

MIGRATION CRISIS: MACEDONIA ON CROSSROADS

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I. Introduction; II. The EU asylum policy; III. Is there criminal responsibility for unlawful entry in EU country and Macedonia?; IV. Asylum through numbers; V. Macedonia on the crossroad; VI. Macedonian asylum policy and its shortcomings; VII. Intention to submit a request for recognition of the right to asylum and request for recognition of the right to asylum; VIII. Regular procedure for recognition of the right to asylum; IX. Conclusions

Macedonia is witnessing the largest migrant crisis which is driving an unprecedented number of people going on life-threatening journeys to safety within the European Union. As a response to this crisis it seems that Macedonia as well as the European Union lack of solidarity and consistency to deal with this issue. More precisely, even though Macedonia is not a frontline country to the Schengen zone, still its geographical position being the crossroad on the Balkan, puts it in a very controversial position in this migration crisis context. Some of the aspects of this paper are to evaluate the key features of the Macedonian asylum system and their conformity with international standards and to point out the ongoing changes in Macedonia's asylum policy as well as to stress the drawbacks of the current system. Given the fact that there are many international instruments that regulate asylum, the paper will make efforts to define asylum and its procedure according the most important instruments relevant for the EU

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Asylum policy and Macedonia's policy. Therefore, the paper will focus on the 1951 Convention relating to the Status of Refugees, EU's Common European Asylum System and the Dublin system. Also it will illustrate the ongoing situation with asylum seekers through numbers in order to capture a full picture about the current migration crises.

I. Introduction

The 1951 Convention and its 1967 Protocol⁴ are the only global legal instruments explicitly covering the most important aspects of a refugee's life. According to their provisions, refugees deserve, as a minimum, the same standards of treatment enjoyed by other foreign nationals in a given country and, in many cases, the same treatment as nationals. The 1951 Convention also recognizes the importance of international solidarity and cooperation in trying to resolve any issues with the status and the legal position of refugees.

The 1951 Convention defines a refugee as a person who is outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail him—or herself of the protection of that country, or to return there, for fear of persecution.⁵ The difference between the refugees⁶ and migrants is in the following: the refugees are forced to flee because of a threat of persecution and because they lack the protection of their own country. A migrant, in comparison, may leave his or her country for many reasons that are not related to persecution, such as for the purposes of employment, family reunification or study. A migrant continues to enjoy the protection of his or her own government, even when abroad. The word "migrant" is used broadly and not always in the right manner. Hence in everyday use it covers people fleeing war, violence, and natural catastrophes, or seeking to escape poverty and it includes those who move through legal channels as well as those who move across borders without a visa or government approval (the latter is often called irregular or undocumented migration).⁷ Under

⁴ Convention relating to the Status of Refugees, Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950 Entry into force: 22 April 1954, in accordance with article 43;

⁵ Article 1, The 1951 Convention related to the status of refugees and its 1967 Protocol, published by UNHCR, September 2011, p.3 available at <http://www.unhcr.org/pages/49da0e466.html>

⁶ Broadly, the word "refugee" describes a civilian fleeing danger, such as violence or natural disasters.

⁷ Open society Foundation, Understanding Migration and Asylum in the European Union, <https://www.opensocietyfoundations.org/explainers/understanding-migration-and-asylum-european-union> last access on 21.09.2015;

international law, refugees who cannot return to their home countries due to fear of persecution are entitled to claim protection, or asylum, in the country they are in. Those claiming this right—asylum seekers—are required to file a formal application to receive refugee status, which brings with it rights and benefits. This application process can be long-lasting and complicated. Not every asylum seeker will ultimately be recognized as a refugee, but every refugee is initially an asylum seeker.

II. The EU asylum policy

In the EU, an area of open borders and freedom of movement, countries share the same fundamental values and have a joint approach to guarantee high standards of protection for refugees. Procedures must at the same time be fair and effective throughout the EU and impervious to abuse. With this in mind, the EU States have committed to establishing a Common European Asylum System.⁸ The EU's Common European Asylum System (hereafter CEAS) is intended to ensure that the rights of refugees under international law are protected in its member states. The system sets out standards and procedures for processing and assessing asylum applications, and for the treatment of both asylum seekers and those who are granted refugee status. Also important documents regarding the EU asylum policy are the Dublin Convention⁹ and the Dublin II Regulation.¹⁰ This Regulation establishes the principle that only one Member State is responsible for examining an asylum application and that is the first EU country reached by the asylum seeker.¹¹ The objective is to avoid asylum seekers from being sent from one country to another, and also to prevent abuse of the system by the submission of several applications for asylum by one person¹² as well as to identify as quickly as possible the Member State responsible for examining an asylum application, and to prevent abuse of asylum procedures.¹³

⁸ See the cite on the European Commission (Migration and Home Affairs) http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm last access 22.09.2015;

⁹ Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities - Dublin Convention, *Official Journal C 254*, 19/08/1997 P. 0001 – 0012;

¹⁰ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

¹¹ But Greece complained that it was blocked with applications, as so many migrants arrived in Greece first. Germany then suspended the Dublin rule and decided to consider asylum cases from the majority of Syrian applicants.

