants.

Going through a turbulent period that has significantly affected the development of everyday politics, the refugee crisis in the country has been managed poorly. Hence, the circumstances of the events significantly varied from one period to another and were marked by the developments given below.

## Crisis Situation

On August 19<sup>th</sup>, 2015, the Government of the Republic of Macedonia adopted a decision for declaring a crisis situation on the southern and northern border of the country due to the influx of refugees in the country. With the Assembly's decision, the crisis situation was extended until June 2016 and was further extended until December 31<sup>st</sup>, 2016 at a session shortly before the unconstitutional dissolution of the Assembly.<sup>4</sup> During October 2016, the Government once again decided to extend the declared crisis situation until the end of June 2017. During the month of June 2015, the Assembly adopted the amendments to the Law Amending the Law on Asylum and Temporary Protection. The proposed solution made it possible for refugees to express intention to seek asylum in front of a police officer. After doing so, they had an opportunity to duly submit such a request within 72 hours. From the expression of intention to the submitting of an application, refugees were not to be considered as illegal immigrants, which allowed them temporary free movement and legal use of public means of transport.

## Closing the Borders

In late 2015 and early 2016, Macedonia decided to restrict the entry of individuals on its borders. In December 2015, the Government adopted a decision which specified that only citizens of Syria, Iraq and Afghanistan may cross the state border, while in February 2016, the entry of refugees from Afghanistan was denied as well. In early March 2016, the Government decided to completely close the borders for entry of persons without legal residence documents, which were automatically categorized as "migrants". Despite the fact that this practice directly violates the principles of non-refoulement and the right of access to territory and asylum procedure, the

1 Statistical data from the International Office for Migration – IOM <http://doe.iom.int/docs/Flows%20Compilation%202015%20Overview.pdf>

2 With an agreement between the countries of the European Union and Turkey signed on 18 March 2016, the border crossings of the Balkan route were officially closed.

3 Statistical data from the Ministry of Interior of the Republic of Macedonia <http://moi.gov.mk/vest/1639>

4 Official Gazette of the Republic of Macedonia no. 162/15 and no. 59/16

Government explained that these policies were a result of the practice of other countries on the Balkan route and the agreement between the EU and Turkey.<sup>5</sup> After the closure of the borders, smuggling channels re-activated and the Macedonian police in cooperation with police forces of Austria, Czech Republic, Slovakia, Poland, Hungary, Slovenia, Croatia, and Serbia have discovered the smuggling of thousands of refugees and migrants. After the closure of the borders, almost 1500 registered refugees and migrants remained in Macedonia, and in September 2016, as a result of their moving forward on the path to Serbia, their number was less than 200.

## Transit Camps

Due to the chaos caused by reception and transport of refugees, Gevgelija residents protested against the large number of refugees in their city. In September 2015, the transit of refugees was initiated and organized in improvised transit camps in the south, near Gevgelija (Vinojug) and in the north, near Kumanovo (Tabanovce). The camps were set up away from the populated areas, along the railroad tracks, 500 meters from the border with Greece, i.e. with Serbia. The camps expanded daily and transit was conducted in an organized manner with the registration of refugees in Gevgelija and direct transport with a special line of Macedonian Railways trains. After the closure of the borders in March 2016, about 130 refugees remained at the camp in Vinojug, Gevgelija. This was a closed-type refugee camp, i.e. refugees were not allowed to leave the camp. That type of detention of the refugees in Vinojug lasted for almost 9 months. After persistent urgings by NGOs and the Ombudsman, the refugees were allowed to go on short walks to town, always accompanied by representatives of the Red Cross. In contrast, 1,500 refugees remained living at the camp in Tabanovce under appalling conditions, some of them even sleeping in the mud, under the open sky. Within a few months, the number of refugees in Tabanovce slowly but surely reduced. It is an open-type camp, i.e. refugees could leave whenever they wanted, so about 1,400 unregistered refugees “dispersed” throughout the country and abroad. Today, the camps are partly renamed to reception-transit centers. The number of accommodated refugees ranges from 60 to 100 in each center, but it varies with the groups of refugees which come and go on a daily basis. None of them have a legal status in the country. A small number of refugees have opted to apply for asylum after a several-month stay in the camps after which they were moved to the Reception Center for asylum-seekers in Vizbegovo, Skopje. Most of them gave up on the filed requests and left the country illegally.

## Smuggling and Robbery

Many refugees who have illegally entered and are still entering the country have become victims of smuggling and hate crimes. On a weekly basis, the media reported on a significant number of incidents related to smuggling and the Helsinki Committee registered over 30 incidents of bandit attacks. During these incidents, approximately 100 victims were citizens of Syria, Afghanistan and Morocco. The robberies are of similar nature, i.e. victims are being offered fake transport or intercepted, at which point the bandits, by way of serious threats or pretending to be police officers, startle, attack, injure, and rob the refugees with cold weapons (sometimes firearms and electric batons).

Considering the developments above, we can conclude that the country has significantly underestimated the seriousness of the refugee crisis. Violations of rights are continuously registered to this day and this paper analyzes those violations in terms of domestic legislation and international law with special reference to the European Convention on Human Rights (ECHR).

## National Framework Analysis

Due to the influx of refugees and the high number of requests for asylum in the Republic of Macedonia, in 2015 and 2016 the legislation was changed in order to meet the new needs. However, it still remains uncertain whether the achieved progress was sufficient for the country to be able to fully meet the international standards for managing refugees and asylum-seekers. Therefore, this section investigates the key elements of the asylum system in the Republic of Macedonia, such as access to territory and asylum procedure, the mechanisms for the granting of asylum, treatment of persons with special needs and conditions of admission and detention, while offering information for their compliance with the relevant international standards and recommendations for further improvements.

