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MIGRATION AND ASYLUM POLICIES SYSTEMS

CHALLENGES AND PERSPECTIVES

edited by

GIUSEPPE CATALDI
ADELE DEL GUERCIO ANNA LIGUORI

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Migration and Asylum Policies Systems



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Preface

This book is the first publication delivered within the *Jean Monnet* Network on *MIGRATION AND ASYLUM POLICIES SYSTEMS* (MAPS), born within the context of the past experiences of Jean Monnet activities carried out in the University of Naples “L’Orientale”, and involving, as partners, universities of other nine different European countries: National and Kapodistrian University of Athens; University of A Coruña; University Jean Moulin Lyon 3; University of Malta; University of Innsbruck; Queen Mary University of London; University Goce Delcev-Stip; University Sarajevo School of Science and Technology (SSST); Stiftung Europa-Universität Viadrina Frankfurt (Oder).

According to the aim of MAPS – i.e highlighting key changes and best practices relating to general principles and safeguards of asylum systems, at the same time analysing weaknesses and the compliance with international law obligations to protect asylum seekers, refugees and migrants in general – on 23rd September 2019 the First Workshop, on “Migration and Asylum Policies Systems, challenges and perspectives”, took place at University of Naples “L’Orientale”.

Essays included in this volume are excerpts from the lectures given during the Workshop, concerning a critical appraisal of the national legal systems of most of MAPS Partners (in the first Part), to which contributions on topical issues concerning Asylum and Migration under European Law are added (in the second Part), as well as, in the third Part, the speeches delivered at the Workshop in Naples from Antonio Di Muro (UNHCR) and Riccardo Gatti (ONG *Open Arms*).

On the basis of the Project, other publications will follow. The hope is that they will be able to testify an increased attention from national and international institutions to the issue of migration governance, with a view to respecting fundamental human rights as consolidated in the second half of the last century and now included in the Constitutions and international treaties ratified by European States. Unfortunately, the provisional balance of this first part of the work carried out within MAPS is not encouraging, and the advent of the Covid-19 pandemic has further made it problematic the respect of

fundamental principles, in many cases overwhelmed by emergency legislation. Of course there is no question here of denying the need to resort to extraordinary measures in such worrying circumstances, but it seems paradoxical that once again migrants and asylum seekers may risk to incur in unbearable consequences.

MIGRATION AND ASYLUM POLICY SYSTEM: THE CASE OF REPUBLIC OF NORTH MACEDONIA

OLGA KOSHEVALISKA*, ANA NIKODINOVSKA KRSTEVSKA**

1. Introduction

The EU integration process is a clear and unambiguous strategic interest and priority for North Macedonia. One of the basic requirements for the integration is the harmonization of the national legislation with the EU legislation. In 2015 and 2016 North Macedonia was witnessing the largest migrant crisis¹ which shook the already fragile legal and political system² and put the State on test for respecting the rule of law, human rights, international conventions, the principles of humanity and solidarity. At that time, North Macedonia's migration and asylum policy similarly to the EU's policy on migration and asylum, lacked solidarity and consistency to deal with the migration influx.³ The legislation concerning asylum policy was amended consequently to the increase of the number of migrants. In fact, the solutions reached at that time seemed not to be so appropriate, however bearing in mind the urgency of the crisis situation that the country coped with, that legislative solution was thought to be the most suitable to solve the migration challenge at least temporarily. Following the crisis, the Law on asylum

* University Goce Delcev – Stip.

** University Goce Delcev – Stip.

¹ Until September 2016, more than 800,000 transited through Macedonia, which is almost half of the country's population. Actually, the total population of the country according to the last census from 2001 amounts to 2.022.547 citizens (*State Statistical Office* 2019).

² See *RadioFreeEurope RadioLiberty*, <<https://www.rferl.org/a/explainer-crisis-in-macedonia-leads-to-violent-protests/27675969.html>> [08/2019].

