

## THE RIGHT OF ASYLUM AND THE RECENT REFUGEE CRISIS ON THE BALKAN ROUTE: THE CASE OF THE REPUBLIC OF MACEDONIA

### Abstract

The article examines the current level of protection of the right of asylum in the Macedonian asylum legislation and related practice amid the serious challenges caused by the recent migration and refugee crisis on the Balkan Route. The Asylum Law and practice have been heavily influenced by the Government policies in dealing with the crises of the last year or so, that culminated with the recent permanent closure of the Macedonian border for asylum seekers as part of an concerted European effort to put an end to the migration and refugee flow along the Balkan route. Despite some progressive developments at the normative level, in practice, the necessity for ensuring effective access to proper asylum procedures for asylum seekers transiting through the country has not rarely yielded over the exigencies of shifting Government policy priorities and wider European policies and strategies in dealing with the current refugee crisis. As the process of reaching further harmonization with the EU's latest asylum legislative package is already underway, much more attention should be paid on increasing the capacity of Macedonian authorities for ensuring stability in the functioning of the asylum system and for effective enforcement of the asylum seekers' rights.

**Key words:** right of asylum – refugees - Macedonia - Balkan Route.

The development of the Macedonian asylum system in the recent years<sup>1</sup> has been influenced by two major factors: on the one hand, it had to respond to the short term demands of Government policies and strategies in dealing with the unprecedented influx of migrants and refugees transiting through the country on the Balkan route, amounting to close to a million people in 2015 alone.<sup>2</sup> On the other hand, the Macedonian asylum system had to be continuously aligned with the international rules and standards on refugees and with the rules and policies comprising the CEAS as part of the country's aspiration of joining the EU. The first of these factors has had a major impact on the later and on the proper functioning of the Macedonian asylum system, causing difficulties in maintaining its stability and ensuring the asylum seekers' and refugees' rights.

Macedonia has been used as a transit country by migrants and refugees travelling through the Balkan corridor, with only a slight fraction of them genuinely seeking asylum in RM.<sup>3</sup>

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<sup>1</sup> This article is based on the author's presentation at the *Colloque sur La réforme de l'asile mise en oeuvre*, organisé par L'Institut international des droits de l'Homme et de la paix, L'Université de Caen Normandie et Le Centre de recherché sur les droits fondamentaux et les évolutions du droit (CRDFED), 10 juin 2016, à la Faculte de droit de l'Université de Caen Normandie.

<sup>2</sup> See Frontex, 'Risk Analyses for 2016,' 2016, available from: [http://frontex.europa.eu/assets/Publications/Risk\\_Analysis/Annula\\_Risk\\_Analysis\\_2016.pdf](http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annula_Risk_Analysis_2016.pdf) [7 June 2016].

<sup>3</sup> In the first half of 2015, for instance, only 1446 had applied for asylum in the Republic of Macedonia, out of whom over 50 per cent were Syrians. It is reported, however, that over 90 percent of those who apply for asylum leave the

Against that background, the Government's strategy of responding to the bulk of people wishing to travel through the country to their final destination in the EU member countries has been shifting over time. Until mid 2015, the Government pursued a policy of letting irregular migrants and refugees basically an unregulated (yet *de facto* seriously restricted) transit through its territory, that resulted *inter alia* with dozens of incidents (including fatalities) involving migrants and refugees crossing the country at the time.<sup>4</sup> Amid the dramatically increased influx of migrants and asylum seekers coming from Greece, a state of emergency in the border regions in the north and south of the country (with military deployment) was proclaimed, and the Greek-Macedonian border in August 2015 was temporarily closed, that incited violent clashes between the Macedonian police forces and migrants and refugees coming from neighboring Greece.<sup>5</sup>

