

## **MYLA- UPR Submission on asylum and migration**

### **INTRODUCTION**

1. Macedonia and many other countries faced a challenging refugee/migrant crisis in the course of 2015 – 2016. Hundreds of thousands of refugees made their way towards Europe through the Western Balkan Route. The situation was challenging in many ways starting from the humanitarian conditions, the health care, and then continuing to the legal and institutional framework pertaining to the topic of asylum and migration. Since then, laws were changed but the institutions are still reflecting on the problems that arose from the reception of huge numbers of people within the Macedonian borders. Lack of implementation of national legislation is still a problem and although seen as a transitory country, the policies in place must be responsive to the new situations and challenges. Although no proper analysis of the situation is performed, Macedonia is still in a situation of crisis proclaimed by the Parliament and will last until the end of 2018, when the Parliament again will decide upon this issue<sup>1</sup>.
2. The Macedonian Young Lawyers Association (MYLA) makes this submission to the Universal Periodical Review (UPR) on the human rights challenges pertaining to the issues of asylum and migration, with a specific focus on the asylum system (legal and institutional framework) in Macedonia.
3. MYLA is a nongovernmental organization established in 2003, providing free legal assistance to asylum seekers, refugees, stateless persons and other persons of concern, in procedures before relevant authorities, assuring the exercise of their rights and finding durable solutions.

### **PREVIOUS UPR**

4. There are two other UPR reports for Macedonia, the first cycle in 2009 and the other in 2014.
5. In the second cycle several countries submitted recommendations on the concerned topics. Cambodia recommended Macedonia that it should continue its effort in the active implementation of the National Strategy for the Fight against Human Trafficking and Illegal Migration. Hungary recommended the country to establish a procedure for determining the best interest of the children during all asylum and refugee processes, and the Philippines recommended that Macedonia should continue to improve the condition of all migrant particularly with regard to access to health, education and other social services, and accelerate efforts towards accession to ICRMW. Germany and Switzerland had recommendation towards the detention conditions emphasizing the importance of respecting international obligations and standards, especially set under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol. The recommendations made on the detention system in the country are worth mentioning since during the refugee/migrant crisis many issues occurred particularly in this regard. The response of Macedonia is that it accepts these recommendations by

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<sup>1</sup> A crisis situation in Macedonia is declared pursuant to Article 31 paragraph 5 of the Law on Crisis Management (Official Gazette of the Republic of Macedonia, no. 29/2005, 36/2011, 41/2014, 104/2014 and 39/2016).

declaring that some of them are already being implemented or are to be implemented in the upcoming period.

## **INTERNATIONAL OBLIGATION OF THE COUNTRY**

6. Macedonia is a state party of the following international and regional mechanisms:
  - a) International Covenant on Civil and Political Rights-acceded in 1994;
  - b) International Covenant on Economic, Social and Cultural Rights – accessed in 1994
  - c) 1951 Convention relating to the Status of Refugees - accessed 1994
  - d) The 1967 Protocol - accessed 18 Jan 1994
  - e) Convention of the rights of the child- acceded in 1993;
  - f) International Convention on the Elimination of All Forms of Racial Discrimination- acceded in 1994;
  - g) Convention on the Elimination of Discrimination against Women- acceded in 1994
  - h) Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment - acceded in 1994
  - i) European Convention on Human Rights- ratified in 1997;

## **INSTITUTIONAL FRAMEWORK**

7. Institutions responsible for managing the flows of migrants and refugees crossing Macedonia, are firstly the Ministry of Interior and its special Unit for Border Affairs and Migration, responsible for security aspects and management of Macedonian Borders and the Ministry of Defense. The Ministry of Interior's Secor for Asylum (SfA) is responsible for deciding upon asylum applications and the processes for issuing of identification documents. The Ministry of Labor and Social Policy is responsible for access to services and socioeconomic integration, but it also manages the appointment of guardians to unaccompanied minors, asylum seekers and humanitarian food and non food items. The Ministry of Health is responsible for providing health care, while the Ombudsman Office has its part in the protection of human rights and freedoms. During the crisis two transit centers were opened at the Southern border with Greece (TC Vinojug) and at the Northern Border with Serbia (TC Tabanovce), both of them operated by the Crisis Management Center<sup>2</sup> of Macedonia. The Ministry of Education should take care of the obligation that every child staying on the territory of Macedonia should receive a proper access to education.
8. The Administrative and High Administrative Court decide in the second instance asylum procedures, and the Ministry of Justice is the responsible institution on the provision of free legal aid to the asylum seekers.