³ See *Asylum in Europe*, <<http://www.asylumineurope.org/annual-report-20142015#sthash.ejTDheJ.dpuf>> (09/2019): Annual Asylum Information Database 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.

and temporary protection⁴ was amended a couple of times. This was due to the many gaps that turned out to be a ground for opening numerous questions related to the right of asylum and proper protection. Since the Law was supposed to be in line with the European acquis in matter of migration and asylum, because of the country's European integration process, North Macedonia opted for passing a new Law for international and temporary protection that came in force in the first quarter of 2018⁵, replacing the Law on asylum and temporary protection. In parallel a new Law for foreigners⁶ came into effect in June 2018 and replaced the old one. Therefore, some of the aspects of this work 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 the country's asylum policy as well as to stress the drawbacks of the current system.

2. Start at the beginning

Migrant crisis is not news to North Macedonia. In the last 25 years, the country has coped five times with a refugee crisis. Hence, in 1991 when, following the events in the Republic of Albania,⁷ 1,180 persons from the border regions towards the Republic of North Macedonia sought and received protection in the regions of Prespa-Oteshevo, Struga and Ohrid. During 1992, the country offered protection to 35,000 people fleeing from the war in Bosnia and Herzegovina whereby refugees were accommodated in seven collective centers throughout the country. These persons were under the protection of State until 1997.⁸ In

⁴ Amendments to the *Law on Asylum and Temporary Protection*, published in the *Official Gazette of the Republic of Macedonia* No. 49/2003, 66/2007, 142/2008, 146/2009, 166/2012, 101/2015, 152/2015, 55/2016 и 71/2016.

⁵ *Law for International and temporary protection*, Official Gazette No.64/2018.

⁶ *Law for Foreigners*, Official Gazette of the Republic of Macedonia no. 97/2018 and "Official Gazette of the Republic of North Macedonia" no. 108/2019.

⁷ See *New Protests in Albania; Crisis Mounts*, by <David Binder, Special To the New York Times>, (02/1991), Section A, Page 3, *New York Times* <<https://www.nytimes.com/1991/02/22/world/new-protests-in-albania-crisis-mounts.html>> (09/2019).

⁸ See J. Kekenovski, "Republic of Macedonia and refugee crisis - between the hammer and the anvil", *Horizonti*, 2017, available at <<https://www.uklo.edu.mk/filemanager/HORIZONTI%202017/Horizonti%20serija%20A%20>>

the aftermath of the Kosovo crisis in the spring of 1999, 360,000 people – mainly ethnic Albanians – sought and received international protection in Macedonia. After the Government Act on Providing Temporary Humanitarian Protection, 126,000 persons were placed in eight collective centers,⁹ built for that purpose on the territory of the Republic of Macedonia, and 234,000 persons were accommodated in family homes of citizens throughout the country.¹⁰ During the escalation of the internal state crisis in North Macedonia during 2001, as a result of the armed violence, 86,954 internally displaced persons were registered, and according to the UNHCR data about 20,000 people left the Republic of North Macedonia and headed for Kosovo.¹¹

Lastly, the country coped with an unprecedented migration crisis in 2015, over 850.000 as observed by local NGOs (Legis, 2005), most of them coming from Syria, Iraq and Afghanistan. Starting from June 19th, 2015 at 00:00 hours, the first day after the Law for asylum and temporary protection was amended)¹² until March 7th, 2016 at 24:00 hours, the day of closing the so called ‘Balkan route’, the total number of migrants that were registered on Macedonia’s border according to the relevant domestic laws was 477.876,¹³ which did not correspond to the observed number of migrants that have transited through the country’s territory.¹⁴ On one hand, this gap was generally due to the big number of daily entrances in the country that varied from 5.000 up to 15.000 entries per day, and on the other hand because of the poor capacity of the State in terms of technical and human resources, in order to answer the needs and carry out full registration. The registered migrants would

20volume%2019/1.%20Republic%20of%20Macedonia%20and%20refugee%20crisis%20between%20the%20hammer%20and%20the%20anvil-%20Jove%20Kekenovski.pdf> (09.2019).