As of the second half of 2015, in turn, the Macedonian Government resorted to a policy of providing controlled transit for migrants and refugees through its territory, as part of an evolving jointly coordinated effort with the other countries of the Balkan route and with the EU.<sup>6</sup> The later policy eventually culminated with the permanent closure of the Macedonian southern and northern borders for irregular migrants and refugees on 7<sup>th</sup> March 2016, which became inaugurated following an agreement among the five countries on the Balkan corridor, Austria, Slovenia, Croatia, Serbia and Macedonia, concluded by their chief police officers at the Meeting in Zagreb on February 18<sup>th</sup>.<sup>7</sup> That policy should be seen as being part of a wider EU's policy of permanently closing the Balkan corridor,<sup>8</sup> which also resulted with the later conclusion of the much criticized EU-Turkey deal (of March 2016).<sup>9</sup> Indeed, on its part, the agreement of the five countries and their ensuing stringent policies towards migrants and refugees have faced serious criticism of many high UN officials as being contrary to International human rights and refugee law, leading *inter alia* towards discrimination among asylum seekers (favoring Iraqis and

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country on their way to EU member states, before interviews are held and a first and the first instance decision is taken. UNHCR, '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,' August 2015, available from: <http://www.refworld.org/docid/55c9c70e4.html> [17 May 2016].

<sup>4</sup> Szpala Marta, and Marta Jaroszewicz, 'Macedonia and the Migrant Crises,' Analyses, 2015-08-26, available from: <http://www.osw.waw.pl/en/publikacje/analyses/2015-08-26/macedonia-and-migrant-crisis> [7 June 2016]; Stanojoska, Angelina, and Ivona Shuskak, 'Life in a Backpack: The EU's Asylum Policies and Its Impact on the Macedonian Asylum Legislation,' *Journal of Liberty and International Affairs*, 2015, vol 1, no.2, available from: [http://e-jlia.com/papers/v2\\_3.pdf](http://e-jlia.com/papers/v2_3.pdf) [7 June 2016].

<sup>5</sup> UNHCR, 'UNHCR voices concern about developments at border of FYR Macedonian and Greece, 21 August 2015, available from: <http://www.unhcr.org/news/latest/2015/8/55d74aef6/unhcr-voices-concern-developments-border-fyr-macedonia-greece.html> [7 June 2016].

<sup>6</sup> See the Leaders' Statement at the Leaders' Meeting on Refugee Flows along the Western Balkans Route, held in Brussels on 25 October 2015, available from: [http://ec.europa.eu/news/2015/docs/leader\\_statement\\_final.pdf](http://ec.europa.eu/news/2015/docs/leader_statement_final.pdf) [7 June 2016].

<sup>7</sup> See Joint Statement of the Heads of Police Services from the Meeting held in Zagreb, Croatia, on 18<sup>th</sup> February 2016, available from: [http://www.mup.hr/UserDocsImages/topvijesti/2016/veljaca/migranti\\_sastanak/joint\\_statement.pdf](http://www.mup.hr/UserDocsImages/topvijesti/2016/veljaca/migranti_sastanak/joint_statement.pdf) [16 May 2016]

<sup>8</sup> E.g. See the statement of the EC President Donald Tusk, who "... thank[ed] Western Balkan countries for implementing part of EU's comprehensive strategy to deal with migration crisis," reported in Radio Free Europe/Radio Liberty, 'Balkan states shut down migrant route to northern Europe,' 10 March 2016, available from: <http://refworld.org/docid/570cdfd1a.html> [23 April 2016].

<sup>9</sup> See the EU Turkey Statement of 18 March 2016, available from: <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/> [16 May 2016]. On legal aspect raised by that Statement See Peers, Steve, 'The final EU/Turkey refugee deal: a legal assessment,' 206, available from: <http://eulawanalysis.blogspot.mk/2016/03/the-final-euturkey-refugee-deal-legal.html> [16 May 2016], criticizing the deal. Also See Pascouau, Yves, 'Accord UE-Turquie: quel droit d'asile?', Point de vue, Quest France – justice et liberté, available from: <http://www.ouest-france.fr/debats/point-de-vue/accord-ue-turquie-quel-droit-dasile-4138117> [03/04/2016].