## **ISSUES RELATING TO THE ASYLUM/MIGRATION IN THE COUNTRY**

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<sup>2</sup> The Center for Crisis Management, as an independent state administration body with a position and function of a directorate and as a legal entity, is expected to perform the following activities: ensures continuity in inter-ministerial and international cooperation, consultations and coordination in crisis management; elaboration and updating of a unique assessment of the risks and dangers for resolving the crisis situation and proposes measures and activities for resolving the crisis situation and performs other activities determined by law. The Center is the holder of the overall support (expert, organizational, administrative and other) of the Steering Committee and the Evaluation Group.

9. Starting in October 2014, throughout 2015, and until the first quarter of 2016, Macedonia turned into a transit country, especially for refugees fleeing from the war in Syria and Iraq, who chose as their point of destination countries in the European Union. This came as a direct consequence of the geographical position of Macedonia, as a part of the "Western Balkan route".<sup>3</sup> It was estimated by UNHCR in Macedonia<sup>4</sup> that during the migration crisis approximately 2,000 persons per day on average were entering the country through unofficial border crossing points, along the border line with Greece near Gevgelija, and passing through Macedonia into Serbia. After the western Balkan countries officially closed their borders to the refugees and migrants, push-backs, or the informal returning of refugees by the state from their territory to another country, has become more common practice. Now the borders of the country are still closed, but refugees and migrants are still crossing and transiting our borders. With the closure of the borders, the illegal migration, smuggling and the risk of human trafficking became very problematic and many incidents occurred in the past period.
10. The overall number of migrants transiting through Macedonia (the Southern and Northern border of the country) –estimated at 800.000 only between June 2015 and March 2016–, represents about one third of the overall population of the country; a figure which it itself may well describe the unprecedented burden this crisis posed for the Macedonian administrative structures.<sup>5</sup>
11. Generally, the Macedonian asylum legislation which envisages the asylum system and procedure, is in line with international standards for the protection of persons in need of international protection, even though it is expected for Macedonia to further align its legislation with European acquis. However, it is inevitable to mention that there is a lack of proper and effective implementation.

### **Access to territory and procedure**

12. According to the Macedonian Laws, a foreigner can apply for asylum by submitting a request for recognition of the right to asylum or to express an intention to seek asylum to the police at the border crossing point either in the nearest police station or in the premises of the SfA situated in the Reception Center<sup>6</sup>. Also, a foreigner can be detained for a purpose of establishing identity and forced removal.
13. During the refugee/migrant crisis many challenges regarding the access to procedure and territory occurred. When the two borders were closed many refugees stayed in a limbo space with undefined legal status. Police officers often refused to record asylum applications submitted by the refugees, and moreover many of these people were pushed back to Greece without any legal and official procedure. In the absence of an adequate system for orderly management of irregular movements, in particular effective readmission arrangements

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<sup>3</sup> <http://www.balkania.es/wp-content/uploads/2017/05/Macedonia-in-the-2015-Refugee-Crisis.pdf> page 219

<sup>4</sup> Statistics for irregular movements – UNHCR office in Macedonia;

<sup>5</sup> Ibid, page 223

<sup>6</sup> Art.16-a of the Law on Asylum and Temporary Protection (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)

with neighboring countries, illegal returns continued. Since January 2017, international organizations recorded 3 726 persons returned irregularly to Greece.<sup>7</sup>

