



Macedonian Young Lawyers Association

Expert Legal Opinion

# Initiation of the Administrative Procedure in Case of an Asylum Application

Prof. Borce Davitkovski, PhD



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## INTRODUCTION

This Expert Legal Opinion is provided to the Macedonian Young Lawyers Association (MYLA) with an aim to serve them to clarify *when* is it considered that a procedure for recognition of the right to asylum is *initiated*, or in other words, in which moment does the foreign national become an *asylum seeker*. The Expert Legal Opinion has a special emphasis on the question *when, in case of an oral Application, is the procedure considered initiated*, and it also contains an overview of other relevant dilemmas related to the asylum recognition procedure.

## RELEVANT LEGAL SOURCES

There are multiple legal acts in the Republic of Macedonia which, in either substantive or procedural manner, regulate the right to asylum. Speaking of the *procedural* ones, e.g. the ones which regulate the *procedure* for recognition of the right to asylum, that is in its essence an administrative one, one could enlist: the Asylum and Temporary Protection Act (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), the General Administrative Procedure Act from 2005 (Official Gazette of the Republic of Macedonia no. 5p. 38/2005, 110/2008 и 51/2011)<sup>1</sup> and the General Administrative Procedure Act from 2015 (Official Gazette. 124/2015).<sup>2</sup> These three legal acts regulate the procedure for recognition of the right to asylum in a comprehensive way, including its *initiation*. Bearing that in mind, they serve as a basis for this Legal Opinion.

## PROCEDURE FOR RECOGNITION OF THE RIGHT TO ASYLUM AND ITS INITIATION

As suggested by its title, the Asylum and Temporary Protection Act is the *lex specialis* in regards to the right to asylum and the procedure for its recognition. As such, it regulates the respective procedure in the first Section of its second Chapter (Articles 15 to 26), providing for *subsidiary* application of the General Administrative Procedure

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<sup>1</sup> Herein after: APA from 2005.

<sup>2</sup> Herein after: APA from 2015.

Act (Article 15). In accordance with Article 16 the *initiation* of the asylum recognition procedure is divided in two separate phases:

- in *the first one* (referred to as “expression of intent”) the foreign citizen/national expresses his/her *intent* to apply for asylum to the police officer of the Ministry of Internal Affairs. The intent can be expressed either orally or in a written form, at the border crossing point or inside the territory of the Republic of Macedonia. Upon the expression of intent, the police officer is going to take notes of the foreign citizen’s personal data, issue a confirmation, and direct him/her to submit an application for recognition of the right to asylum within 72 hours. The respective application can be submitted to the responsible person within the Asylum Sector, which is to be found in the Asylum-Seekers Reception Center;
- in *the second one* (referred to as “application submission”) the foreign citizen submits the application for recognition of the right to asylum to the Asylum Sector within the Asylum-Seekers Reception Center (within 72 hours of the expression of intent).

However, in its Article 16-a, the Asylum and Temporary Protection Act provides for another possibility, that is to also submit the asylum application to the police at the border crossing point or at the nearest police station. If this would be the case, the police officers are going to escort the asylum-seeker to the Asylum-Seekers Reception Center. In accordance with Article 18, the application for recognition of the right to asylum can be submitted in writing or verbally when it should be noted on minutes.<sup>3</sup>

Not one of the aforementioned, or any other provisions of the Asylum and Temporary Protection Act provides a clear answer – what moment shall be considered as the one of *initiation* of the asylum recognition procedure, as a special type of administrative procedure? Would that be the moment when the intent is expressed, the one when the police officer takes notes of the foreign citizen’s intent and personal data, or perhaps, the one when the asylum application is submitted? What would happen, on the other hand, if the foreign citizen submits the application verbally, but minutes are not taken without her/his responsibility?

Bearing in mind its *subsidiary* application as *lex generalis* in the procedure for recognition of the right to asylum, the answers to the aforementioned questions are to be found in the APA. According to APA from 2005, which was applicable until 29.07.2016 (upon Articles 140 and 141 of the APA from 2015), an administrative procedure is to be considered *initiated* when the competent authority undertakes any activity/action for conducting the procedure (Article 128 of the APA from 2005). According to APA from 2015, on the other hand, it is considered that the administrative procedure upon the party’s application is *initiated* on the day when the respective application is submitted (Article 52 of the APA from 2015). Taking these provisions into consideration the author concluded the following:

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<sup>3</sup> The application for recognition of the right to asylum shall be submitted in Macedonian language, or if this is not possible, in the language of the country of origin, some of the commonly used languages, or a language that is reasonably expected for the asylum-seeker to know.

- if one is examining the time-period before 29.07.2016, e.g. before the application of the APA from 2015, the asylum recognition procedure should be considered initiated in the moment when the police officer has taken notes of the foreign citizen's personal data, as per Article 16, paragraph 2 of the Asylum and Temporary Protection Act;<sup>4</sup>
- if speaking for a time-period succeeding 29.07.2016, then, the asylum recognition procedure ought to be considered initiated in the moment when the application for recognition of the right to asylum is submitted, regardless if in writing or verbally, in the frame of the 72 hours;
- if the asylum application is submitted verbally after APA from 2015 started applying, and minutes are not taken without the foreign citizen being responsible, the procedure should be considered initiated in the moment of expression of will (submission of application) for asylum. However, this would mean that additional evidence for submission of the application for asylum is going to be needed. This would include, but is not limited to: stamp from the border police in the foreign citizen's passport; other documents possessed by the foreigner, that can serve as a confirmation of his/her identity and the crossing of the border; witnesses' or other persons' statements that the foreign citizen has expressed his/her will to seek asylum in the Republic of Macedonia, and to stay there.

## **CONCLUSION**

The answer of the question – when should an asylum recognition procedure be considered initiated – is based on three legal acts: the Asylum and Temporary Protection Act, APA from 2005 and APA from 2015. The moment of initiation, in that sense, may vary depending if the APA from 2005 or the one from 2015 is applied on the individual procedure.

## **ABOUT THE AUTHOR**

Prof. Borce Davitkovski, PhD is professor at the Iustinianus Primus Faculty of Law at Ss. Cyril and Methodius University in Skopje (from 2008 to 2016 Dean). He teaches courses in the field of Administrative Law and Public Administration, on all three levels of academic studies at the Faculty of Law. He is the author of more than 160 scientific papers published in various scientific reviews in Macedonia and abroad. He also is the (co)author of multiple university textbooks.

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<sup>4</sup> It is considered that by taking notes the police officer has undertaken the first action/activity for conducting the procedure, in sense of the elaborated Article 128 of the APA from 2005.

In his papers he mainly covers the fields of administrative law, with particular interest in: control over the administration, relations between administrative bodies and citizens, judicial control over government agencies, organization of state administration, local government, relations between public authorities (parliament, government, administration and judiciary), and lately the privatization of public sector draws its special scientific interest. In the period from 1990 onwards he has participated in numerous working groups for the preparation of more than thirty working versions of legal texts for the Macedonian Government; and as an expert for numerous prominent projects for private and public entities.