Syrians, while excluding Afghans), conditioned entry of migrants and refugees with possession of travel documents or visas, profiling people and limiting entry for these people on humanitarian grounds. They have been also criticized for enabling collective expulsion that *inter alia* 'particularly troubled' the UN High Commissioner for Human Rights.<sup>10</sup>

The above varying Government policies towards migrants and refugees have had a major impact on the recent development of the Macedonian asylum legislation and on the ensuing implementing practices regarding the treatment of asylum seekers and refugees. The central piece of the Macedonian asylum legislation – the Law on Asylum and Temporary Protection (the 'Asylum Law')<sup>11</sup> – experienced four series of amendments in the last year alone. Macedonia is a party to the 1951 Geneva Refugee Convention (without geographical limitation) and its 1967 Protocol, and to the ECHR, which has to be applied by Macedonian courts according to the principles devised in the case law of ECtHR.<sup>12</sup> At the normative level, as it currently stands, the Macedonian Asylum Law is mostly aligned with international and European rules and standards, and a new comprehensive version of that Law has been already announced that would eventually complete the harmonization of the Macedonian asylum legislation with the complex set of directives and regulations comprising the new EU's Asylum package.<sup>13</sup> Yet, at the practical level, there are still serious difficulties in securing the internationally recognized asylum seekers' and refugees' rights.

The Macedonian Asylum Law offers two types of international protection, protection to refugees (including refugees *sur place*, and subsidiary protection to persons facing a real risk of suffering serious harm if returned to their country of origin (including beneficiaries of subsidiary protection *sur place*),<sup>14</sup> a concept devised by the ECtHR and first codified by the EU's Qualification Directive. Added to these is the temporary protection in case of mass influx of refugees.<sup>15</sup> In the Asylum Law, the first two concepts are basically developed according to the standard definitions provided by the Geneva Convention and/or the EU's asylum directives, including to the standard conditions and procedures providing potential beneficiaries a possibility to seek international protection in the territory of RM.

Yet, despite normative guarantees, a careful reading of the relevant provisions of the Asylum Law governing access to asylum procedures reveals the existence of a latent danger that persons seeking international protection may be *effectively* denied the opportunity to enter the Macedonian territory and/or seek asylum therein, that has been identified both in the context of the respective provisions of the EU's harmonizing directives.<sup>16</sup> Whereas, the Asylum Law correctly implies that granting of asylum merely recognizes the status that a refugee and/or a beneficiary of subsidiary protection already possess as from the moment of leaving his country

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<sup>10</sup> UN News Service, 'UN rights chief warns police agreement by five European countries will worsen refugee crisis,' 25 February 2016, available from: <http://www.refworld.org/docid/56d00d8e40b.html> [23 April 2016]. Also See the statement of UN SG Ban Ki-moon reported in Radio Free Europe/Radio Liberty, 'Balkan nations put daily caps on migrants despite UN protests,' 27 February 2016, available from: <http://www.refworld.org/docid/570cdf7915.html> [21 April 2016].

<sup>11</sup> As amended, Official Gazette of the Republic of Macedonia no. 49/03; 66/07; 142/08; 146/09; 166/12; 101/15; 152/15; 55/16.

<sup>12</sup> Article 35 of the Macedonian Law on Courts of 11.05.2006 (as amended), Official Gazette of the Republic of Macedonia no. 58/06; 35/08; and 150/10, as regards rights to fair trial guaranteed in ECHR.

<sup>13</sup> Recast: Qualification Directive 2011/95/EU; Procedures Directive 2013/32/EU; Reception Directive 2013/33/EU; Dublin III Regulation No.604/2013; Eurodac Regulation No.603/2013. Also: Return Directive 2008/115/EC; Family Unification Directive 2003/86/EC; Directive 2003/109/EC, amended by Directive 2011/51/EC.

<sup>14</sup> Asylum Law, articles 2 and 4b.

<sup>15</sup> Asylum Law, articles 62-66.