¹² Commonly known as 'asylum shopping'.

¹³ In order the migrants to get asylum status in the EU, they have to satisfy the authorities that they are fleeing persecution and would face harm or even death if sent back to their country of origin. Under EU rules, an asylum seeker has the right to food, first aid and shelter in a reception center. They may be granted asylum by

III. Is there criminal responsibility for unlawful entry in EU country and Macedonia?

Under the Dublin Convention¹⁴ in cases when the refugees had entered unlawfully in the country of refuge, then the Contracting States of this Convention shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened, enter or are present in their territory without authorization, under the condition to present themselves without delay to the authorities and show good cause for their illegal entry or presence. In this manner, Hungary has breached this article from this Convention, since it has amendment its legislative to impose a penalty of imprisonment up to three years, for any on the refugees that will be caught on the territory of Hungary.

Also, the Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.¹⁵ This provision was violated by every single country of this region that was on the path to the “good life” up north.

Under the applicable legal framework in Macedonia, asylum-seekers are entitled to enjoy freedom of movement and to be protected from arbitrary arrest or detention.¹⁶ However the “illegal entry” into Macedonia is punishable by detention and expulsion from the country. An irregular *migrant* who is not identified as an asylum-seeker by the police is handed over to the High Inspector for Illegal Migration in the Ministry of Internal Affairs, who is responsible to transfer the person for further processing to the closed “Reception Centre for Foreigners” in Gazi Baba.¹⁷ An *asylum-seeker* who has illegally entered or has

the authorities at “first instance”. If unsuccessful, they can appeal against the decision in court, and may win. Asylum seekers are supposed to be granted the right to work within nine months of arrival. Also see Why is EU struggling with the migrants and asylum, available on <http://www.bbc.com/news/world-europe-24583286> last access 25.09.2015;

¹⁴ Article 31 from the Convention, see footnote 6;

¹⁵ Article 31, paragraph 2 from the Dublin Convention;

¹⁶ Article 3 from the Law on Foreigners, published in the Official Gazette of the Republic of Macedonia No. 35 on 25 March 2006;

¹⁷ Article 153 from the Law on Foreigners, published in the Official Gazette of the Republic of Macedonia No. 35 on 25 March 2006. All individuals held at the Gazi Baba reception centre have access to information on their right to seek asylum. If an individual claims asylum while in detention, his/her claim should be recorded and the asylum-seeker should be transported to the Reception Centre for Asylum Seekers in Vizbegovo and the Section for Asylum is informed. The conditions in Gazi Baba have been criticized by a number of independent observers and have been rated as “inhuman and degrading conditions of detention” see OHCHR, Committee Against Torture, *Concluding observations on the third periodic report of the former Yugoslav Republic*

been illegally staying on the territory of the Republic of Macedonia, and is coming directly from a state where his/her life or freedom have been threatened will not be punished, provided that he/she immediately requests for the recognition of the right to asylum at the Asylum Department or reports him/herself at the nearest police station and explains his/her request for recognition of the right to asylum, as well as the justified reasons for his/her illegal entry or stay. In this case the police shall immediately escort the person to the Asylum Department.¹⁸ The Law on Aliens shall not apply as of the day of submission of the request for recognition of the right to asylum until the day of issuing the final decision. The submitted request for recognition of the right to asylum shall be regarded as withdrawal of the request for issuance of a permit for residence to an alien, in terms of the provisions of the Law on Aliens.¹⁹

The Minister of Justice is responsible for the provision of free legal aid to those who express an intention to apply for asylum. As a result of advocacy efforts by UNHCR and partners, as of end June 2015 legal aid has been made available to those in detention who have expressed a wish to apply for international protection. Currently legal aid is being provided through UNHCR's legal aid partner organization, the Macedonian Young Lawyer's Association²⁰.

