



**Macedonian Young Lawyers Association**

***Emerging Challenges in Response to the Refugee Crisis***  
**The state of the Macedonian asylum system**

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## Introduction

Republic of Macedonia is State party of the 1951 Convention relating to the Status of Refugees and the 1967 Protocol and the Macedonian national legislation is fully in line with the EU Directives on the matter at hand. As the number of people coming from non-European countries has drastically increased in the last 3-5 years, the Macedonian asylum system has faced many challenges rendering irregular migration an issue of concern.

Whilst in 2010 there were only 180 asylum-seekers in Macedonia, in 2013, 1,343 people claimed asylum in the country, including 360 persons who had fled the violence in Syria. In 2014 there have been 1,267 registered asylum seekers, the majority of whom arriving from Syria. Out of all of the asylum applications during the same year, 11 applications were granted (3 families and one unaccompanied minor asylum seeker) refugee status.

## Access to territory

According to MYLAs statistics, most of the Syrian asylum seekers enter Republic of Macedonia crossing the southern border with Greece. A development occurring during 2014 was the detection of crossings of the eastern border with Bulgaria. These people are usually part of the mixed migratory groups and as by far the most commonly used method by irregular migrants in the Western Balkans is a simple crossing of green borders on foot and subsequent transport by car, taxi, van or regular bus lines.<sup>1</sup>

Entry officials often receive only basic training and lack the necessary capacity, skills and tools to distinguish between various categories on the move and to identify asylum-seekers and other vulnerable groups (potential victims of trafficking, unaccompanied and separated children, women and girls at risk, etc.). Lack of necessary language skills and/or absence of interpreters hinder effective communication with persons on the move and limit the ability of border guards to provide immediate assistance even in cases when vulnerable persons are identified.

## Access to asylum procedure

When a person intends to seek asylum in the Republic of Macedonia he/she must apply when entering the territory of the country at the border crossing point (airports included) or at the nearest police station. After expressing their will to request asylum, the person is escorted by a police officer to the Section for Asylum (SfA) or to the Reception Centre for asylum-seekers.<sup>2</sup> When a person residing in the country intends to submit an asylum application, they can do this in the Section for Asylum (SfA) at the MoI. In cases of family reunification, an asylum application can be submitted to the diplomatic/consular mission of the Republic of Macedonia.<sup>3</sup> According to MYLA statistical data, majority of the asylum applications are submitted in the capital city of Skopje in only one police station.

However, serious shortcomings in the implementation of the legislation, as well as gaps in institutional structures and capacities hamper effective access to protection by those in need. While solutions to such deficiencies are often determined by the availability of financial resources, the creation of a conducive protection environment largely depends on the genuine political will of the Government. Current asylum and migration policies and practices are, however, dominated by security concerns and growing pressure to stem

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<sup>1</sup> [http://frontex.europa.eu/assets/Publications/Risk\\_Analysis/WB\\_ARA\\_2014.pdf](http://frontex.europa.eu/assets/Publications/Risk_Analysis/WB_ARA_2014.pdf)

<sup>2</sup> Article 16 of the Law on Asylum and Temporary Protection (Official Gazette of the Republic of Macedonia, no. 49/2003, 66/2007, 142/2008, 146/2009 and 166/2012)

<sup>3</sup> Article 16 of the Law on Asylum and Temporary Protection (Official Gazette of the Republic of Macedonia, no. 49/2003, 66/2007, 142/2008, 146/2009 and 166/2012)

irregular movements and associated transnational crime, which tends to overshadow human rights and refugee protection considerations.<sup>4</sup>

Relevant state authorities often lack sufficient and adequately qualified personnel. This is further exacerbated by high turnover of staff which results in loss of acquired training, skills and experience, undermining the capacity-building efforts undertaken by UNHCR. In general, the authorities responsible for administering various parts of the asylum systems suffer from acute lack of financial and technical resources. Essential services such as the expenses for interpretation during the asylum procedure and/or free legal assistance for asylum-seekers continue to be covered largely by UNHCR.<sup>5</sup>

The first instance negative decisions are not elaborated enough and lack sufficiently explained reasons for refusal. This is of particular importance for the cases rejected with the explanation that asylum seekers pose “danger for the security of the state”, where the state is not providing any evidence for rejecting the asylum claim on the basis of a single document issued by the State Security Bureau which they consider to be confidential.