<sup>16</sup> See Cherubini, Francesco, (2015) *Asylum Law in the European Union*, New York. Routledge, pp. 225-26.

of origin,<sup>17</sup> it nevertheless conditions the enjoyment of that status and the ensuing internationally protected rights (including protection from *refoulement*<sup>18</sup>) with the application for asylum made by that person at the border or inside the territory of Macedonia within the strict time limits set out in the Law.<sup>19</sup> According to Article 16 of the Asylum Law, adopted on June 18<sup>th</sup>, 2015, amid the series of incidents involving migrants and refugees at that time, an asylum-seeker has 72 hours to lodge an application for asylum, after he had initially declared his intention to submit such application before a police officer (at the border or inside the Macedonian territory), had been registered, issued a certificate, and directed by that police officer to apply for asylum at the office of the Asylum Sector of the Ministry of the Interior at the Reception Center for Asylum Seekers. Article 17 of the Asylum Law further adds that illegal entrance and/or stay of an asylum seeker coming directly from the state of origin would not be punishable (e.g. by detention),<sup>20</sup> provided that he/she immediately applies for asylum, or presents himself at the nearest police station providing valid reasons for his illegal entry or stay. Failure by an asylum seeker to make an application for asylum within the time frame of 72 hours would bring about a situation where he/she would be treated as a foreigner, subjected to procedures envisaged by the Law on Foreigners.<sup>21</sup>

If not properly enforced, the procedures of Articles 16 and 17 may easily put asylum seekers in a risky situation where, because of their own mistake or, more probably because of not being properly informed on their rights by the border (or other) police authorities,<sup>22</sup> they would fail to apply for recognition of their refugee or subsidiary protection status within the strict 72 hours deadline, resulting with their *de facto* exclusion from international protection (most notably from *non-refoulement*). In fact, according to unofficial reports from the field, some instances of that sort have already emerged in practice – especially following the recently adopted restrictive policy of the five countries on the Balkan route - where, due to lack of interpretation, misinformation, ignorance by the police authorities of the asylum seekers' declared intention for applying for asylum or similar practices (including conditioned entry of asylum seekers with possession of travel documents or visas), prospective asylum seekers have failed to submit their asylum application on time, resulting with many asylum seekers being placed in the Macedonian asylum transit centers without any regulated legal status, or with involuntary returns to their previous transit countries. The post-Zagreb agreement strategy of closing the Balkan corridor has also produced other difficulties impeding the effective protection of asylum seekers' and refugees' rights: as result of the cascade closure of the borders of the five countries, causing simultaneous returns, in March 2016, close to 1000 persons (of mainly Afghan and Syrian origin) were found stuck at the Macedonian territory and were temporarily placed at the Center for Asylum Seekers at the Macedonian northern border with Serbia, with an unregulated legal status.<sup>23</sup>

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<sup>17</sup> See UNHCR, 2011, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, Reissued, UNHCR, Geneva, also available from: <http://www.unhcr.org/3d58e13b4.html> [16 May 2016], p.9.

<sup>18</sup> *Non-refoulement* is guaranteed by Article 7 of the Asylum Law.

<sup>19</sup> Asylum Law, articles 1, 3 and 4.

<sup>20</sup> In the context of Article 3 of the 1951 Geneva Convention, corresponding to Article 17 of the Asylum Law, the requirement that refugees should come 'directly' from the country of origin should not exclude refugees that have merely transited through other countries. See Peers, Steve, 'The Refugee Crises: What should the EU do next?', 2016, available from: <http://eulawanalysis.blogspot.mk/2015/09/the-refugee-crisis-what-should-eu-do.html> [16 May 2016].

<sup>21</sup> The Law on Foreigners, Official Gazette of the Republic of Macedonia no. 35/06.

<sup>22</sup> Cherubini, *Asylum Law in the European Union*, pp. 225-26.

<sup>23</sup> UNHCR, 'Europe's Refugee Emergency Response Update #24,' 24 February 2016, available from: <http://reliefweb.int/report/greece/europe-s-refugee-emergency-response-update-24-19-25-february-2016> [7 June 2016].