IV. Asylum through numbers

It is a fact that the vast majority of asylum applications in the EU is really affecting 'only' 5 EU Member States in 2014 and 2015, because only those 5 Member States take in the highest numbers of refugees and face significant challenges in their economy. This fact has become a political block and has violated the 'friendly' relations between EU member states. In 2014, the EU statistics agency Eurostat Statistics,²¹ launched an information that 45%²² of first

of Macedonia, May 2015; and p.9 UNHCR Observations: The former Yugoslav Republic of Macedonia as a Country of Asylum, UNHCR the Un Asylum Agency, August, 2015;

¹⁸ Article 17 from the LATP;

¹⁹ Article 19 of LATP;

²⁰ Official web cite <http://www.myla.org.mk/> ;

²¹ See the cite on Eurostat Statistic Explained, http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics last access 25.09.2015;

²² According to this source in 2014 total number of 104,000 got refugee status in the EU last year, nearly 60,000 subsidiary protection status and just over 20,000 authorization to stay for humanitarian reasons. The highest number of positive asylum decisions in 2014 was in Germany (48,000), followed by Sweden (33,000), then France and Italy (both 21,000) and the UK (14,000). According to Asylum Europe the EU registered 626,710 asylum applicants in 2014, and record numbers during the first half of 2015 is over 300,000 asylum seekers received by four Member States: Germany, Hungary, France and Italy. The majority of applicants come from Syria, Afghanistan and Eritrea, yet their treatment varies substantially between European countries. In

instance asylum decisions were positive and the competent authorities granted refugee or subsidiary protection status, or permission to stay for humanitarian reasons. These data may vary depending from the source. Syrians accounted for the highest number of applicants in 11 of the 28 EU Member States, including 41 thousand applicants in Germany (the highest number of applicants from a single country to one of the EU Member States in 2014) and 31 thousand applicants in Sweden. Some 27 thousand Serbians and 13 thousand Eritreans also applied for asylum in Germany and 12 thousand Eritreans in Sweden. The only other EU Member States to receive in excess of 10 thousand asylum applicants in 2014 from a single group of citizens were Hungary (21 thousand Kosovans) and Italy (10 thousand Nigerians).²³

V. Macedonia on the crossroad

Macedonia is witnessing the largest migrant crisis which is driving an unprecedented number of people going on life-threatening journeys to safety. At his point we can say that Macedonian as well as the European Union's common policy on asylum lacks solidarity and consistency (according to the AIDA Annual Report 2014/2015 – Common asylum system at a turning point: Refugees caught in Europe's solidarity crisis).²⁴

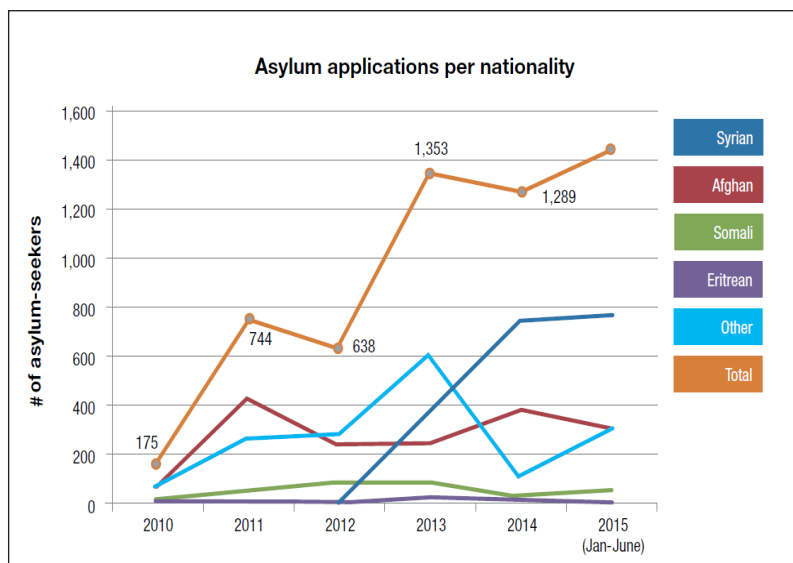
Some 3,000 people are expected to cross into Macedonia each day in the coming months, according to the UN. In 2011, Macedonia received 744 asylum applications from individuals from outside the region, four times more than in 2010. In 2012, 638 applications were received and in 2013 a total of 1,353 new asylum applications were submitted. In 2014, some 1,289 new asylum-seekers from 19 different countries were registered in the country and as of end June 2015, 1,446 persons had applied for asylum, out of whom over 50 per cent were Syrian nationals. Currently about 80 per cent of those who apply for asylum are single men (18-35 years of age), but there is an increasing trend of unaccompanied

2014, positive decision rates for Eritrean nationals varied from 26% in France to 100% in Sweden, while rates for Iraqi nationals ranged from 14% in Greece to 94% in France. See <http://www.asylumineurope.org/news/10-09-2015/aida-annual-report-20142015-launched-today> last visited 11.09.2015;

²³ Data from http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics last access 25.09.2015;

