

POLICY PAPER

**Issues concerning  
naturalization  
of persons under  
SP in 2015**

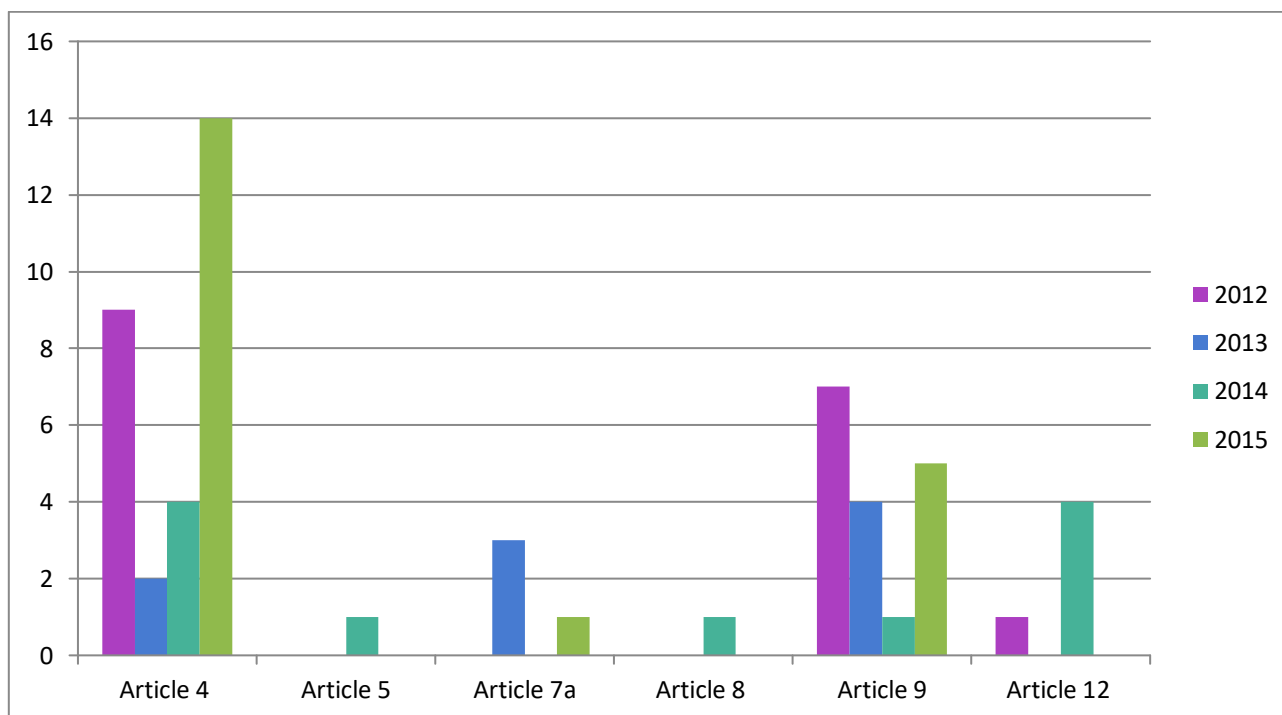


Macedonian Young Lawyers Association

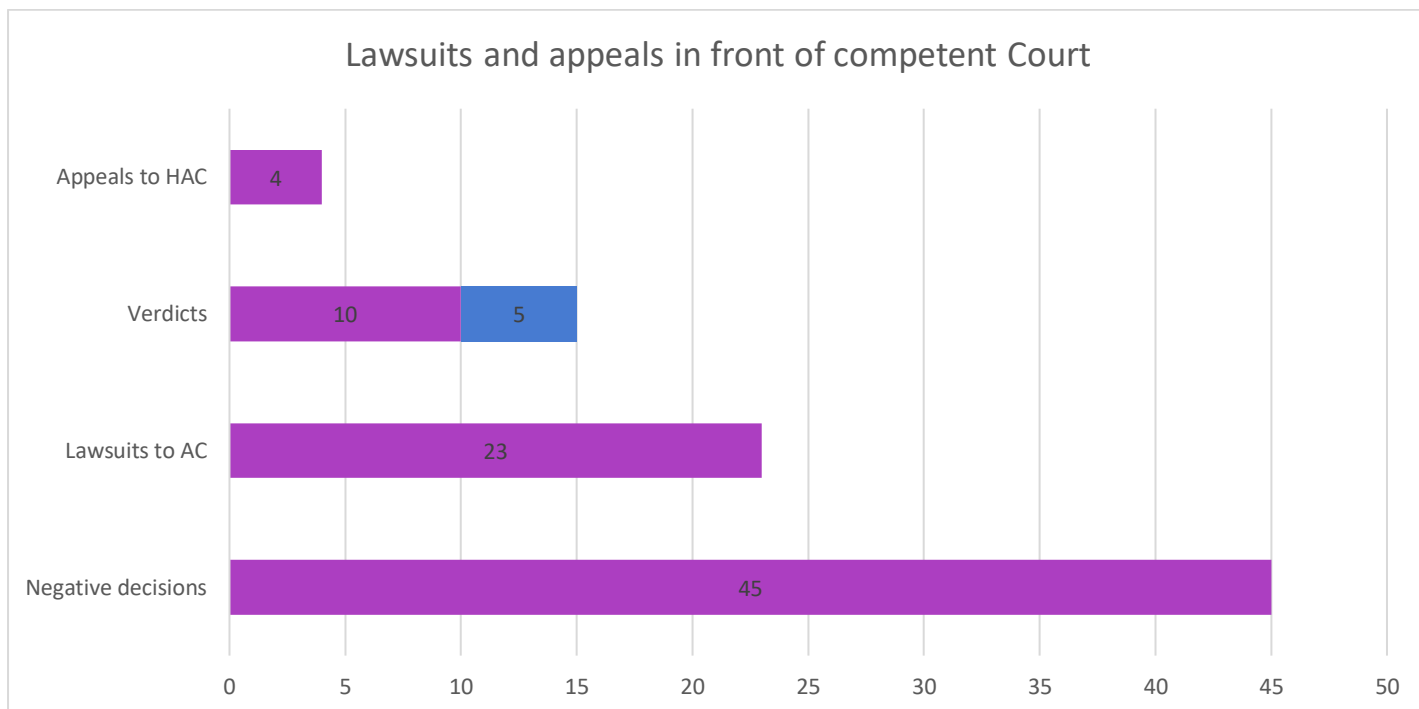
In 2015, MYLA continues to be dedicated to integration of the persons under subsidiary protection in the part of naturalization to Macedonian citizenship. MYLA offers legal assistance in the procedure for naturalization, which can be considered as one of the most important milestones in the integration process. Through naturalization the beneficiaries will be able to fully integrate in the society by becoming a Macedonian citizens and practice the rights and responsibilities which this status brings.

As it can be seen in the chart below, most of the successful naturalizations of persons under subsidiary protection in the period from 2012 to 2015 have been done under Article 4- *Acquisition of Citizenship by origin* from the Law on Citizenship- **29** in total; following are naturalizations by marriage in accordance to Article 9 from the Law on Citizenship-**17** in number; According to Article 12 from the Law on Citizenship, a child under 18 years of age acquires macedonian citizenship if both his parents have acquired Macedonian citizenship by naturalization, we had **5** such cases in the given period; Article 7a from the law on Citizenship prescribes that a stateless person or a person with recognized refugee status may be naturalized if he/she has been legally and permanently living in Macedonia for 6 years and fulfills other requirements- **4** persons were naturalized under this article. All in all, **56** persons obtained Macedonian Citizenship.

## POSITIVE DECISIONS ON NATURALIZATION BY YEAR AND ARTICLE FROM THE LAW ON CITIZENSHIP



However, although **196** persons or **59** families have applied for naturalization under Article 7 of the Law on Citizenship, as an alien living in Macedonia, under certain requirements, none of them has been naturalized in accordance to this article. So far, we have received 45 negative decisions (for 93 persons).



There are **23** lawsuits submitted to the Administrative Court. We received 10 negative verdicts and 5 positive. On average, it takes **741** days for the Administrative Court to decide upon the submitted lawsuit. So far, we have submitted **4** appeals to the High Administrative Court.