⁹ With 91,476 persons accommodated, Stenkovec was the largest collective center. Temporary humanitarian protection for refugees from Kosovo lasted until September 22, 2003, although by the end of 2000 the number of refugees was reduced to 5,416.

¹⁰ B. Markovski, *Evropska begalska kriza – predizvik od globalni razmeri* [European refugee crisis – a challenge with global proportion], available at <<http://respublica.edu.mk/blog/2016-02-25-10-02-17>> (09/2019).

¹¹ Ibid.

¹² Amendments of the *LATP* see Official Gazette No. 152/2015.

¹³ Parlamentaren Institut, *Sobranie na Republika Makedonija, Efektite od Migrantskata kriza vo zemjite od Jugoistocna Evropa – Studija* [The effects of the Migrant crisis in the countries of Southeast Europe – A Study], Skopje, July 2016, p. 24.

¹⁴ *Parlamentaren Institut*, cit., p. 24.

have been in a much smaller number if it wasn't for the help offered by the local and international non-governmental organizations that they offered in the transit camps near the border.¹⁵

In this context, the table given below gives an illustration about the different migrant nationalities that were officially registered by the state authorities during the crisis.¹⁶

Table No.1:

Number of officially registered migrants that transited through North Macedonia on the Balkan route (2015 and 2016) according to the state of origin

Year	2015	2016	Total
Syria	216,157	44,734	260,891
Afghanistan	95,691	26,546	122,237
Iraq	54,944	18,337	73,281
Iran	6,231	N/A	6,231
Pakistan	5,416		5,416
Palestine	2,158		2,158
Somalia	1,276		1,276
Bangladesh	1,253		1,253
Morocco	1,317		1,317
Congo	514		514
Alger	453		453
Laban	434		434
Nigeria	279		279
Other	2,110	6	2,116
Total	388,233	89,623	477,856

Source: Institute of the Assembly of the Republic of Macedonia [Parlamentaren Institut na Republika Makedonija], 2016

¹⁵ Z. Drangovski, *Analytical report Lessons learned from the 2015-2016 migration situation in the Western Balkan region*, Prague Process: Dialogue, Analyses and Training in Action Initiative, International Center for Migration Policy Development, 2019, <<https://www.pragueprocess.eu/en/migration-observatory/publications/document?id=180>> (09/2019).

¹⁶ *Parlamentaren Institut*, cit., p. 26.

North Macedonia was not a priority country for the asylum seekers,¹⁷ neither it was the country of last resort. Studies have shown that if the asylum seekers were to stay in this region they would choose Serbia or Greece, because from Serbia they are closer to the EU, and being in Greece is better because they have access to European funds and possible relocation schemes.¹⁸ This brings to the conclusion that the migrant influx was of a transitory character for Macedonia. This observation is also confirmed by the low number of asylum requests registered in the country (Amet, 2018:140). However, despite its transitory character the migration flow had repercussions upon the humanitarian, political, institutional and economic system of the country.¹⁹

3. Macedonian asylum policy and its shortcomings

3.1. Existing legislation in the time of the migrant crisis 2015 – 2018

According to Stojanoski, T.,²⁰ the migrant crisis can be divided into three periods in base of the intensity of the migrant influx and the type of entry.²¹ The *first* period is the period of illegal entry until the

¹⁷ S. Amet, *Help on the route, Annual report for 2018, The rights of refugees, migrants and asylum seekers in the Republic of Macedonia*, Helsinki Committee for Human Rights of the Republic of Macedonia, 2018, <<https://mhc.org.mk/wp-content/uploads/2019/05/Help-On-Route-ANG-2018-final.pdf>> (19/2019).