The Law on Asylum and Temporary Protection<sup>6</sup> (LATP, Mac: ЗАПЗ) is the basis of the legal framework for the treatment of refugees and asylum-seekers in the Republic of Macedonia. This Law went through its first serious changes in 2012, which were aimed at aligning the Law with the national legislation of relevant international standards and key provisions of the Convention Relating to the Status of Refugees of 1951 (the definition of “refugee” under the Convention, illegal stay in the country of escape, the principle of non-refoulement). Furthermore, the Law guarantees certain rights for recognized refugees. These are basically the same rights enjoyed by every citizen of the state, except for the right to vote, the right to engage in wage-earning employment, to found associations of citizens or political parties in cases when, as a condition, it is prescribed by law that the person is to be a citizen of the Republic of Macedonia. (Art. 50-57 of LATP). However, certain provisions have not yet been aligned with the international standards, especially the ones referring to the grounds for rejection of the right to asylum.

Changes in LATP of 2015 and 2016 brought improvements in the areas of access to territory and asylum procedures as well as the conditions for detention of people seeking international protection, but also brought restrictions on family reunification and the definition of “safe third country” in a way which represents a serious violation of the rights of refugees and asylum-seekers. Despite the limited progress in terms of legislation, there is still the problem with the lack of implementation or inadequate implementation of the legal provisions. Institutions failed to cope with the huge increase in the number of refugees, which made room for concern regarding the free access to territory and asylum procedure. When the legal provisions are being applied, the late issuance of appropriate identification documents exposes asylum-seekers at the risk of being unable to obtain international protection or exercise their rights which are specifically relevant to the status of international protection. The decision-making process in asylum procedures is often considered non-transparent because decisions rarely contain clear explanations of the reasons for the decision and state security matters are most commonly used as grounds for refusal of applications for international protection. In practice, there is also a concern for effective access to legal remedies, access to information and translation in a language that refugees can understand. The country’s experience with previous refugee crises showed that their integration into everyday life is not only difficult but almost impossible.

Therefore, a number of bodies of domestic and international character, including the United Nations High Commissioner for Refugees (UNHCR), believe that “the country does not as yet meet international standards for the protection of refugees, and does not qualify as a safe third country”<sup>7</sup>, and even advises “that other states should refrain from returning or sending asylum seekers to the former Yugoslav Republic of Macedonia, until further improvements to address these gaps have been made, in accordance with international standards”.

6 *Official Gazette of the Republic of Macedonia, no. 49/2003, 66/2007, 142/2008, 146/2009, 166/2012, 101/2015, 152/2015, 55/2016 and 71/2016*

7 Observations on the situation of asylum-seekers and refugees in the former Yugoslav Republic of Macedonia, UNHCR, August 2015, <http://www.refworld.org/pdfid/55c9c70e4.pdf>

## Access to Territory and Asylum Procedure

According to Article 25 of the Law on Foreigners<sup>8</sup>, “a foreigner who expresses an intention to apply for asylum in the Republic of Macedonia, has submitted an application for asylum in the Republic of Macedonia, has been granted an asylum by the Republic of Macedonia, may not be denied entry in the country”. Starting from June 19<sup>th</sup>, 2015 (based on amendments to the LAMP from June 18<sup>th</sup>, 2015), applicants for asylum may submit a statement of intention to apply for asylum at border crossings or any police station, after which the applicant is issued a temporary residence permit which is valid for 72 hours, during which the applicant must also formally apply for asylum. If already in the country, the asylum-seeker can submit a request to the nearest police station or directly to the Department of Asylum at the Ministry of Interior (Art. 16 of LAMP). After the initial filing of the application, the police are responsible for sending the asylum-seeker to the Department of Asylum at the Ministry of Interior (MOI). MOI is the primary institution responsible for implementing the asylum procedures through the Department of Asylum, while the Ministry of Labor and Social Policy is responsible for the reception and integration of asylum-seekers and persons who have been granted an asylum.

In practice<sup>9</sup>, however, there is a lack of implementation of internationally accepted procedures<sup>10</sup> for identification, profiling, referral, and treatment of applicants with special needs (such as victims of human trafficking, victims of sexual and gender-based violence, the elderly or people with disabilities). Training for police officers is organized at the Department of Asylum (for police officers deployed at border crossings and for those in police stations), but they are focused only on asylum procedures, and not on identification, profiling and referral. Police stations rarely have available translators at their disposal (or do not have them at all) and the filing of the applicant usually contains only basic biographical data, thus omitting information relevant to refugee status or special protection. This calls into question the capacity of the police officers and the existence of mechanisms for timely identification of persons in need of international protection, including refugees and victims of human trafficking.

In late 2015 and early 2016, the Republic of Macedonia decided to restrict the entry of persons at its borders. In December 2015, the Government of the Republic of Macedonia decided that only nationals of Syria, Iraq and Afghanistan may cross the state border, and in February 2016 it was decided that neither citizens of Afghanistan can cross the border. In early March 2016, the Government decided to completely close the borders for people who were automatically categorized as “migrants”. Although this practice directly violates the principles of non-refoulement and the right of access to territory and procedures, the Government explained that these policies were a result of the actions of other countries on the Balkan route as well as of the agreement between the European Union and Turkey, and the legal coverage of such treatment was made possible through the Law on Amendments to the LAMP (ЗАПЗ) from April 2016, with the extension of the meaning of the term “safe third country”.