14. Push backs were also detected all along the Western Balkan route, Croatia and Hungary to Serbia, Serbia to Macedonia and Bulgaria, Macedonia to Greece etc. The main concern is that in most of the cases these push backs are not in accordance with the official legal procedures and readmission agreements for return of third country nationals. Since most of these returns are conducted outside of the legal procedure there is extremely high risk for the people to be subject of human rights violations.
15. Another problem was the access to free legal aid according to the Law on Free Legal Aid (LFLA). Even though asylum seekers have the right to submit a request for appointment of an attorney at law for the asylum procedure their requests were not resolved duly by the Ministry of Justice. Even more, the whole system for state funded legal is not functioning and people in urgent need of a counsel like the asylum seekers could not rely on it.<sup>8</sup> On the other side, foreigners that are detained and held in the Reception Center for Foreigners do not even have access to legal aid and have no information on their rights and procedure while they are detained.
16. Moreover, according to the last changes of the Law on Administrative Disputes a new provision was added in which the cases where the court should hold a public hearing and decide upon the merits were explicitly listed, from the practice so far, the Administrative Court and the High Administrative Court has not adopted one verdict in which it had been decided upon the merits of the case. In conjunction with solving the administrative matter by the courts, also stands the question for scheduling and conducting public hearing and the possibility for the persons to testify in front of the courts which has never been done.
17. Although the numbers are smaller, refugees and migrants are still present at both Macedonian transit centres, Tabanovce and Vinojug, consisting of those left behind with the border closings and some who attempted to cross borders on their own and were pushed back. A new trend of irregular backward movement of a significant number of refugees and migrants departing Serbia for Macedonia, and subsequently to Greece, has been noticed. Their movements were mostly voluntary, with the majority's intention to return to Greece.

## **Freedom of movement and detention**

18. The Parliament of Republic of Macedonia in April 2018 adopted a new Law on International and Temporary Protection replacing the old Law on Asylum and Temporary protection.
19. In order to adjust with EU Directive, into the new Law there are few provisions that regulate the deprivation of freedom of movement of asylum seekers for the first time in the Macedonian legal system. These provisions allow detention for up to three months with the

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<sup>7</sup> EC country report Republic of Macedonia 2018 <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-the-former-yugoslav-republic-of-macedonia-report.pdf>

<sup>8</sup> <http://myla.org.mk/wp-content/uploads/2016/09/2016-%D0%94%D0%BE%D1%81%D1%82%D0%B0%D0%BF%D0%BD%D0%BE%D1%81%D1%82%D0%B0-%D0%B8-%D0%BF%D1%80%D0%B8%D1%81%D1%82%D0%B0%D0%BF%D0%BE%D1%82-%D0%B4%D0%BE-%D0%91%D0%9F%D0%9F-%D0%B7%D0%B0-%D0%BB%D0%B8%D1%86%D0%B0%D1%82%D0%B0-%D0%B1%D0%B0%D1%80%D0%B0%D1%82%D0%B5%D0%BB%D0%B8-%D0%BD%D0%B0-%D0%B0%D0%B7%D0%B8%D0%BB-%D0%B2%D0%BE-%D0%A0%D0%9C-1.pdf>

possibility for extension for three more months with a decision of the Ministry of Interior, and thus violating the Constitution of the country and the international obligations that the country accepted and ratified in this regard. Giving the authority of the Ministry of Interior, as a state administrative body, to decide on restricting the freedom of movement of asylum seekers, instead of the court to bring such decisions, violate Article 12 of the Constitution which is: *“No individual's freedom can be restricted, except by a court decision and in cases and a procedure determined by a law”* and the standards set with the European Convention of Human Rights. So, taking into account the facilities and the manner where under the law, the asylum seekers will be held, indeed can be classified as a deprivation of liberty.

20. Moreover, in practice foreigners are being held in the Reception Centre for Foreigners to be witnesses in the criminal procedure against the smugglers, although there is no legal provision that permits detention of witnesses.

## **Integration**

21. Even though in the course of 2017, a Strategy for integration of refugees and foreigners was prepared by the Ministry of Labor and Social Policy, the Strategy never started implementing. The reason was the high media pressure, the stereotypes and xenophobia by the Macedonian citizens. Since then, there are no information on the implementation of this document that creates a legal uncertainty in the integration processes of refugees and migrants in the country.