¹⁸ See E. Brmbevska, *Help on the route" Yearly report 2017 – Right of migrants, refugees and asylum seekers in Macedonia*, Helsinki Committee, Skopje, 2017 available at <https://mhc.org.mk/wpcontent/uploads/2019/05/Help_On_Route_-_MK__3_.pdf> (09/2019)].

¹⁹ B. Weber, *Time for a Plan B: The European Refugee Crisis, the Balkan Route and the EU – Turkey Deal*, A DPC Policy Paper, Berlin: Democratization Policy Council, 2016.

²⁰ T. Stojanovski, *Prava na begalcite, migrantite I baratelite na azil vo Republika Makedonija* [The rights of refugees, migrants and asylum seekers in Republic of Macedonia], Helsinki Committee for Human Rights of the Republic of Macedonia, 2016 available at <https://nkeu.mk/wp-content/uploads/2018/12/Izvestaj_Trpe-Stojanovski.pdf> (09/2019)]. (hereafter T. Stojanovski, *Prava na begalcite, migrantite I baratelite na azil vo Republika Makedonija*).

²¹ Also B. Beznec, M. Speer, M. S. Mitrović, *Governing the Balkan route: Macedonia, Serbia and the European Border Regime*, Research Paper Series of Rosa Luxemburg, Stiftung Southeast Europe n. 5, 2016, <<https://bordermonitoring.eu/wp-content/uploads/2017/01/5-Governing-the-Balkan-Route-web.pdf>> (09/2019) (here-

amendments of the legislation in June 2015; the *second* period of legislative amendments and formalization of the corridor – introducing the 72 hours rule (from June 2015 until March 2016) and the period of closure of the Balkan route and the return to illegality (from March 2016 – ongoing).

The *first* period is the period when North Macedonia was in the center of the attention of the international public for the detained 1003 migrants at Gazi Baba ‘Reception Centre for Foreigners’ from January 1st, until June 15th, 2015.²² These cases of arbitrary detention refer to those migrants and refugees that were ‘detained’ together with their smugglers in order to serve as witnesses in the subsequent criminal proceedings of their smugglers.²³ This practice was contrary to the Law on asylum and temporary protection (LATP) and the Criminal Procedure Code,²⁴ (hereafter CPC), because it resulted in deprivation of liberty of the migrants for the entire criminal process that could last three months or even longer. The UNHCR,²⁵ Human Rights Watch (HRW),²⁶ Amnesty

after B. Bezec et.al., *Governing the Balkan route: Macedonia, Serbia and the European Border Regime*).

²² See C. Veigel, O. Koshevaliska, B. Tushevska, A. Nikodinovska Krstevska. “The ‘Gazi Baba’ Reception Center for Foreigners in Macedonia: migrants caught at the crossroad between hypocrisy and complying with the rule of law”, *The International Journal of Human Rights*, 21, 2, 2016, p.103-119.

²³ *The former Yugoslav Republic of Macedonia as a Country of Asylum: Observations on the Situation of Asylum-Seekers and Refugees in the former Yugoslav Republic of Macedonia*, 2015. The UNHCR – the UN Refugee Agency, p. 10. <<https://www.refworld.org/docid/55c9c70e4.html>> (09/2019).

²⁴ *Criminal Procedure Code*, published in the Official gazette No. 150 on 18 November 2010, entered into force on 01.12.2013.

²⁵ *The former Yugoslav Republic of Macedonia as a Country of Asylum: Observations on the Situation of Asylum-Seekers and Refugees in the former Yugoslav Republic of Macedonia*, 2015. The UNHCR – the UN Refugee Agency, p. 3. <<https://www.refworld.org/docid/55c9c70e4.html>> (09/2019).