The Administrative Court, as a second instance body deciding in asylum matters, decides only on the procedural aspects of the asylum cases, without further entering in details and deciding on the merit of the claim of the right to asylum.

### Detention of asylum seekers

The Reception Centre for Foreigners in Gazi Baba, under the jurisdiction of the Section of Border Affairs and Migration at the Ministry of Interior (MOI) is the place where irregular migrants detected on the territory of the Republic of Macedonia are detained. In most of the cases there are migrants, victims of human trafficking and potential asylum seekers. The centre is of closed type and the access to humanitarian non-governmental organizations is limited.

This year, the number of persons detained in the centre is constantly on the rise and one of the reasons is increased migration movements through the country. In some cases women and children are detained. As part of the signed Memorandum for Cooperation between MYLA<sup>6</sup> and National Preventive Mechanism, Ombudsman of the Republic of Macedonia<sup>7</sup>, MYLA representatives took part in several visits to places where the persons are deprived of their liberty and had unannounced visit to this center. The most of our findings and recommendations from the visits are included in the Annual Report of the National Preventive Mechanism for 2013<sup>8</sup>.

According to the practice, the irregular migrants who are detained at the Reception Centre for Foreigners have the possibility to submit an asylum application while they reside there, and once they submit the asylum application, they are transferred to the Reception Centre for Asylum Seekers in Vizbegovo which is at around 3km distance from the centre of Skopje.

The NGO sector is not included in the process of detention of asylum seekers. The organizations working in the field of asylum and migration are not notified in cases of detained Syrians and access

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<sup>4</sup> Kristina Zitnanova Refugee Protection and International Migration in the Western Balkans March 2014 <http://www.unhcr.org/5375c9ab9.html>

<sup>5</sup> Kristina Zitnanova Refugee Protection and International Migration in the Western Balkans March 2014 <http://www.unhcr.org/5375c9ab9.html>

<sup>6</sup> Memorandum for cooperation signed between MYLA and Ombudsman <http://myla.org.mk/index.php/en/collaboration/ombdusman-of-rm>

<sup>7</sup> Ombudsman of the Republic of Macedonia, National Preventive Mechanism

[http://www.ombudsman.mk/MK/nacionalen\\_preventiven\\_mehanizam/izveshtai/godishni\\_izveshtai.aspx](http://www.ombudsman.mk/MK/nacionalen_preventiven_mehanizam/izveshtai/godishni_izveshtai.aspx)

<sup>8</sup> Annual Report of National Preventive Mechanism for 2013 <http://ombudsman.mk/upload/NPM-dokumenti/2014/NPM%20Godisen%20izvestaj-2013.pdf>

to detained irregular migrants is often denied. Concerned persons thus remain without access to appropriate legal assistance, and it is not clear whether they enjoy adequate access to the procedure and to information on their rights, including the right to seek asylum.

### Reception

All asylum seekers have access to accommodation and basic support provided by the Ministry of Labour and Social Policy (MLSP) to cover their basic needs during their stay at the Reception Centre for asylum seekers while they await the final decision on their case.<sup>9</sup> However, not many asylum-seekers remain in the country until the final outcome of the procedure.

The shelter has the capacity for 150 people. It offers separate accommodation units for single male or female asylum seekers and families. Also, access to services is available only through the Reception Centre for asylum-seekers. Persons may reside outside the Centre, however, at their own expense. Also, the asylum seekers have the right to work within the Reception Centre for asylum-seekers as well right of free access to the labour market after the expiry of one year period from the day of submission of their asylum application.<sup>10</sup> However, social welfare assistance and activities for facilitated cultural adaptation are lacking.