This year (**2015**), **61** of the persons that have submitted application for integration in RoM to the Centre for Integration at the Ministry of Labor and Social Policy have already applied for citizenship and are in the procedure. This year, one PoC was rejected by the Section for citizenship at the MoI and the negative decisions was challenged in front of the Administrative Court. There were 10 verdicts from the Administrative Court, 9 of which were negative and one positive received in 2015. This year we have submitted appeals to the Higher Administrative Court on the negative verdicts on the issue of citizenship, four in number. Other four persons who received negative verdicts have already been voluntarily repatriated to Kosovo and one person decided to submit an application for citizenship on different legal ground and decided not to submit an appeal to the High Administrative Court.

However in this area of work, we have located several problems, listed below:

### **1. Lack of documentation for the house the person under subsidiary protection lives in;**

In terms of the required proof of a place of living, Article 7 of Law on Citizenship, among other conditions provisions that the alien should “have provided an abode”. In practice the Section for Citizenship considers a proof notary verified purchase contractor lease contract; (most of the persons under subsidiary protection live in rented houses, so the other kinds of proof such as a property certificate for example, are never used).

In order to have a proper notary verification of the lease contract, the owner must possess a property certificate which is rarely the case.

Furthermore, a considerable number of these houses are illegally built. This means that the owners do not possess a property certificate. Without this it is impossible to prepare and sign this kind of contract.

This means that although the person has factually provided an abode, for which he/she pays rent, it seems that there is no other way to prove this besides the lease contract and its notary verification.

### **2. Duration of the procedure for obtaining personal documentation; Obtaining personal documentation from the country of their nationality**

Persons under subsidiary protection that have applied for Macedonian citizenship need to submit a certificate that there are not criminal proceedings instigated against them in their state of their nationality and in the Republic of Macedonia. In terms of obtaining these certificates from Macedonia, there are no problems. However, when it comes to certificates of this kind from the country of the persons’ nationality, there is a problem with the length of the procedure. Namely, they cannot travel there, because otherwise they risk losing the subsidiary protection. This is why we have a collaboration with partner organizations from Serbia and Kosovo- Praxis and CRPK. However it usually takes a couple of months to acquire the documents they were asked to provide. This period is much longer than the time limit of 15 days set up in the decision from the section for Citizenship at the Mol. This also applies to the birth certificates for the minor children needed in the procedure for obtaining Macedonian citizenship.

### **3. Certificate that there the PoCs have not been punished by a sentence of imprisonment with a duration of minimum one year, and that there are not criminal proceedings instigated against the PoCs that were minors when they left Kosovo**

If the person of concern have left Macedonia, this would mean that the Section for Asylum would have brought a negative decision and cease the subsidiary protection status of the PoC. This means that there is no objective chance for these persons to have physically committed a crime, been imprisoned or that a criminal proceeding has been instigated against them.

In conclusion, the PoC that was a minor when he/she fled Kosovo couldn’t have been punished by a sentence of imprisonment, nor could there have been a criminal proceedings instigated against

him/her in the state of his/her nationality, by the sole fact that the person of concern was a minor during the time when he/she resided in the country of his/hers nationality.

#### **4. Article 7 has been crossed-out and instead Article 7a has been added in the Citizenship Application**

We noticed several cases (e.g. the Verdict from the Administrative Court U-6. No 131/2013) where the Court determined that in the application form for Citizenship, article 7 has been crossed-out and instead Article 7a has been added. However there is not a precise proof that the PoC crossed it out or maybe it was done by the clerk at the counter when accepting the form. There is also the possibility that the applicant was advised to make this kind of correction of the form.<sup>1</sup>

#### **5. What does legal residence mean?**

In several verdicts from the Administrative Court, in relation to the requirement “legal residence” from Article 7, paragraph 1, point 2 of the Law on Citizenship, the Court doesn’t seem to recognize the legality of the residence although it concludes that this residence is regulated under the Law on Asylum and Temporary Protection, i.e. Article 58- Right of Residence: *“With the day of delivery of the decision for recognition of the right to asylum for humanitarian protection, the person under humanitarian protection shall acquire the right of residence in the territory of the Republic of Macedonia for period of one year and the same shall be extended should the reasons of Article 5 of this Law still exist.*

However, in the verdicts there is no explanation why and on the basis of what the Court finds this residence to be illegal.