²⁶ Human Rights Watch, *As Though We Are Not Human Beings: Police Brutality against Migrants and Asylum Seekers in Macedonia*, September 2015, p. 47. Available from Human Rights Watch. The Macedonian Ministry of Interior has urged HRW to file a detailed report with the police so that the alleged reports of abuses could be investigated, raising questions as to whether the accusations would be treated as biased and unserious, see <<http://english.republika.mk/interior-ministry-asks-human-rights-watch-for-help-in-dealing-with-allegations-raised-by-their-refugees-report/>> (08/2018). Meanwhile, Macedonia’s Sector on Internal Control and Professional Standards issued disciplinary sanctions against five police officers at Gazi Baba, including the discharge of one, and, despite statements by Macedonia’s government to the contrary, there is evidence that Gazi Baba remains operational. Human Rights

International²⁷ and the Helsinki Committee for Human Rights of the Republic of North Macedonia have issued reports detailing the ‘conditions of’ and the ‘reasons for’ the detention at Gazi Baba. In general, the reports suggest that the refugees and migrants at Gazi Baba were arbitrarily detained and subjected to degrading treatment.

Despite these indictments, the Macedonian government claimed it was merely ‘accommodating’ the refugees and migrants in accordance with Macedonia’s Law of Foreigners and the Reception Centre’s *Rulebook for House Order* and that it had fully comply with its obligations under international and domestic law.²⁸ Concerning this it can be assumed that relevant Macedonian domestic laws were in compliance with international and regional human rights laws and obligations, however they were applied arbitrarily. According to the domestic legislation at that time anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is unlawful. Under very narrow circumstances witnesses can be deprived of their liberty under CPC.²⁹ As a part of its investigative power, the public prosecutor may summon persons who may provide evidence in connection with a criminal investigation.³⁰ It is important to note that imprisonment here refers to incarceration in a Macedonian prison, not “accommodation” in a “Reception Centre for Foreigners”, and that victims who act as

Watch (2015), p. 66; See also the press statement of I. Kotevski, Public Relations for the Macedonian Ministry of Interior Affairs, <<http://alsat.mk/News/211854/disciplinski-vo-mvr-protiv-nasilstvoto-vrz-begalci> last access on 13.11.2015> (08/2019); Interview with Mersiha Smailovic, Lawyer and General Secretary for LEGIS, on October, 2015. LEGIS is a non-governmental organization located in Skopje, Macedonia, <<http://www.legis.mk/what-we-are/>> (08/2019).

²⁷ *Europe’s Borderlands Violations against Refugees and Migrants in Macedonia, Serbia and Hungary*, Amnesty International, July 2015, p. 6. Available from Amnesty International; Helsinki Committee for Human Rights of the Republic of Macedonia (MHC), Submission to United Nations Committee Against Torture, 54th session in Geneva, 20 April to 15 May 2015. Submitted: 6 April 2015.

²⁸ *Human Rights Watch* (2015), cit., p. 46.

²⁹ *Macedonia Code of Criminal Procedure*, Official Gazette No. 150/2010, unofficial translation. Available from <https://www.unodc.org/cld/document/mkd/1997/criminal_procedure_code_of_the_republic_of_macedonia_as_of_2010.html> (09/2019) (hereafter *CPC*).

³⁰ *CPC*, at Article 285 ph.1.

witnesses are subject to witness protection procedures, not incarceration or detention.³¹ Under the CPC, witnesses are to be protected and treated with dignity and respect, not detention under the conditions found at Gazi Baba. Additionally, it is unlikely that the testimony of the witnesses could have been used at all given that their testimony was conditioned by force and threats.

The so called “immigration custody” continue to be a practice among the authorities in the next several years and to this very day,³² even though there is no legal ground for deprivation of liberty to be a witness in a criminal procedure.³³

With the amendments of the LATP on June the 16th 2015 starts the *second* period characterized by the legalization of transit through Macedonia, allowing migrants to register an intention to apply for asylum on the border points and to get a 72-hour travel permit for legal transit throughout the country.³⁴ Additionally, with this travel permit, migrants could legally use public or private transport and housing, and get free medical aid in state facilities.³⁵ With the amendment, the number of detainees in Gazi Baba decreased, probably because newcomers could legally travel through the country. Also, the Ministry

³¹ CPC, at Articles 226-232; See also *Law for the Protection of Witnesses* (Official Gazette No. 38/2005 and 58/2005). See N. Matovski, G. Buzarovska-Lazetnik, G. Kalajdziev, *Criminal procedure law*, Faculty of Law, Skopje, 2011, p.194-205, G. Buzarovska-Lazetnik, G., Kaladziev, B. Misoski, D. Ilik, *Criminal procedure law*, Faculty of Law, Skopje, 2015, p. 144-146.