²⁴ Annual AIDA Report 2014/2015: Common asylum system at a turning point: Refugees caught in Europe's solidarity crisis. The report covers research for 18 countries: Austria, Belgium, Bulgaria, Cyprus, Germany, France, Greece, Croatia, Hungary, Ireland, Italy, Malta, the Netherlands, Poland, Sweden, the United Kingdom, Switzerland and Turkey - See more at: <http://www.asylumineurope.org/annual-report-20142015#sthash.ejTDhelJ.dpuf> last access 11.09.2015;

and separated children arriving.²⁵ In 2015, despite the high number of asylum applications, so far only one person has been recognized as a refugee. But from these applications, more than 90 % of those who apply for asylum in Macedonia leave the country on their way to EU Member States, before interviews are held and the first instance decision is taken.²⁶ Since many asylum-seekers leave, the majority of cases in 2013, 2014 and 2015 were dismissed due to ‘withdrawal’ of asylum requests, although some cases were also pending decision to be taken by the Section for Asylum. Meanwhile, in the period between the adoption of the amendments to the Law on Asylum and Temporary Protection on 18 June 2015 and the end July 2015, the authorities have registered 18,750 persons expressing an intention to seek asylum in the country, with trend of some 1,000 new arrivals every day.



Picture 1: Asylum seekers in Macedonia by country of origin.

Source: UNHCR Observations: The Former Yugoslav Republic of Macedonia as a Country of Asylum, UNHCR the UN Asylum Agency, August, 2015;

²⁵ See p.6 of UNHCR Observations: The former Yugoslav Republic of Macedonia as a Country of Asylum, UNHCR the UN Asylum Agency, August, 2015;

²⁶ For example, out of the 1,353 asylum applications lodged in 2013, only one interview was held and had a decision taken, which was the granting of subsidiary protection. In 2014, out of 1,289 applications lodged, only 16 decisions on asylum claims were made, with 12 asylum-seekers from Syria being recognized as refugees, while one person was granted subsidiary protection. This information has also been confirmed by the Section for Asylum, Ministry of Interior. See more about these data on p.5 of UNHCR Observations: The former Yugoslav Republic of Macedonia as a Country of Asylum, UNHCR the UN Asylum Agency, August, 2015;

Even though Macedonia is not a frontline country to the Schengen zone, still its geographical position (being the crossroad on the Balkan) puts the country in a very controversial position in this migration crisis context.

VI. Macedonian asylum policy and its shortcomings

Macedonia has a national asylum law, the Law on Asylum and Temporary Protection (hereafter LATP).²⁷ LATP²⁸ was substantially amended several times,²⁹ and the last amendment was in response to urgent need to resolve the crisis with the influx of migrants. The amendment changed the previously restrictive regulations for applying for asylum, which exposed asylum-seekers to a risk of arbitrary detention and return at the border. The new amendments, which were adopted on 18 June 2015 and entered into force the same day, introduce a procedure for registration of the intention to submit an asylum application at the border, protect asylum-seekers from the risk of refoulement³⁰ and allow them to enter and be in the country legally for a short timeframe of 72 hours, before formally registering their asylum application. In 2015 the government of Macedonia initiated the drafting of a new asylum law, that is supposed to be in line with the EU asylum instruments and it is planned to be adopted in 2016.

²⁷ Law on Asylum and Temporary Protection, published in the Official Gazette No. 54 on 15 April 2013, <http://www.slvesnik.com.mk/Issues/3dffa1ee8f23e4547ad198661fe794149.pdf> last access 25.09.2015;

²⁸ According to UNHCR the law currently incorporates many key provisions of the 1951 Convention. Furthermore, the provisions on subsidiary protection in the law are in conformity with relevant EU standards.

²⁹ Amendments to the Law on Asylum and Temporary Protection, published in the Official Gazette of the Republic of Macedonia No. 49/03, 66/07, 142/08, 146/09, 166/12 and 101/15.

³⁰ This principle is explained in article 7 of the Law on Asylum and Temporary. According to the principle of non – refoulement: The asylum seeker, recognized refugee or person under subsidiary protection cannot be expelled, or in any manner whatsoever be forced to return to the frontiers of the state: in which his/her life or freedom would be threatened due to his/her race, religion, nationality, membership of a particular social group or political opinion; or where he/she would be subjected to torture, inhuman or degrading treatment or punishment. (2) The prohibition referred to in paragraph 1 line 1 of this Article shall not apply to an alien who is considered a danger to the safety of the Republic of Macedonia, or who, after having been convicted by a legally valid decision of a crime or especially of a serious crime, is considered a danger for the citizens of the Republic of Macedonia. The alien referred to paragraph 1 line 2 of this Article, who for the reasons referred to in Article 6 of this Law cannot enjoy the right to asylum in the Republic of Macedonia, shall be allowed to remain within the territory of the Republic of Macedonia as long as in the state of his/her nationality or, if he/she has no nationality, in the state of his/her habitual residence, he/she would be subjected to torture, inhuman or degrading treatment or punishment. The alien referred to in paragraph 3 of this Article, during his/her stay in the Republic of Macedonia, shall have the same rights and duties as the persons under temporary protection in the Republic of Macedonia.

There are positive developments in terms of amending the asylum legislation³¹ but still Macedonia is not considered as a safe third country.