### **NEW DEVELOPMENTS**

#### **1. Positive Verdict from the Administrative Court**

In terms of jurisprudence in the realm of citizenship procedure, we have received a positive verdict from the Administrative court, in relation to the use of article 7a by the section for citizenship although the person applied under Article 7<sup>2</sup>. Among other, the verdict states the following: “...the accused authority did not respect the rules of the administrative procedure, and because of that it determined the factual situation, which is as an assumption for rightful implementation of the material law, irregularly and incompletely. The accused authority did not decide on a matter which is a subject of the citizenship application in the way it is set up according to Article 7 from the Law on Citizenship, so it determined a new factual situation on the basis of Article 7a from the same Law...According to the previously named provisions of the Law on General

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<sup>1</sup>More on this issue can be found below in the cited verdict of the Administrative Court.

<sup>2</sup> While Article 7a refers to stateless person or a person with recognized refugee status, Article 7 refers to an alien. Our persons of concern who apply for citizenship are neither stateless persons nor recognized refugees, but persons under subsidiary protection. According to the Law on Asylum and Temporary protection a person under subsidiary protection is: “an alien who does not qualify as a recognized refugee but to whom the Republic of Macedonia shall recognize the right to asylum and shall allow to remain within its territory, because substantial grounds exist for believing that if he/she returns to the state of his/hers nationality, or if he is a stateless person, to the state of his previous habitual residence, he would face the risk of suffering serious harm.”

This Article clearly explains that a person under subsidiary protection is not a recognized refugee, because he does not qualify as such, and he is rather an alien. Moreover, the persons of concern in general have Serbian citizenship, meaning that they are not stateless. Again this proves the fact that the Persons of Concern fall under the category of “Aliens” and this persons’ application for citizenship are legitimately submitted under article 7, not 7a.

Administrative procedure, the subject of the procedure is determined by the party in the submitted request, so the decision that will be brought by the authority must be in the frames of the given request and if it is unclear or is not precise, the authority is obliged to call the party and ask for specification of the request in the sense of the named Article 133 of the Law on General Administrative Procedure.”

This opinion and explanation clearly shows the Court’s position that the citizenship applications under Article 7 of the Law on Citizenship should be reviewed as such, and their processing under another Article would mean determining a new factual situation that requires further consultation with the applicant.

This Court’s decision is also in line with our last year recommendations in the issue of citizenship application, stated in our *Policy Paper on Citizenship Application from Persons under Subsidiary Protection with Emphasis on Application under Article 7 of LAMP of Republic of Macedonia (2014)*.

## **2. Guarantee for admission in citizenship of RoM**

One of the PoCs has received *Guarantee* reached by the Ministry of Interior, that he will be admitted into citizenship of the Republic of Macedonia provided that he fulfills the requirements provisioned in Art. 7, paragraph 1, items 1 to 9 from the Law on Citizenship and if he submits a proof that he has a release from his former citizenship or to prove that he will obtain it if he is admitted into citizenship of the Republic of Macedonia within a time -limit of two years from the day of delivery of the guarantee.

Although this is a new development in the citizenship procedure of the PoCs as well as a step forward and only a stage away from acquisition of citizenship, we cannot overlook the fact that the PoC cannot contact his country of origin in order to obtain a release or a proof of release from Citizenship.

## **3. First appeals to the High Administrative Court on Naturalization of the PoCs**

Upon receiving verdicts from the Administrative Court which weren’t in favor of the PoCs, this year we have submitted the first appeals to the High administrative court in the area of Citizenship, four in number.