³² See *Report on Immigration custody in North Macedonia for January to September 2019*, MYLA and UNHCR, and see Ombudsman of North Macedonia, *Special report on the conditions of the Shelter Centers for accommodation and detention on migrants and refugees*, available at <<http://ombudsman.mk/upload/NPMdokumenti/Izvestai/Poseben%20izvestaj-januari-avgust%202019.pdf>> (09/2019).

³³ See *Yearly Report on the efficiency of the protection on human rights in North Macedonia*, MYLA, 2016 available at <http://myla.org.mk/pub_categories/%d0%b1%d0%b8%d0%b1%d0%bb%d0%b8%d0%be%d-1%82%d0%b5%d0%ba%d0%b0/%d0%bf%d1%83%d0%b1%d0%bb%d0%b8%d0%ba%d0%b0%d1%86%d0%b8%d0%b8/%d0%b8%d0%b7%d0%b2%d0%b5%d1%88%d1%82%d0%b0%d0%b8/#> (09/2019).

³⁴ Article 16 of the Amended LATP, Official Gazette No.152/2015.

³⁵ Before legalizing the transit of migrants, humanitarian medical assistance was offered by local NGO's. However, it was hard to deliver due to the irregular and hidden nature of the transit through the country, in particular in the first half of 2015, Legis, *2015 Annual Report Legis*, Skopje, 2016.

of Interior and the Public Prosecution Office have also speeded their processing of refugees 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.³⁶

In accordance with the previous LATP, in force in that time, asylum-seekers could 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.³⁷ If already inside the country, the asylum-seeker must register his or her asylum application at the nearest police station. These amendments formalized in a way the transit through the country, allowing migrants to gain access to two transit centers situated on the south and north border of the country (Vinojug and Tabanovce). Here migrants were registered and they received different kind of assistance and medical help. In this period 477,876 migrants were registered at the border points or in transit centres. But still, the massive influx and the high number of daily arrivals that varied from 5000 to 10000 people,³⁸ brought the country to declare the state of emergency on 21 August 2015³⁹ and close temporarily its southern border. The closure of the border left stranded almost 4000 migrants on the Greek side that resulted in violent clashes between migrants and police. Three days later Macedonian authorities reconsidered opening the border again.⁴⁰

With the state of emergency, the Army of the Republic took control over the management of the borders and the Center for Crisis Management (a special government body), was appointed to manage the

³⁶ See UNHCR Observations: *The former Yugoslav Republic of Macedonia as a Country of Asylum*, UNHCR, the Un Asylum Agency, August, 2015, p.16. 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.

³⁷ 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;

³⁸ Z. Drangovski, *Analytical report Lessons learned from the 2015-2016 migration situation in the Western Balkan region*, cit., p.5.

³⁹ S. Senada, S. Sabić, S. Borić, *At the Gate of Europe: A Report on Refugees on the Western Balkan Route*, Fridrich Ebert Stiftug, Zagreb, 2016, p. 6.