## Detention

According to the current legal framework, asylum-seekers have the right to freedom of movement within the territory of the country and protection from arbitrary arrest or detention. Provisions for the detention of foreigners do not apply to persons seeking protection from the Republic of Macedonia based on LAMP (Art. 3 of the Law on Foreigners). According to Article 21 of the Law on Foreigners, unauthorized entry into the country is considered

8 *Law on Foreigners* (“Official Gazette of the Republic of Macedonia”, no. 35/2006, 66/2007, 117/2008, 92/2009, 156/2010, 158/2011, 84/2012, 13/2013, 147/2013, 148/2015 u 217/2015);

English Version: [https://www.ecoi.net/file\\_upload/1930\\_1332582379\\_fyrom-law-on-foreigners-2006-en.pdf](https://www.ecoi.net/file_upload/1930_1332582379_fyrom-law-on-foreigners-2006-en.pdf)

9 The observations are the result of direct field monitoring by UNHCR as well as by the Helsinki Committee and other NGOs whose observers are on the field. For more information see: Observations on the situation of asylum-seekers and refugees in the former Yugoslav Republic of Macedonia, UNHCR, August 2015

10 More information on the procedures for treatment of special categories of people can be found in: UNHCR, Refugee Protection and Mixed Migration: A 10-Point Plan of Action, January 2007, Rev. 1, <http://www.refworld.org/docid/45b0c09b2.html>

any entry into the country where the foreigner “crosses or attempts to cross the state border out of the place designated or hours and manner specified as for border crossing; avoids or attempts to avoid border control; at entry presents falsified, another person’s, invalid travel or other identification documents; enters or attempts to enter without a valid and recognized travel or other identification document; and presents false data to the Ministry of Internal Affairs”. Illegal migrants who are not included in the category of “asylum-seeker” are then referred to the Inspectorate of illegal migration for further processing and treatment in the Reception Centre for Foreigners in Gazi Baba which is a closed-type institution. According to Art. 153 of the Law on Foreigners, unauthorized entry into the country is an offense punishable by fines, but also with a security measure of expulsion from the country.

In practice, the problem that arises is the excessive detention of “foreigners who crossed the state border illegally” and who have expressed their intention to apply for asylum in the Reception Centre for Foreigners in Gazi Baba. According to the legal framework, foreigners placed in Gazi Baba should be explained about their legal right to seek asylum as soon as possible, and if they express intention to do so, they should be immediately transferred to the Reception Centre for Asylum-Seekers in Vizbegovo. Even though responsible institutions claim that legal norms are being implemented, in practice the results are quite different. Namely, the relocation of foreigners who applied for asylum from the Reception Center for Foreigners Gazi Baba to the Reception Centre for Asylum-Seekers Vizbegovo is often dragged out and can last from 30 to 60 days.

The conditions in the center in Gazi Baba have been criticized by many observers. The UN Committee against Torture<sup>11</sup> and the Ombudsman of the Republic of Macedonia<sup>12</sup>, the Helsinki Committee<sup>13</sup> and other national and international organizations have indicated that the conditions in the center are inhumane and degrading.

According to the Criminal Code of the Republic of Macedonia, migrants and refugees caught with their smugglers are considered witnesses in criminal proceedings against smuggling. Consequently, despite the ban in national legislation on detention and detention of asylum-seekers, refugees were held in the center in Gazi Baba for the purpose of “providing evidence” in the criminal proceedings and were detained throughout the proceedings that may last for three months or more, and sometimes even exceed the time limit of one year. With the amendments of June 2015, the refugees were allowed to submit their claim (or intention to seek asylum) at the border crossing, which resulted in a major reduction in the number of persons who crossed the border illegally and the number of asylum-seekers who wait to be transferred from Gazi Baba to the Centre in Vizbegovo.

## Asylum procedure

Within the Ministry of Interior, the Department of Asylum is responsible for implementing the asylum procedure based on the Law on Administrative Procedure.<sup>14</sup> LAMP entails regular and urgent procedures for decisions upon requests for asylum. Emergency procedures apply in cases where the request is evidently unfounded unless the application is submitted by an unaccompanied minor or a person with mental disabilities (Art. 27 and Art. 34 of the LAMP).

Ensuring the rights of asylum-seekers and persons who have been granted the right of asylum is a responsibility of the Ministry of Labour and Social Policy (MLSP (Mac: МТСП), Art. 48 of the LAMP). The MLSP is obliged to ensure the stay, the accommodation and the care for asylum-seekers and to provide necessary legal aid and social

11 OHCHR, Committee Against Torture, Concluding observations on the third periodic report of the former Yugoslav Republic of Macedonia, May 2015; <http://goo.gl/fAJccu>

12 Ombudsman of RM, Report on the extraordinary visit to the Reception center for foreigners of July, 2012, <http://goo.gl/ybRHkx> and Annual Report on the National Preventive Mechanism for 2013, <http://goo.gl/Uii7y1>. See also European Commission, The Former Yugoslav Republic of Macedonia 2014 Progress Report, October 2014, p. 45 <http://goo.gl/mmVdDQ>

13 <http://mhc.org.mk/announcements/295#.V7689P197IU>

14 *Law on Administrative Procedure, Official Gazette of the Republic of Macedonia 124/2015*

protection. Taking into account the existing conditions at the two Reception Centers (Vizbegovo and Gazi Baba) and the nonexistent plans for integration and social protection of refugees and asylum-seekers, it is inevitable to conclude that state institutions have completely failed in ensuring the rights of refugees Republic of Macedonia.

Regarding the language of communication, there is a deviation in the national legislation from international standards. Namely, LAMP does not stipulate that the asylum-seeker should be provided with a translation in a language that he/she understands, but in a language which the asylum seeker is presumed to understand or in any of the foreign languages in common use (Art. 18 et al., LAMP). In practice, the assumption that the asylum-seeker speaks a particular language may often be inaccurate and have a negative impact on the asylum procedure.<sup>15</sup> Also, the procedures are not adapted to the specific categories of people. The vulnerable categories and the children, including unaccompanied minors seeking asylum are treated in the same way as adults, although LAMP specifically calls for taking into account the forms of persecution typical for children (Art. 22-a) as well as cases of persecution which by nature are tied to gender or to children (Art. 4-c). The legislation does not list the specific forms of persecution specific to children<sup>16</sup>, which leads to a high probability for their oversight in the decision-making process.