In accordance with the Law on Asylum and Temporary Protection³², asylum-seekers can now register an intention to apply for asylum at the border entry points, in which case the asylum-seeker is provided with a travel permit valid for 72 hours, for the purpose of travelling to a police station to formally register the asylum claim. If already inside the country, the asylum-seeker must register his or her asylum application at the nearest police station. After the initial registration, the police are responsible for referring the asylum-seeker to the Section for Asylum within the Ministry of Interior, which is the primary governmental body responsible for implementation of the reception and asylum procedure, including escorting the asylum-seeker(s) to the country's only reception center for asylum-seekers.

Under the new Criminal Procedure Code,³³ migrants and asylum-seekers arrested together with their smugglers were considered to be witnesses in the criminal cases subsequently pursued against the latter. As a consequence, asylum-seekers were detained in Gazi Baba for the purposes of 'securing evidence', which resulted in their deprivation of liberty for the entire criminal process (which could last three months and sometimes even longer), despite the prohibition

³¹ Despite significant progress made to align the national legislative framework with international standards on asylum, UNHCR concludes that substantial shortcomings still persist when it comes to implementation. According to this observation the government currently lacks capacity to ensure protection to the increasing number of asylum-seekers. There are concerns about access to the territory and the asylum procedure. The lack of timely issuance of adequate identification (ID) documents and concerns regarding the processing of claims exposes asylum-seekers to the risk of not being able to obtain international protection, or to exercise rights associated with international protection. The quality of decision-making of asylum claims remains inadequate, as decisions often do not contain clear reasoning, and reference to national security concerns is used excessively as a ground for rejection of applications for international protection. There is also a lack of access to effective legal remedies, as cases are not considered on their merits in the judicial review phase. Other basic procedural safeguards such as access to information and interpretation are not always ensured. Moreover, refugees and subsidiary protection holders have limited integration prospects. UNHCR concludes that the country does not as yet meet international standards for the protection of refugees, and does not qualify as a safe third country. Accordingly, UNHCR advises that other states should refrain from returning or sending asylum seekers to Macedonia, until further improvements to address these gaps have been made, in accordance with international standards. See p.3 from UNHCR Observations: The former Yugoslav Republic of Macedonia as a Country of Asylum, UNHCR the Un Asylum Agency, August, 2015;

³² Article 16 from the Amendments to the Law on Asylum and Temporary Protection, published in the Official Gazette of the Republic of Macedonia No. 101/15;J

³³ Criminal Procedure Code, published in the Official gazette No. 150 on 18 November 2010, entered into force on 01.12.2013;

under Macedonian law of detaining asylum-seekers.³⁴ However, as a result of the previously mentioned amendments of the Law on Asylum and Temporary Protection, allowing asylum-seekers to register their asylum application at the border, there has been a reduction in asylum-seekers being arrested on charges of irregular entry or stay.

Since the end of June 2015 the Ministry of interior and the Public Prosecution Office have also speeded their processing of asylum-seekers held in detention in order to serve as witnesses in criminal cases, as a result of which almost all asylum-seekers held in detention (some 350 individuals as of June 2015) have been referred to the open Vizbegovo RC.³⁵

The Ministry of Interior, through its organizational unit in charge of asylum (Asylum Department), is responsible for conducting the first instance procedure for recognition of the right to asylum and shall make a decision. This department is obliged to co-operate with the United Nations High Commissioner for Refugees in all phases of the procedure for recognition of the right to asylum.³⁶

The asylum seekers have the right to legal assistance and explanation regarding the conditions and the procedure for recognition of the right to asylum, as well as the right to free legal aid in all phases of the procedure, in accordance with the regulations on free legal aid. The asylum seekers in all phases of the procedure may communicate with persons who provide legal assistance, with the representatives of the High Commissioner for Refugees, as well as with non-governmental humanitarian organizations. The representatives of the High Commissioner for Refugees have the right to access to, and communicate with, the asylum seekers, in all phases of the procedure, wherever they are staying.³⁷

The asylum procedure is carried out in accordance with the Law on General Administrative Procedure.³⁸ The Law on Asylum and Temporary Protection

³⁴ The long detention period was mainly due to the lack of interpreters in relevant languages for criminal court cases. According to the law, the police cannot detain a person without a court order, which needs to be produced within 24 hours. However, in practice those detained in order to serve as witnesses were not considered to be formally detained. Since the detention was not formalized with a court order, it was also impossible to appeal against the decision to detain the person. Upon release from detention, the persons concerned often left the the Republic of Macedonia immediately. In the absence of witness statements, the smugglers were released, as the police was often unable to gather enough evidence to charge the smugglers. UNHCR has been working with the authorities to accelerate the court procedure in order to reduce the period in detention, as well as to advocate for alternatives to detention.