⁴⁰ B. Beznec, M. Speer, M. S. Mitrović, *Governing the Balkan route: Macedonia, Serbia and the European Border Regime*, cit., p.19.

crisis. Not only that, but the country raised a wired fence along the border with Greece on which, the state authorities together with foreign police officers (mostly from the Visegrád countries but also other states), conduct border control activities in order to prevent smuggling of migrants.⁴¹ In the meantime the Western Balkan states and the leaders of the EU in November 2015 held a meeting where they drafted a 17-point Action Plan, after which the country introduced restrictive admission policy for migrants. In base of that only Syrian, Iraqi and Afghan migrants were permitted to enter the border, whilst migrants coming from other countries were denied entrance. Soon these restrictive measures were extended also to migrants coming from Afghanistan.⁴²

Finally, the *third* period was characterized with the closing of the Balkan route and return to illegality. The agreement between the EU and Turkey which foresaw a special arrangement for tackling the crisis, affected also North Macedonia, and consequently the country closed its borders on March 8, 2016. The same day of the closure of the border, the Government abolished the 72-hour rule for transiting the country and started to apply the previous provisions that did not allow free movement of migrants through the country at all, except in case of application for asylum. In addition, it introduced the new safe third country clause whereby all neighbouring countries were to be considered as safe countries.⁴³ In base of this clause and in base of the readmission agreements that the country has signed with neighbouring states, North Macedonia could legally proceed towards deportation of migrants to the country of their first entry.⁴⁴ Besides the regular deportation of migrants which was practiced by the authorities, non-governmental organizations have observed that also illegal push-backs were taking place.⁴⁵ However, in spite of these restrictions migrants continued to illegally cross the border, turning to smugglers and traffickers in order to follow their journey to the EU.

⁴¹ T. Stojanovski, *Prava na begalcite, migrantite I baratelite na azil vo Republika Makedonija*, cit., p. 5-6.

⁴² *Annual Report of Legis* 2016, cit., p. 6-8.

⁴³ This was introduced in article 10-1 that foresees that states coming from the EU, EFTA and NATO were to be considered as safe countries.

⁴⁴ B. Beznec, M. Speer, M. S. Mitrović, *Governing the Balkan route: Macedonia, Serbia and the European Border Regime*, cit., p. 24.

⁴⁵ *Annual Report of Legis* 2016, cit. p. 24-6; *Annual Report of Legis*, 2018, cit., p. 15-17.

3.2. The renewed legislation for asylum – 2018 and ongoing

The EU integration process is a clear and unambiguous strategic interest and priority for Macedonia. One of the basic requirements for the integration is the harmonization of the national legislation with the EU legislation. Since the national legislation concerning asylum reported to have many gaps for which it failed to meet the challenges from the migration crisis, the latter needed to be changed. Therefore, a new Law for International and Temporary protection was passed in April 2018 (hereafter LITP).⁴⁶ This Law is a successor of the Law for asylum and temporary protection. The first purpose of this law was to harmonize the Macedonian legislative with the relevant EU concerning asylum and temporary protection. This law is in full consistency with several Directives of the EU Parliament and the Council:

1. The Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted;

2. The Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection;

3. The Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection;

4. Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

The LITP regulates the terms and the procedure for obtaining the right to international protection (right of asylum), as well as cessation, abolishment and annulment of the right of asylum of a foreign national or a stateless person (foreign national), as well as the rights and duties of asylum seekers and persons to whom the right of asylum has been recognized in the Republic of North Macedonia. This Law also regulates the conditions under which the country may give temporary

⁴⁶ *Law for International and temporary protection*, Official Gazette No. 64/2018.

protection, as well as the rights and duties of persons under temporary protection.

The LITP overcomes the concerns that have risen from its predecessor as a result of the disputed legal solutions concerning the right of family reunion and the access to efficient asylum procedure. For the first time, the law encompasses and recognizes “sexual orientation”, as the basis for persecution and for seeking asylum in Macedonia. Namely, in Article 7, paragraph 5 of the new law,⁴⁷ for the first time, sexual orientation and gender identity have been indicated as characteristics of a particular social group that could face persecution and would have the possibility to seek international protection. In the same paragraph, it is noted that sexual orientation is not considered a punishable offense and that gender and gender identity will be taken into account when determining the belonging to a particular social group. Bearing in mind that very few laws in Macedonian legislation explicitly mention sexual orientation and gender identity as grounds for protection, the introduction of this change in the law can be considered a major step.