Under the Law on Free Legal Aid, asylum-seekers are entitled to free legal aid at all stages of the asylum procedure. The aid is approved by the Ministry of Justice and there are NGOs on the field offering services of free legal aid (Helsinki Committee, Macedonian Young Lawyers Association). Pursuant to LAMP, the Department of Asylum is obliged to conduct separate interviews with asylum-seekers to establish the facts related to the seeking of asylum (Art. 28). However, practice shows that the first stage in the asylum procedure is too slow and registration (including fingerprinting, verification of personal data and photographing) is often delayed by significant difficulties in providing a translation. Interviews are often limited to establishing the identity and desired destination of the asylum-seekers for the purposes of security and border-crossing management.<sup>17</sup> Furthermore, the UNHCR states that generally, in the decision-making processes, there is inadequate legal reasoning and assessments resulting in ill-founded decisions. This is due to the fact that very often, when deciding, only selected statements of asylum-seekers are taken into account without sufficient analysis of all facts in the application or consideration of all relevant information on the country of origin.

Invoking national security is often used as a basis for rejecting requests for asylum and special protection without offering any other appropriate explanation. In practice, the Administration for Security and Counterintelligence conducts security checks on all asylum seekers, and then the Department of Asylum processes the applications. However, if the Administration believes that a person is a threat to national security, the Department usually rejects the application immediately, solely on the basis of the Administration's opinion, without further action or consideration of other facts or grounds for granting protection. These decisions are made regardless of whether asylum-seekers fulfill the other conditions for granting protection and such treatment is not in accordance with the Convention Relating to the Status of Refugees of 1951 (Art. 1D, 1E and 1F). Also, in cases where applicants claim they were victims of gender-based violence, even rape, authorities do not refer to such violence as a reason for granting refugee status. Instead, most persons are granted subsidiary protection on the basis of the overall use of violence in the country of origin.

Decisions of the Department of Asylum can be appealed to the Administrative Court. The applicant has the right to appeal within 30 days of adoption of the decision in a regular or seven days from the date of issuing the decision

15 For more information, see: UNHCR comments on the European Commission's Amended Proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast) COM (2011) 319 final, January 2012, p. 12-13, <http://www.refworld.org/docid/4f3281762.html>

16 UNHCR, Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, HCR/GIP/09/08, 22 December 2009, <http://www.refworld.org/docid/4b2f4f6d2.html>

17 The observations are the result of direct field monitoring by UNHCR as well as by the Helsinki Committee and other NGOs whose observers are on the field. For more information see: Observations on the situation of asylum-seekers and refugees in the former Yugoslav Republic of Macedonia, UNHCR, August 2015

in a summary procedure (Art. 32 and 37 of LAMP). The Administrative Court then has a period of two months, i.e. thirty days to decide on the appeal. The appeal delays the execution of the deportation of the applicant, which is determined when the request is rejected at the first instance by the Department of Asylum. Most often, the Administrative Court decides only on basis of the procedural aspects of first instance decisions without ever hearing from the asylum-seeker.<sup>18</sup>

In April 2016, the Assembly of the Republic of Macedonia adopted amendments to the Law on Asylum and Temporary Protection. The amendments were published in the “Official Gazette of the Republic of Macedonia, no. 71/2016” on 11 April 2016. These amendments significantly reduced the protection that the Republic of Macedonia gives to asylum-seekers and limited their human rights guaranteed by the European Convention on Human Rights (ECHR) and the Convention Relating to the Status of Refugees of the United Nations. These restrictions on the rights of asylum-seekers challenge the other articles of the Law on Asylum and Temporary Protection, the United Nations Convention Relating to the Status of Refugees, the European Convention on Human Rights, the European Union Directives, the Convention on the Rights of the Child, and proposals and guidelines for the protection of refugees and asylum-seekers of the United Nations High Commissioner for Refugees. The amendment to Art. 8 refers to the time limit for family reunification, i.e. a family reunification can be realized 3 years after a person receives a refugee status or a subsidiary protection. The new paragraph of Article 8 is contradictory to Article 12 paragraph 2 of the EU’s Family Reunification Directive 2003/86/EC, which states that countries shall not put a time limit for family reunification of recognized refugees, i.e. shall not require the person who has been granted asylum to stay in the country for a certain period of time before they can be reunited with their family members. Furthermore, limiting family reunification which is stipulated by the new law, violates the principle of the best interests of the child and the needs of minors provided for in Article 22-a, unaccompanied minors regulated by Article 23 and vulnerable people with special needs provided for in Article 23-a of the Law on Asylum and Temporary Protection.

The amendments of April 2016 stipulate changes in the “safe third country” section as well (Article 10-a). This Article stipulates that asylum-seekers can be returned to a third safe country without an actual review of their application provided they entered from an EU member country, NATO, or EFTA, which meets certain requirements. Those requirements involve: ratifying and implementing the provisions of the 1951 Refugee Convention, ratifying and implementing ECHR provisions, applying standards for effective legal remedy and having procedures for asylum in accordance with the Refugee Convention. In applying the principle of safe third country, the Article emphasizes that the requirements will be examined separately and it will be determined whether the country meets the aforementioned requirements.

Yet again, the problem which arises is the lack of specificity and detail in the legal provision. Namely, the Law does not stipulate how the assessment of the safe third country will be performed, i.e. if the country meets the necessary requirements stated in the new Article. Furthermore, the Law states that the applicant will be informed about “the possibility of using a legal remedy”, but the available legal means and the deadlines are not clearly stated. Article 39, paragraph 3 of the Directive 2013/32/EU<sup>19</sup> states that “The applicant shall be allowed to challenge the application of the concept of a safe third country on the grounds that the third country concerned is not safe in his or her particular circumstances”. The applicant should be given the chance to challenge the general supposition of safety in a third country by showing that considering his/her particular circumstances, the third country would apply more restrictive criteria in reviewing the application for asylum than the country in which the application was initially filed.