³⁵ See p.11 of UNHCR Observations: The former Yugoslav Republic of Macedonia as a Country of Asylum, UNHCR the Un Asylum Agency, August, 2015. UNHCR continues to advocate with the authorities for the Criminal Code to be amended in order to ensure that asylum-seekers are not detained if summoned to act as witnesses in court cases;

³⁶ Article 12 and 13 of the Law for Asylum and Temporary protection;

³⁷ Article 14, Ibid;

³⁸ Article 15 of LATP and Law on the General Administrative Procedure ("Official Gazette of the Republic of Macedonia" no. 38/2005, 110/2008 and 51/2011). Decision of the Constitutional

allows for a speeded or a regular procedure, where a speeded procedure is initiated for those claims that are considered to be manifestly unfounded.³⁹ The Asylum Department decides whether a case should be processed in the regular or speeded procedure based on information obtained during registration and based on provisions in the law. The majority of cases are referred for regular processing.

VII. Intention to submit a request for recognition of the right to asylum and request for recognition of the right to asylum

A foreigner at the border crossing point or in the inland of the Republic of Macedonia may orally or in a written form state his/her *intention* to submit a request for recognition of the right to asylum to a police officer of the Ministry of Interior. The police officer will write down the personal data of the foreigner who has stated his/her intention, and shall issue a copy of the certificate for the stated intention, and shall instruct him/her, within a period of 72 hours, to submit a request for recognition of the right to asylum with an authorized official in the premises of the Asylum Department situated in the Reception Center for Asylum Seekers. If the foreigner does not act in accordance with this, it shall be acted in accordance with the regulations on foreigners. An asylum seeker may submit a *request* for recognition of the right to asylum to the police at the border crossing point, in the nearest police station, or in the premises of the Asylum Department situated in the Reception Center for Asylum Seekers. If the request is submitted to the police at the border crossing point or in the nearest police station, the police officer shall escort the asylum seeker to the Reception Center for Asylum Seekers.⁴⁰ Upon submission of the request for recognition of the right to asylum, the Asylum Department shall, within a period of three days, issue to the asylum seeker a sealed certificate, containing the number and date of submission, confirming the status of an asylum seeker and proving that the asylum seeker is allowed to stay on the territory of the Republic of Macedonia for the duration of the procedure upon his/her request for recognition of the right to asylum.

Court of the Republic of Macedonia, U.no. 102/2008 dated 10.09.2008, published in the "Official Gazette of the Republic of Macedonia" no. 118/2008;

³⁹ Article 34 from the LATP: The urgent procedure shall be conducted if the request for recognition of the right to asylum is obviously unfounded, unless an unaccompanied minor or a mentally disabled person has submitted the request. In this paper we only refer to the regular procedure.

⁴⁰ Article 16 -1 from the LATP. An asylum seeker, who resides on the territory of the Republic of Macedonia, shall submit a request for recognition of the right to asylum to the Asylum Department. In cases of family reunification, the request may be submitted to the diplomatic-consular mission of the Republic of Macedonia abroad.

The Asylum Department in the Ministry of Interiors shall notify the asylum seekers, in writing and orally, in a language that can be reasonably presumed that they understand, and within a time period not exceeding 15 days as of the day of submission of the request for recognition of the right to asylum, about the manner of conducting the procedure for recognition of the right to asylum, about the rights and obligations of the asylum seeker in that procedure, about the possible consequences if they do not comply with their obligations and do not cooperate with the competent bodies, as well as about the conditions for accepting the right to legal assistance, as well as the right to contact persons providing legal assistance, representatives of the High Commissioner for Refugees and non-governmental humanitarian organizations, during all the phases of the procedure no matter where the asylum seekers are.⁴¹ During this procedure the rights to interpreter and the right to secrecy are recognized.⁴²

But is a fact that up to 90 per cent of asylum-seekers leave the country before the asylum procedure is completed that means that Macedonia is used as transit stage on the way to Western Europe. The authorities close the case files of asylum-seekers who have left the country as “unfounded” on procedural grounds.⁴³

The asylum seekers can withdrawal the request for recognition of the right to asylum. The request for recognition of the right to asylum shall be considered withdrawn and the procedure shall be discontinued by a conclusion if it is determined that the asylum seeker has withdrawn the request for recognition of the right to asylum, has not responded to the call for hearing in the Asylum Department, and he/she has not justified the absence within a period of 48 hours as of the day the hearing has been scheduled, has left the place determined for his/her accommodation without an approval in the course of the procedure, longer than three days without informing the competent body or without obtaining consent from the competent body for leaving the place determined for his/her accommodation.⁴⁴

VIII. Regular procedure for recognition of the right to asylum

The Asylum Department is the body responsible for the implementation of a regular procedure for recognition of the right to asylum in the first instance. This Department is obliged to adopt the decision within six months as of the day of submission of the request. Firstly, before reaching any decision there has to be a hearing of the asylum seeker. The asylum seeker has the possibility to