## **Child rights and care**

22. In October, 2015 the National Committee on Human Trafficking and Illegal Migration adopted new Standard Operating Procedures for unaccompanied children, developed in cooperation with MYLA, UNHCR and other relevant institutions. Unfortunately, there were many issues with the appointment of guardians and proper registration of unaccompanied minors. The new registration forms allowed for minors to be registered only with their mother or father. Family relations such as brother/sister, uncle/aunt or grandparents were not possible. The Ministry of Labor and Social Policy arbitrarily assigned guardians to the UASC from the group they were travelling with without informing them and in several cases the guardian continued to Serbia without the UASC, who remained behind without any registration document. In addition those UASC that remained in the country were not processed promptly therefore they were not assigned a guardian and transferred to a Safe House in reasonable time, thus increasing their vulnerability.
23. Moreover, minors are not always accommodate separately from the adult asylum seekers residing in TC and there is high risk of victimization of the minors. There are no qualified interpreters in the TC. The access to education is limited.
24. Another important issue is the education of the children regulated with the Law on primary and the Law on secondary education. According to these laws, refugees, asylum seekers, recognized refugees, persons under subsidiary protection and person under temporary protection have a right to education. In the Law on primary education it is stated that every

child shall have the right of primary education. However, through the text of the laws only the categories of “foreigner” and “stateless person” are recognized. Except foreigner and stateless person, all the other categories should be included for elimination of all difficulties in the access of education. For the smooth realization of these children’s right to access to education it is preferable for a separate chapter to be included within the frames of the laws which will regard the fundamental rights of refugee children<sup>9</sup>, and will contain imperative provisions for preparation of educative programs as well a test for assessment of their knowledge and providing the whole process, competent authority etc.

25. The conditions for enrolment of the children should also be facilitated. For example, in order for one child to enter into the educational process the parent shall submit a compulsory immunization certificate issued by the competent healthcare institution that these children may not have. It is the same with the time of enrolment, the learning the Macedonian language, the nostrification of diplomas and certificates etc.

### **Recommendations:**

- I. Respect of international obligations and standards that are set with the ratified Conventions and harmonization of the European acquis with the Macedonian national legislation, in the area of: the principle of non-refoulement, freedom of movement, the right to a fair trial and procedure, the right to a legal counsel etc.
- II. The quality of decision-making on asylum procedures remains inadequate. The Section for Asylum is understaffed. The capacity to evaluate the merits of asylum applications is still weak.
- III. The Law on Foreigners and the Law on International and Temporary Protection should be amended and harmonized with the Constitution with respect of the competence of the body deciding on the deprivation of liberty.
- IV. Provision of individual approach, procedural safeguards and conditions and when depriving a person of liberty.
- V. Establishment of a protection-sensitive screening mechanisms to identify and refer those who may be in need of protection, as well to respond to the needs of the most vulnerable;
- VI. Improving the protection for the victims of human trafficking especially child trafficking. The skills of the border police in communication, interaction and treatment of migrants need to be upgraded;
- VII. Including non-punishment of trafficked persons for the offences they have committed in connection with, or as a result of, being trafficked, into the Criminal Code. A new law on compensation for victims of criminal offences should be drafted and adopted;

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<sup>9</sup> This category includes also: asylum seekers, recognized refugees, persons under subsidiary protection and person under temporary protection.

- VIII. An independent border monitoring system to be established and introduced in the new Law on Foreigners as written in the Return Directive.<sup>10</sup>
- IX. Establishment of an effective asylum system with proper coordination and division of responsibilities among duty bearers.
- X. The Administrative Court and the High Administrative Court in case where all the criteria are fulfilled should decide upon the merits of the case and should respect the national legislation in regards to scheduling public hearings.
- XI. The 2017-2027 Integration Strategy for Refugees and Foreigners has not yet been adopted. Urgent measures are needed to counter xenophobia and address negative public attitudes towards migrants and refugees.
- XII. Amendments to the laws on primary and secondary education that would facilitate the access to education of children as the most important part of integration process in the country.

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<sup>10</sup> UNHCR, Regional Refugee and Migrants Response Plan for Europe, Eastern Mediterranean and Western Balkans Route, January-December 2016, p.73