## Conclusion

In the last few years, the legal framework for the treatment of refugees, asylum-seekers and other persons in need of international protection has significantly advanced. Also notable are the country’s efforts to enhance the

18 European Commission, Progress Report for The Republic of Macedonia for 2012, p. 56; <http://goo.gl/gLOUyT>

19 European Union Directive on common procedures for granting and withdrawing international protection (recast), 2013/32/EU, 26 June 2013, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=en>

available capacities and improve the infrastructure for the treatment of those persons.

However, it has to be noted that key differences between domestic legislation and international standards (grounds for refusal, family reunion, safe third country, etc.) still do exist. This situation leads to a situation where even though most of the legislation is in line with international standards, the existence of several key differences results in a treatment that is very different from the spirit of the Convention Relating to the Status of Refugees and the rest of the international legal framework.

There is a huge delay in the implementation of new laws and a large discrepancy between legislation and practice. In 2014, 2015 and 2016, the increased influx of refugees requires prompt reaction by the state. Despite the amendments, the establishment of the changes in practice was often delayed along with providing the necessary equipment and human resources to apply the new procedures.

There is a huge delay in the implementation of new laws and a large discrepancy between legislation and practice. In 2014, 2015 and 2016, the influx of refugees required prompt reaction by the state. In spite of the amendments, the implementation of the changes in practice was often delayed, as was providing the necessary equipment and human resources necessary to apply the new procedures. At the same time, legal changes that extend the meaning of the term “safe third country” practice resulted in a practice of refoulement which is in direct contradiction with the principles of international law on the treatment of refugees, asylum-seekers and other persons in need of international protection.

# Violations of the Rights of the European Convention on Human Rights

In trying to deal with the unprecedented wave of refugees who transited through the country and refugees who remained “stuck” in the country, the rights of refugees guaranteed by international documents which include the Republic of Macedonia as a signatory state, have been seriously violated with individual acts and established practices. In this regard, this section analyzes the violations of the European Convention on Human Rights and the breach of the country’s obligations.

## Obligation to Respect Human Rights

Article 1 of the ECHR provides that all contracting States to the Convention “shall secure to everyone within their jurisdiction the rights and freedoms” guaranteed by the Convention. According to Article 8 of the Constitution of the Republic of Macedonia, some of the fundamental values of the constitutional order are “the fundamental freedoms and rights of the individual and citizen, recognized in international law and determined by the Constitution”. Article 29 of the Constitution stipulates that foreigners in Macedonia “enjoy the rights and freedoms guaranteed by the Constitution, under conditions determined by law and international agreements”. The Republic of Macedonia guarantees the right to an asylum to foreigners and persons without citizenship persecuted because of democratic political convictions and actions. The Law on Asylum and Temporary Protection<sup>20</sup> regulates the conditions and the procedure for granting and termination of the right of asylum to foreigners or stateless persons seeking asylum in the Republic of Macedonia. With the complete closure of border crossings and setting up a barbed wire fence, which are violations of international and domestic law, Macedonia avoids its obligation to respect the rights of refugees.

## Right to Life

Article 2 of ECHR stipulates that every person’s right to life is protected by law. Article 10 of the Constitution reads as follows: “Human life is inviolable”. The Republic of Macedonia, as a signatory state of ECHR, has an obligation to take appropriate measures for the protection of the life of the persons in transit on its territory. Throughout 2014, until June 2015, the Republic of Macedonia regarded refugees as “illegal migrants” and did not allow them to use public transport thus forcing them to walk on foot throughout the entire country in an attempt to reach the Republic of Serbia. On their way to Serbia, they often used the train line from Tabanovce to Gevgelija. On April 24<sup>th</sup>, 2015, near Veles, a train killed 14 refugees out of which six were minors. In the period from late 2014 to May 2015, at least 29 refugees and migrants were killed, including infants, children, and women. Unfortunately, although the Ministry of Interior was aware of the dangers and risks to which refugees were subjected, the state took very few adequate measures to protect their most basic human rights, especially the right to life.

## Prohibition of Torture

Article 3 of ECHR stipulates the following: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”. Article 11 of the Constitution reads as follows: “Human physical and moral dignity is inviolable. Any form of torture, or inhuman or humiliating treatment or punishment is prohibited”. Article 142 of

20 Official Gazette of the Republic of Macedonia no. 49/2003, 66/ 2007, 142/2008, 146/2009, 166/2012, 101/2015, 152/2015, 55/2016 and 71/2016.

the Criminal Code<sup>21</sup> stipulates the following: “A person who while performing his duty, as well as a person instructed by an official person or based on an agreement of the official person, shall apply force, threat or some other illicit instrument or an illicit manner with the intention to force a confession or some other statement from a defendant, a witness, an expert witness or from some other person, or will inflict on another person severe bodily or mental suffering in order to punish the other person for a crime which the other person has committed or for which the other person or some other person is under suspicion, or to intimidate him/her or to force him/her to forfeit some of his\her rights, or shall cause such suffering due to any kind of discrimination, shall be punished with imprisonment for three to eight years”. If the aforementioned actions lead to a heavy bodily harm or other grave consequences for the damaged party, the perpetrator will be punished with at least four years of imprisonment. According to Article 143 of the same Law, a person who mistreats, frightens or insults another person or in general, behaves towards another person in a manner demeaning to human dignity, will be punished with one to five years in prison.