### Conclusions and Recommendations

1. System of early identification of persons in need of international protection on the borders with focus on Syrian refugees and other vulnerable groups (potential victims of trafficking, unaccompanied and separated children, women and girls at risk, etc.) within mixed migration groups needs to be introduced in order to provide effective protection safeguards for the persons on the move;
2. Independent system for external oversight of the police which will include border monitoring and training for border officials needs to be set in place;
3. Effective access to asylum procedures must be ensured for all the asylum-seekers applying for asylum on all the territory of country;
4. The capacities of asylum officials must be further strengthen in order quality of Refugee Status Determination procedure to be improved;
5. Practice should be established in which the Administrative Court would grant the right of the asylum seekers to be heard in front of a judge who would gain better insight into the case and hear the evidence of the asylum seeker, thus providing him/her an opportunity to explain the reasons for fleeing the country of origin/habitual residence and claim asylum. This practice would lead to the proactive role of the Court and deciding on the asylum cases on substantial grounds;
6. Regular presence of NGOs providing legal aid should be introduced and facilitated in the Reception Centre for Foreigners;
7. Detention of children should be perceived as measure of last resort, limited to the exceptional situations, where the deprivation of liberty of the minor would be in the best interest;
8. Reception conditions should be advanced with program facilitating the access to social welfare and activities for cultural adaptation to the new environment according to the needs of the population.

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<sup>9</sup> Article 48 of the Law on Asylum and Temporary Protection (Official Gazette of the Republic of Macedonia, no. 49/2003, 66/2007, 142/2008, 146/2009 and 166/2012)

<sup>10</sup> Article 48 of the Law on Asylum and Temporary Protection (Official Gazette of the Republic of Macedonia, no. 49/2003, 66/2007, 142/2008, 146/2009 and 166/2012)

## MACEDONIAN YOUNG LAWYERS ASSOCIATION

MYLA was founded in 2004 in a period of absence of other similar organizational forms among the young lawyers. Through its initiatives and determination, MYLA overtook the role of being agent of the transformation in the segment of the young legal professionals in the time of already initiated reforms in the judicial system in Republic of Macedonia. This is because MYLA considered that there will be no alternative not there can be any reforms without the potential of the youth and coordinated joint activities toward effective and efficient implementation of the judicial reforms and rule of law in the country.

In order to accomplish the above mentioned vision MYLA actively supports the young lawyers on their professional upgrade through different projects and activities, aiming to achieve higher level of expertise of its members. Despite this commitment, MYLA also serve the needs of the citizens and other persons for qualitative and easy access to pro bono legal aid related to the protection of human rights and liberties and support the marginalized groups in the society.

MYLA provide expertise and support in strategic advocacy of human rights in certain areas and issues. The extent of our advocacy is before national and international human rights bodies where MYLA generally represent persons in need of legal aid. MYLA's primary focus is promoting the principles and the rights of the European Convention on Human Rights with tendency of advocacy of selected cases before the European Court of Human Rights in order to comply with the generally accepted international standards for promotion and protection of basic human rights and liberties. The association implements numerous projects related to the protection of the human rights, such as non-discrimination, free access to information, free legal aid, asylum, stateless and migration etc.

### About the author

**Martina Smilevska** is currently working as project manager on the projects "*Legal Assistance and Representation of PoC*" and "*Prevention and Reduction of Statelessness*", both projects implemented by the Macedonian Young Lawyers Association (MYLA) and supported by the UNHCR Office in Skopje. She is actively involved in civil society organizations in Macedonia and in 2013 was elected President of MYLA. She is a graduated lawyer, holding an MA in International Relations with area of sub-specialization is conflict resolution. She conducted her master research in the field of state security interest and asylum decision making, a research area where international and human rights law, international relations and security theory intercept. In the first cycle of her studies, she graduated at the Faculty of Law "Iustinianus Primus", Ss. Cyril and Methodius University in Skopje, in the International law module. Martina actively conducts research in the field of human rights and rule of law, with special focus on forced migration.