In the case of Ms. Sanije Ferizi, among other, in the appeal to the High administrative Court we argue that the fulfillment of the requirements of article 7 in relation with article 7a cannot be relativized in terms of the legal stay<sup>3</sup>. In other words, the applicant have been staying in RoM legally the entire time upon her arrival in RoM. Since 19.04.2004, when she has received a decision for status recognition<sup>4</sup> from the Section for Asylum at the Ministry of interior, in accordance with the Law on Asylum and Temporary Protection which is a proof of the legitimacy of her stay (residence). In terms of the continuity of the stay, the abovementioned decisions for recognition and extension of the protection, which are renewed annually in continuity of almost (9) nine years and 6 (six) months are a proof that the applicant hasn’t resided anywhere else, because in that case, the Section for Asylum would have reached a decision and cease her subsidiary protection because the person has voluntarily re-availed himself of the protection of the country of his nationality or who has acquired a new

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<sup>3</sup>Article 7, paragraph 1, point 2, Law on Citizenship

<sup>4</sup> Right to asylum under humanitarian protection; following the amendments of the Law on Asylum and Temporary Protection, she gained the right to asylum under subsidiary protection

nationality, in accordance to Article 38, paragraph 1, line 1 and line 3 from the Law on Asylum and Temporary Protection. The applicant does not have received this kind of a decision.

Related to the certificate that the PoC has not been punished by a sentence of imprisonment with a duration of minimum one year, and that there are not criminal proceedings instigated against her, the birth certificate and proof of citizenship from the country of her nationality, the person cannot obtain these documents by itself, because if she personally contacts her country of nationality, it would be considered that the reasons she has requested asylum are no longer present and she risks losing her subsidiary protection status. However if she still takes the risk in order to be naturalized in RoM, but doesn't succeed, she will be left without protection whatsoever. On the other hand, her citizenship has been determined by the Section for Asylum at the MOI, the only thing she lacks is the proof.

Moreover, there is no proof that the applicant was asked to submit additional evidence that are lacking by editing the application because it has been processed under Article 7a from the Law on Citizenship and additional documents have not been requested.

## Recommendations

Regarding the proof of an abode in the RoM and taking into consideration the places where the persons under subsidiary protection rent their homes, and that is Shuto Orizari municipality, where there are a lot of illegally built houses, or houses for which the owners do not possess property certificate due to the fact that most of the people living there are poor and do not have the financial means to obtain the property documentation. Therefore, we consider that the Section for Citizenship should have these information on mind when assessing the citizenship application and be a little more flexible in defining the proof of an abode. The Law on Citizenship in Article 7 prescribes only the condition, such as: "To have provided an abode..." while the Section for Citizenship provisions what will be considered a proof for fulfilling these conditions. Therefore, this state authority has the independent competence to decide which proof would be proper and applicable. In our view, each case has its specifics and should be reviewed considering all the facts about the applicant and its condition. The essence of the condition in Article 7 must be the basic guideline- the person de facto has provided an abode, which can also be confirmed by the address in his Identity card.

In terms of duration of the procedure for obtaining personal documentation from the country of Origin, the Section for Citizenship should consider extending the time limit for the PoCs because they cannot obtain them personally, but through an authorized person or organization which needs additional time and planning.

The Section for Citizenship should reconsider asking for proof of not been punished by a sentence of imprisonment, and a proof that there has not been a criminal proceedings instigated against the PoCs in the country of their nationality that were children when they left Kosovo, because children cannot be taken responsible for a crime, nor serve a sentence or be accused in front of a court. This can easily be determined by checking the applicant's year of birth in correlation with the year of the Kosovo crisis-1999, as well as check up on the continuous status of subsidiary protection granted and extended yearly by the Section for Asylum at the Ministry of Interior (The same state authority the Section for Citizenship belongs to). In addition, the Section for Citizenship can be in consultation with the Section for Asylum to be sure the person did not leave Republic of Macedonia after he/she turned 18 years of age in the first place and that there is no chance he/she committed a crime in the state of his nationality.

The Section for Citizenship should act in accordance with the Verdict of the Administrative Court U-6. No 131/2013, and process the applications under the Article 7 instead of 7a. If in the application the Article is not clearly stated, the authority should call the applicant and ask for a clarification on the issue.

The Administrative Court should give an interpretation of the term "legal residence" from Article 7, paragraph 1, point 2 of the Law on Citizenship and why it does not take into consideration as legal the residence of the persons under subsidiary protection granted under the Law on Asylum and Temporary Protection.

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