After the declaring of a crisis situation by the Government, the published media materials and direct observation of representatives of the Helsinki Committee who were present on the southern border, it was evident that there was an inhumane treatment of refugees by the special police officers who used excessive and unjustified force, using tear gas and stun grenades in an unsuccessful attempt to prevent refugees from crossing the territory.

Hundreds of migrants and refugees, victims of armed bandit groups of Macedonian citizens who abuse their vulnerability, were caught in the company of smugglers. Being considered as witnesses and under the Public Prosecutor’s orders, they were sent to the so-called “reception center” for foreigners in the Municipality of Gazi Baba in Skopje.

In 2001, the building of a former kindergarten was meant to become an institution that will provide temporary accommodation for persons whose stay in the country is illegal, before their deportation. With a capacity of 120 beds, the maximum detention period may be 12 months. In the summer of 2015, over 370 refugees and migrants were detained in Gazi Baba. The legally unfounded detentions, the inability to apply for asylum, the overcrowding of 300%, the poor living conditions, the inability to take short walks outdoors, the prohibition of communication with the outside world, the dysfunction of the kitchen and toilets, the inadequate medical services, and detention of juveniles along with adults made Gazi Baba worse than prisons of the least developed countries in Africa. Such actions and conditions at the Reception Center are equivalent to inhuman and degrading treatment.

After several actions and calls by local and foreign NGOs and activists, the reactions of the bodies for protection of human rights of the UN and the change of status from “illegal migrants” into people who have a right to express their intention of seeking an asylum, the Reception Center in Gazi Baba was vacated in the summer of 2015. Some of the refugees were kept there for longer than 7 months. Some of the detained, upon arrival in the EU, said that Gazi Baba will be remembered as the worst experience of their lives. After closing the borders, the practice of detention continues, but with reduced intensity of about thirty people per month.

## Prohibition of Slavery and Forced Labor

Article 4 of the ECHR stipulates an absolute prohibition of any form of slavery and forced labor. The Constitution of the Republic of Macedonia, in Article 11, along with guarantees of the inviolability of the physical and moral integrity of the person, also prohibits forced labor. The Criminal Code, with Article 418-a regarding crimes against humanity and international law, punishes human trafficking, i.e. among the rest, also punishes exploitation, forced labor and slavery.

21 Official Gazette of the Republic of Macedonia no. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 115/2014, 132/2014, 160/2014, 199/2014, 196/2015 and 226/2015.

On 5 April 2015, the British Channel 4 News posted a video report about a notorious house in the village of Vaksince, Kumanovo, where hundreds of refugees are held hostage by a smuggling group.<sup>22</sup> According to the testimony of refugees who managed to arrive in the EU, an armed group extorted money from refugees with clubs and knives and forced to labor in order to let them continue their journey towards the EU while keeping them in unbearable, inhumane conditions. After the issuance of the report, the Macedonian police services needed 6 days to carry out an investigation. During the action, according to the Ministry of Interior, 128 migrants were found hiding in houses in the village and several people suspected of smuggling were detained, one of which was a police officer.

## Right to Liberty and Security

Article 5 of ECHR guarantees every person's right to liberty and security, and that "No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law". According to Article 12 of the Constitution, a person's liberty is inviolable. Also, "No person's liberty can be restricted except by a court decision and in cases and procedures determined by law".

Until June 2015 (although with a reduced intensity to this day), the country retained refugees as witnesses and victims of human trafficking in the only Reception Center for foreigners in Gazi Baba. Some of these people were under security check by the Administration for Security and Counterintelligence. The procedure of detention was carried out illegally. In accordance with Article 108, paragraph 3 of the Law on Foreigners<sup>23</sup>, the Ministry of Interior shall adopt a decision on temporary detention of the foreigner, and in paragraph 5 the Law stipulates that a foreigner has the right to appeal primarily to the State Commission for deciding in administrative procedure in second instance, and then to the Administrative and the Higher Administrative Court. . In accordance with Article 19, paragraph 3 of the Law on Administrative Procedure<sup>24</sup>, the participants in the proceedings who are not Macedonian citizens and do not understand the Macedonian language and the Cyrillic alphabet are entitled to an interpreter. Under Article 61, paragraph 5, the bodies before which the administrative procedure is being conducted should reply in Macedonian language and the official language used by the party.

The illegality of the detention procedures consists in the failure of the Ministry of Interior to provide an interpreter and the inability of refugees and migrants to understand or appeal their detention. In the first half of 2015, the Reception Center in Gazi Baba was overcrowded, decaying and closed for civil associations and the media. After the reaction of UN bodies for the protection of human rights, the Ombudsman, NGOs, and activists, in the summer of 2015 the detained refugees were released, but prosecutors continued the practice of sending witnesses to the Centre, though much lower numbers.

## Right to Fair Trial

Article 6 of ECHR guarantees the right to a fair trial which is procedural and substantive. The procedural character of this right, among other things, refers to the guaranteed for access to court, i.e. the possibility to challenge a particular violation of fundamental individual rights before a legitimate court (6.1). Article 12 of the Constitutions provides for basic procedural rights of citizens which are necessary for a fair trial. Also, Article 15 of the Constitution stipulates the right to appeal particular legal acts enforced in a procedure before a court of first instance, administrative body or an organization, or other institutions which issue authorizations.

22 <http://www.channel4.com/news/tracking-down-macedonias-migrant-kidnap-gang>

23 Official Gazette of the Republic of Macedonia no. 35/2006, 66/2007, 117/2008, 92/2009, 156/2010, 158/2011, 84/2012, 13/2013, 147/2013, 148/2015 and 217/2015.

24 Official Gazette of the Republic of Macedonia no. 38/2005, 110/2008 и 51/2011 (revoked), but the same provisions can be found in the new law with an identical title published in the Official Gazette of the Republic of Macedonia no. 124/2015/

Ever since the beginning of the refugee crisis up to this day, not even one refugee who was in transit or who stayed in the Republic of Macedonia was allowed to address a competent court in a language he/she understands when his/her rights have been violated by holders of public authority.