⁴¹ Article 17 from the LATP;

⁴² Article 21 and 22 from the LATP respectively;

⁴³ Information obtained by UNHCR through discussions with the Section for Asylum. See UNHCR Observations;

⁴⁴ Article 24 from the LATP;

be personally heard, and the hearing may be recorded as a sound for which the asylum seeker will be previously informed. The hearing is confidential and is gender sensitive.⁴⁵ The authorized official who conducts the hearing will take into consideration the personal or general circumstances of the asylum seeker which refer to the request for recognition of the right to asylum, including the cultural origin or the vulnerability of the asylum seeker, in the manner and in the volume possible to do that. An interpreter can be provided. The communication shall not be necessary to be led in a language required by the asylum seeker, in the case where the asylum seeker may communicate in another language for which it may be reasonably presumed that he/she understands. During the hearing, the asylum seeker shall present all the facts and evidence of relevance for establishing the existence of a well-founded fear of persecution. During the hearing, minutes shall be kept and the participants of the hearing shall sign the minutes.⁴⁶

The request for recognition of the right to asylum shall be rejected in the course of a regular procedure in case it is established that:

- i. there is no well-founded fear of persecution in terms of Article 4 of the LATP;
- ii. there are reasons for expulsion referred to in Article 6 of the LATP; and
- iii. the persecution for the reasons referred to in Article 4 of the LATP is limited only to a particular geographic area of the state of his/her nationality or, if he/she has no nationality, in the state of his/her habitual residence, and that there is a possibility for effective protection in another part of the state, unless in light of all circumstances it cannot be expected that the person shall seek protection there.⁴⁷

The Asylum Department can adopt the following decisions: decision to recognize the status of a recognized refugee, a decision to recognize the status of a person under subsidiary protection,⁴⁸ or a decision to reject the request for recognition of the right to asylum.⁴⁹

⁴⁵ The asylum seekers, upon their request, shall have the right to be heard by an authorized same sex official of the Asylum Department.

⁴⁶ Article 28 of the LATP;

⁴⁷ Article 29 of the LATP. In cases where it is established that the asylum seeker does not meet the conditions for recognition of the right to asylum in accordance, the Asylum Department shall, *ex officio*, investigate the existence of reasons and conditions for recognition of the right to asylum due to subsidiary protection in accordance with Article 2 line 2 of this Law;

⁴⁸ If both parents have acquired the status of a recognized refugee or of a person under subsidiary protection, the Asylum Department may adopt a decision to recognize the same status to their minor child born and living on the territory of the Republic of Macedonia. Where one of the parents has acquired the status, the Asylum Department may adopt a decision the minor child born and living on the territory of the Republic of Macedonia to recognize the right to asylum, a recognized refugee or subsidiary protection.

⁴⁹ The decision to reject the request for recognition of the right to asylum shall state the reasons, due to which the request has not been accepted, the advice on legal remedy and the time frame within which the person is obliged to leave the territory of Republic of Macedonia, which cannot be less than 15 days from the day on which the decision becomes effective.

The asylum seeker may initiate an administrative dispute with the competent court against the decision of the Asylum Department within 30 days as of the day of delivery of the decision. The lawsuit shall postpone the enforcement of the decision.

If the asylum seeker submits a new request for recognition of the right to asylum, he/she must provide evidence that his/her circumstances have significantly altered since the moment of adoption of the former decision to reject his/her request for recognition of the right to asylum. If he/she fails to do so, the Asylum Department shall reject the request.⁵⁰

The termination of the right to asylum recognized in the Republic of Macedonia shall apply for a person who has voluntarily re-availed him/herself under protection of the country of his/her nationality; who has, after losing the nationality of that country, voluntarily re-acquired it; who has acquired a new nationality and enjoys the protection of the state of his/her new nationality; who has voluntarily re-established him/herself in the country which he/she left or outside which he/she remained owing to fear of persecution; who can no longer continue to refuse to avail him/herself of the protection of the country of his nationality, because the circumstances in connection with which he/she has been granted asylum have ceased to exist; and who has no nationality, and is able to return to the state of his/her former habitual residence, because the circumstances in connection with which he/she has been granted asylum have ceased to exist. Regarding the termination of the right to asylum for the reasons referred above, a procedure shall be conducted, as well as for recognition of the right to asylum.