However, the NGO's,⁴⁸ the civil society and relevant institutions,⁴⁹ turn the red alert about one of the major changes introduced by the new law, and that is the possibility of restricting the freedom of movement of asylum seekers. According to the new measure, asylum seekers in the Republic of North Macedonia who are currently undergoing through the asylum procedure, in certain cases provided by law, may be restricted by a decision of the Ministry of Interior. Namely, Article 63 stipulates that, in exceptional cases, “the freedom of movement may be restricted in order to establish the identity and citizenship, to establish the facts and circumstances of the asylum application, especially if it is

⁴⁷ In accordance with the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, available at <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095>> (09/2019).

⁴⁸ See *Commentary of the Young Lawyer Association on the new Law for international and temporary protection*, MYLA, 2019, available at <www.myla.org.mk> (09/2019).

⁴⁹ See UNHCR, *Commentary on the LITP of North Macedonia*, available at: <<https://www.refworld.org/cgi-bin/tehis/vtx/rwmain/opensslpdf.pdf?reldoc=y&docid=5b066b354>> (02/2019).

established that there is a flight risk, for protection of the public order and national security, or when a foreigner is detained in order to prepare for a return or removal procedure.” The exceptional cases of restriction on freedom of movement defined in such a way may lead to arbitrary deprivation of liberty in several respects, particularly when considering the assessment of the flight risk as a condition for restricting freedom of movement. Considering the larger wave of refugees in the past three years, the use of the possibility of restricting the freedom of movement of asylum seekers can cause significant burdens on the state in terms of the capacities of the reception centers for asylum seekers and foreigners. This would lead to a greater and more serious violation of their fundamental human rights and freedoms, especially the absolute prohibition of torture, depriving and degrading treatment, which, as demonstrated by the experience, is not inevitable. Moreover, the Law provides for the initial possibility of limiting freedom for a maximum of three months, with the possibility of extension for another three months.⁵⁰ In addition, the procedure for detaining an asylum seeker is unspecific and problematic, especially considering that the decision is not passed by a competent court, but by the Ministry of Interior, thus challenging the constitutionality of this law.

Although this new legal possibility is in line with European law, especially the Directive 2013/33/EU, still there are no guarantees for the rights of asylum seekers in these cases as regards the duration and conditions of restriction of freedom of movement, especially in cases regarding children, families and women asylum seekers. The Helsinki Committee in North Macedonia also stresses that there are few terminological misunderstandings, probably due to bad translation, but these misunderstandings could generate future problems and leave space for arbitrary decisions.⁵¹

4. Conclusion

The conclusions that can be drawn from this paper is that Macedonia’s asylum and migration policy system demonstrated that it

⁵⁰ Articles 64 and 65 of the LITP.

⁵¹ See *Opinion of the Helsinki Committee on the Law for international and temporary protection*, available at <<https://meta.mk/helsinshki-komitet-noviot-zakon-za-azil-ima-nedostatotsi-vo-primenata-na-eu-direktivite/>> (09/2019).

has loopholes and shortcomings which have emerged throughout the various refugee crisis that have stroke the country over the years. The migration crisis from 2015/2016 revealed that the country was not in the position to cope with such an outnumbered migration influx and that it had to proceed towards adopting legislative changes. This has proven to be quite a difficult task. However, having in mind that the country is in the process of European integration, steadily the country had strengthened its asylum system and it harmonized the national legislation with the EU *acquis* but also with international standards in matter of asylum and migration. However, North Macedonia still has not proceeded towards ensuring that asylum-seekers have access to a fair and efficient asylum procedure. This is reflected, amongst others, by the fact that the North Macedonia has not yet put in place sensitive screening mechanisms at the border in order to identify those who may need protection and to refer the individuals concerned to appropriate procedures. But still, this shortcoming represents an issue that should be tackled on a European or on a global level.

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