## Right to Respect for Private and Family Life

Article 8 of ECHR stipulates that every person has the right to respect for private and family right without illegal interference by the state upon exercising that right. Following that Article, Article 25 of the Constitution guarantees citizens' right to respect and protection of their private and family life, of their dignity and reputation.

During the most critical moments of the refugee crisis, 370 refugees were accommodated and detained for 7 months in the Reception Center in Gazi Baba<sup>25</sup> which has the capacity for around 120 people. The overcrowding in the facility amounted to more than 300% and was worse than inhumane treatment. Accommodation conditions included accommodation of more than 20 refugees in the same room, at the same time, and toilets with or without improvised doors. In such conditions, the private life of the refugees who were detained in Gazi Baba was not only threatened but completely non-existent.

Moreover, abusing the vulnerability of the refugees in transit on the painstaking Balkan route as well as their total lack of protection in crisis situations, reporters continuously photographed the refugees and later posted their photos without the refugees' consent. Their intrusiveness was non-selective, i.e. it affected men, women, children, and entire families. Thus, not only did reporters acted contrary to the ethical principles of their profession, but they also violated the refugees' right to private and family life.

Regarding the right to respect for private and family life, the issue of reunification of families has to be discussed as well. Since the closure of the borders (7 months ago) until recently, there has been only one registered case of family reunification of a man who is a recognized as an asylum-seeker in Germany and his family, his wife and children, who were detained in the Transit Camp Tabanovce in Kumanovo. The procedure for their reunification lasted for more than 6 months and was conducted by the husband's legal representatives in Germany.

Unfortunately, the Republic of Macedonia does not take any serious measures for the reunification of families whose members are held in the transit-reception centers. On the contrary, with the amendments to the Law on Asylum, the state limited family reunification even for those people who could receive the asylum-seeker status or subsidiary protection. Namely, it was planned for those people to be able to reunite with their families 3 years after they had been granted a refugee status or have been provided with a subsidiary protection.

## Religious Freedom

The freedom of thought, conscience and religion is stipulated and guaranteed in Article 9 of ECHR, which stipulates that this right includes the right to change religion and beliefs as well as the freedom of expression of religion, alone or with others, publicly or privately, through worship, teaching, preaching, and religious rituals. Freedom of religion is also guaranteed in Article 19 of the Constitution and identical to the Convention, it involves freedom of religious expression which includes the practice of religious rituals.

During the refugee crisis and the overall stay of refugees in transit and reception centers in the country, refugees were never provided with an adequate room for prayer and practice of religious rituals, nor were they provided with access to a religious building. Instead, refugees were forced to perform religious rituals in their rooms, in the presence of others or hidden in a corner.

## Lack of an Effective Remedy

Article 13 of ECHR stipulates that every person whose rights and freedoms guaranteed by the Convention have been violated, has the right to appeal before national authorities, even when the violation was committed by persons acting in an official capacity. In other words, every person whose rights have been violated shall have the right to an effective legal remedy. This right is also defined in Article 15 of the Constitution, and reads as follows: “The right to appeal against individual legal acts issued in a first instance proceeding by a court, administrative body, organization or other institution carrying out public mandates, is guaranteed”.

While it is true that for violations of their rights, refugees and migrants were able to file complaints or appeals against the decisions of state bodies or in regard to their treatment of refugees. In the specific case, these remedies cannot be considered as effective because without being able to participate in the administration, and later on, in the proceedings, refugees were unable to understand the Macedonian legal system. Ineffectiveness of existing remedies is a consequence of the fact that those in the specific case are not effective enough in practice (*Johnston and Others v. Ireland*, 18 December 1986, Series A, No. 112, para. 45) and because they guarantee rights that are only theoretical and illusory (*Airy v. Ireland*, Application no. 6289/73, para 24). In accordance with the established practice of the European Court of Human Rights, it is not sufficient for a remedy to be contained in the national legislation, but such a remedy must be truly effective in determining a violation of the rights guaranteed by the Convention, and in this case, to provide a compensation.

In spite of the numerous established violations of refugee rights provided for in the ECHR, in no time did they have access to real and effective remedy for claiming their rights before the state bodies or domestic courts.

## Prohibition of Discrimination

Article 14 of ECHR stipulates as follows: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”. Protection against discrimination is also established in Article 9 of the Constitution. Even though it refers primarily to “citizens” of the Republic of Macedonia, Article 2 of the Law on Prevention and Protection against Discrimination<sup>26</sup> stipulates that protection against discrimination and its prohibition refer to “all natural and legal persons in the process of exercise of the rights and freedoms guaranteed by the Constitution and the legislation of the Republic of Macedonia”. Apart from the basic provision provided for in ECHR, Article 3 of this Law also provides for a special protection of members of a marginalized group. According to the Law, a marginalized group is defined as “a group of individuals that are united by a specific position in the society, which are subject to prejudices, which have special characteristics that make them favorable for certain types of violence have smaller opportunity for realizing and protecting their personal rights or are exposed to increased opportunity for further victimization”.

During the organized rail transport in the second half of 2015 and early 2016, Public Transport Macedonian Railways JSC, in a short period of time, made two adjustments to the cost of the ticket for refugees who passed through the state. The price of each ticket for these users was 25 euros, i.e. 3.5 times higher than the regular price of the ticket, which is about 7 euros. Regular discounts for children, families and groups were not offered. By raising the price of tickets to refugees, Macedonian Railways introduced the practice of unequal treatment of refugees and violated the rights provided for in Article 29 paragraph 1 of the Constitution which reads: “Foreign subjects enjoy freedoms and rights guaranteed by the Constitution in the Republic of Macedonia, under conditions regulated by law and international agreements”. According to the explanation by Macedonian Railways, the increase in ticket prices was due to the special services and the recruitment of additional resources and employees necessary for providing the transport.