IX. Conclusions

Under international law, refugees who cannot return to their home countries due to fear of persecution are entitled to claim protection, or asylum, in the country they are in. Also, refugees deserve, as a minimum, the same standards of treatment enjoyed by other foreign nationals in a given country and, in many cases, the same treatment as nationals. Not every asylum seeker will ultimately be recognized as a refugee, but every refugee is initially an asylum seeker. Those claiming this right—asylum seekers—are required to file a formal application to receive refugee status, which brings with it rights and benefits. This application process can be long-lasting and complicated. At this point we can say that Macedonian as well as the European Union's common policy on asylum lacks solidarity and consistency to deal with this problem. The EU's Common European Asylum System is intended to ensure that the rights of refugees under international law are protected in its member states. The

⁵⁰ Article 33 of the LATP;

system sets out standards and procedures for processing and assessing asylum applications, and for the treatment of both asylum seekers and those who are granted refugee status. It is a fact that the vast majority of asylum applications in the EU is really affecting ‘only’ 5 EU Member States in 2014 and 2015, because only those 5 Member States take in the highest numbers of refugees and face significant challenges in their economy. This fact has become a political block and has violated the ‘friendly’ relations between EU member states. Under the applicable legal framework in Macedonia, asylum-seekers are entitled to enjoy freedom of movement and to be protected from arbitrary arrest or detention. Even though we are not a frontline country to the Schengen zone, still the geographical position of Macedonia (being the crossroad on the Balkan) puts us in a very controversial position in this migration crisis context. Macedonia has a national asylum law, the Law on Asylum and Temporary Protection which was substantially amended several times, and the last amendment was in response to urgent need to resolve the crisis with the influx of migrants. The amendment changed the previously restrictive regulations for applying for asylum, which exposed asylum-seekers to a risk of arbitrary detention and return at the border. The new amendments, which were adopted on 18 June 2015 and entered into force the same day, introduce a procedure for registration of the intention to submit an asylum application at the border, protect asylum-seekers from the risk of refoulement and allow them to enter and be in the country legally for a short timeframe of 72 hours, before formally registering their asylum application. In 2015 the government of Macedonia initiated the drafting of a new asylum law, that is supposed to be in line with the EU asylum instruments and it is planned to be adopted in 2016. Under the new Criminal Procedure Code, migrants and asylum-seekers arrested together with their smugglers were considered to be witnesses in the criminal cases subsequently pursued against the latter. As a consequence, asylum-seekers were detained in Gazi Baba for the purposes of ‘securing evidence’, which resulted in their deprivation of liberty for the entire criminal process (which could last three months and sometimes even longer), despite the prohibition under Macedonian law of detaining asylum-seekers. However, as a result of the previously mentioned amendments of the Law on Asylum and Temporary Protection, allowing asylum-seekers to register their asylum application at the border, there has been a reduction in asylum-seekers being arrested on charges of irregular entry or stay.

Macedonia has steadily strengthened its asylum system over the years. The legislative framework has been improved and is today largely in line with international standards. But significant weaknesses persist in the asylum system in practice. Macedonia has not been able to ensure that asylum-seekers have access to a fair and efficient asylum procedure. This is reflected, amongst others, by the fact that the Macedonia has not yet put in place protection sensitive

screening mechanisms at the border to identify those who may be in need of protection and to refer the individuals concerned to appropriate procedures.

Considering the outstanding gaps in the asylum system in Macedonia and taking into account the sharp increase in the number of new arrivals in the country more recently which presents major challenges to the asylum environment, UNHCR considers that the country does not as yet meet international standards for the protection of refugees, and does not qualify as a safe third country. Accordingly, UNHCR advises that other states should refrain from returning or sending asylum-seekers to the country, until further improvements to address these gaps have been made by the Government of the Republic of Macedonia.

THE HUMANITARIAN ASPECTS OF THE REFUGEE CRISIS

Mersiha Smailovikj¹

A Testimonial from a Humanitarian NGO activist regarding the refugee crisis in Macedonia, presented at the International Conference Migration at sea: International Law Perspectives and Legal Approaches (06 Oct 2015, Ohrid) reproduced in written form

Respected colleagues, Professors, activists....

Thank you for your invitation to be part of this international conference.

Even if the focus of this conference is “Migration in the Mediterranean”, still, myself as an activist from Macedonia, I will speak about the refugee crisis in Macedonia, as witnessed from the ground route.

For the first time in modern history, the country became part of important global happenings and movements that affect not only the Balkans and the European Union, but the entire world community. Unexpectedly, Macedonia became a key component of the so-called “Balkan route”, the route that migrants take in order to reach EU states like Austria or Germany in order to seek asylum. This specific geopolitical position, imposed the country with an important or better to say a crucial role in the migration phenomenon, which as awkward as it seems implies “defending” national borders from illegal crossings from Greece, an EU-country and a member of the Schengen zone.

This migration phenomenon became known to the Macedonian public for the first time in November 2014, when a “migrant was run over by a train on the railway from Veles to Skopje”.² This shocking news that reached to every person, raised many questions and pored many doubts. In fact, myself and my colleagues from the NGO “LEGIS” - a humanitarian organization that participated in several big humanitarian actions in Syria, we posed some important questions

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² <http://mrt.com.mk/node/16671>