During November 2015, Slovenia enforced a discriminatory selection for admission of refugees based on their country of origin. As a chain reaction, this practice was adopted on all border crossings of the Balkan route. Consequently, only refugees originating from Syria, Afghanistan and Iraq were allowed to pass through the Republic of Macedonia, and refugees with documents originating from other countries were not allowed to pass through. This situation caused the illegal crossing of state borders by all refugees who are not citizens of the aforementioned countries. To prevent illegal crossings, the state built a barbed wire fence along the border crossing with Greece.

## Prohibition of Collective Expulsion of Aliens

According to Article 4 of the Protocol no. 4 of ECHR, the collective expulsion of aliens is prohibited. Through its jurisprudence, the European Court of Human Rights explains that the collective expulsion of a group would be justified only if the state has objectively reviewed the cases of each group member individually.<sup>27</sup> With Article 29, the Constitution guarantees the rights of foreigners provided therein and in international treaties.

Unable to endure the miserable and inhumane conditions in the camps in Idomeni, Greece, and in protest over the closure of borders by states in the Balkan route, on 14 March 2016 around 700 refugees illegally crossed the border between Macedonia and Greece near the village of Moin, Gevgelija. Macedonian police and army members deployed along the southern border immediately reacted with the use of tear gas and smoke bombs. After a short period of time, all refugees who crossed the border were placed in trucks and transported on Greek territory, away from any witnesses. In an attempt to escape, three refugees (two men and a pregnant woman) drowned in the waters of Suva Reka.

Considering the significant increase in illegal crossings of the closed borders, the state has a right to “deport” all refugees on Macedonian territory. The process of deportation is carried out in the following manner: when refugees are caught crossing illegally, they are placed in trucks and transported to specific locations on the border crossing, away from the eyes of the Greek security services. Given the existence of the barbed wire fence, refugees are pushed under the wire and left in the open field on Greek territory. In some cases, the group of refugees is primarily taken to the transit camp in Gevgelija where they are provided with humanitarian and medical aid and then transferred to the Greek side of the border. In individual cases, police officers conduct informative talks with the groups, but such action is taken in exceptional cases.

According to observations of the Helsinki Committee for Human Rights, from the moment of closing the borders up to date, the number of deported refugees ranges from 50 up to 300 in one week. In the official address by the President of the Republic and Commander in Chief of the Armed Forces<sup>28</sup>, he proudly said: “The army and the police prevented more than 15,000 attempts of illegal border crossing”, without perceiving that these attempts are prevented through collective deportation of foreigners which is contrary to the laws of ECHR.

## Violation of the Principle of Non-refoulement

The principle of non-refoulement (non-refoulement rule) is defined in the International Convention Relating to the Status of Refugees adopted in 1951 and is one of the fundamental principles of the Convention. Article 33 stipulates that no refugee will be returned to the territory where there is a real threat to his life or a threat which involves torture, inhuman or degrading treatment. The same prohibition is also derived from the jurisprudence of the European Court of Human Rights in relation to Article 3 of the ECHR (Prohibition of Torture, see subtitle 4).

27 See *Henning Becker v. Denmark* (app. No. 7011/75, 3 October, 1975), para. 166 and *Conka v. Belgium* (app. No. 51564/99, 5 February, 2002), para. 183

28 <http://www.president.gov.mk/mk/2011-06-17-09-55-07/2011-07-19-10-40-39/3849.html>

By massive “deportation” of refugees to Greece, Macedonia indirectly violates the principle of non-refoulement, considering that there is a real possibility that from Greece, the refugees will be deported to their countries of origin, i.e. to crisis and war zones where their lives and their physical integrity are in danger.

## Conclusion

The refugee crisis in the Republic of Macedonia can be generally divided into three periods: the first period in which some refugees lost their lives in trying to illegally cross the country’s territory; the second period in which the crossing was systematically organized through institutions; and the third period which noted the closure of the state and European borders, and immobilization of refugees for a longer period of time.

What all three periods have in common is the fact that the country failed in respecting basic human rights and freedoms of refugees at all times, in each of the three periods. In fact, by the means of separate actions or established practices, the Republic of Macedonia managed to violate even 10 rights and freedoms guaranteed by the European Convention on Human Rights and Freedoms and many other international documents.

During September 2016, in the Republic of Macedonia, there was an official number of 200 refugees held in transit camps or reception centers. The unofficial number is higher than 200. The refugee crisis has not passed yet, and it remains to be seen whether the state learns from its mistakes and how it will deal with the obligations from international instruments for respecting human rights in the unpredictable upcoming period.

## *Recommendations*

- The national legal framework should be harmonized with the internationally recognized standards in relation to the right to interpretation and translation.
- The ground for refusing the asylum application should be harmonized with the wording used in the Convention Relating to the Status of Refugees from 1951 (Art. 1D, 1E and 1F).
- When defining the term “safe third country” the State should not use the overly broad concept of membership in an international organization (e.g. EU, NATO, EFTA). The definition should depend on individual assessment of both the country and the personal circumstances of the asylum seeker.
- Amendments to the Law on asylum and subsidiary protection in relation to the time restrictions for family reunification must be repealed.
- The treatment of vulnerable categories of asylum seekers (e.g. victims of human trafficking, sexual and gender violence, elderly, persons with disabilities) in need of international protection should be defined in a more precise manner through by-laws.
- Living conditions in the places in which foreigners are being accommodated or detained must be improved.
- Trainings should be organized for police officers, members of the army, and other state officials working with refugees, migrants, and asylum seekers.
- Basic human rights and freedoms of refugees and migrants must be promoted, respected, and protected at all times, by all institutions and citizens.