The procedure for submitting an asylum application set out in the Asylum Law generally ensures the asylum seekers' substantive and procedural rights during asylum proceedings, most notably, as regards his or her right: to remain in the territory of Macedonia during the procedure;<sup>24</sup> to receive interpretation in the course of the proceedings in the language of his country of origin or in a language that he or she may be reasonably supposed to understand;<sup>25</sup> to be duly informed by the competent authority on his or her rights and obligations; to obtain legal assistance, including to communicate with persons providing that assistance and with the representatives of UNHCR and relevant NGOs; and the right to instigate remedial proceedings against decisions of the competent authority (the Asylum Sector within MOI) at the Administrative court, during which the execution of any authority's decision on rejection of his or her application causing the applicant's obligation to leave the country would be suspended.<sup>26</sup> Several provisions of the Asylum Law offer special treatment to asylum seekers who are vulnerable persons, including minors, which 'best interests shall be a primary consideration,' through all stages of the asylum proceedings, including with respect to their special accommodation needs.<sup>27</sup> Various reports, however, pointed to various shortcomings in the effective provision of the above rights to asylum seekers, including *inter alia* difficulties in providing interpretation tools, or proper accommodation conditions for vulnerable persons at the reception centers,<sup>28</sup> although, the situation has been gradually improving in the last year.

Article 18a of the Asylum Law sets out an obligation of the assessment authorities to consider each application separately and on individual basis in view of the particular circumstances of the case, on the basis of (mostly objective) enlisted criteria (however without neglecting personal factors), and for that purpose, it stipulates the applicant's duty to substantiate his application by submitting 'as soon as possible' available documentation and relevant information on various specified elements related to the application. In case of applicant's inability to provide certain supporting documents or evidence, the assessment should rely on the credibility of the statements made by the applicant determined according to the credibility criteria of Article 18a that largely conform to those of the new Qualification Directive and relevant CJEU's case law.<sup>29</sup>

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2016]; UNHCR, 'United Nations agencies express serious concern at conditions in transit and asylum centers,' 20 April 2016, available from: [http://www.mk.undp.org/content/the\\_former\\_yugoslav\\_republic\\_of\\_macedonia/en/home/presscenter/pressreleases/2016/04/20/united-nations-agencies-express-serious-concern-at-conditions-in-transit-and-asylum-centers.html](http://www.mk.undp.org/content/the_former_yugoslav_republic_of_macedonia/en/home/presscenter/pressreleases/2016/04/20/united-nations-agencies-express-serious-concern-at-conditions-in-transit-and-asylum-centers.html) [7 June 2016]. According to some unofficial reports, the figure of around 1000 refugees placed at the Asylum center near the Macedonian-Serbian border has been more than halved in the last few months, without, however, many asylum applications being made by these persons in RM.

<sup>24</sup> Asylum Law, articles 18 and 19.

<sup>25</sup> Asylum Law, articles 18 and 21.

<sup>26</sup> Asylum Law, articles 32 and 37.

<sup>27</sup> Asylum Law, Articles 22a, 23, and 23a. See however UNHCR, '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,' August 2015, available from: <http://www.refworld.org/docid/55c9c70e4.html> [17 May 2016].

<sup>28</sup> See UNHCR, 'United Nations agencies express serious concern at conditions in transit and asylum centers,' 20 April 2016, available from: [http://www.mk.undp.org/content/the\\_former\\_yugoslav\\_republic\\_of\\_macedonia/en/home/presscenter/pressreleases/2016/04/20/united-nations-agencies-express-serious-concern-at-conditions-in-transit-and-asylum-centers.html](http://www.mk.undp.org/content/the_former_yugoslav_republic_of_macedonia/en/home/presscenter/pressreleases/2016/04/20/united-nations-agencies-express-serious-concern-at-conditions-in-transit-and-asylum-centers.html) [7 June 2016].

<sup>29</sup> CJEU, judgment of 22 November 2012, Case C/271/11, *M.M. v. Minister for Justice and Law Reform (M.M.)*, para. 66. See Article 4 of the new Qualification Directive 2011/95/EU.

The right to a personal interview of the asylum seeker during the asylum procedure,<sup>30</sup> in turn, does not seem to be sufficiently guaranteed by the Asylum Law. It appears only in the section of the Law governing the ‘regular procedure’ of assessment and deciding on an asylum application,<sup>31</sup> whereas personal interview is omitted from the section of the Law dealing with the fast track (‘accelerated’) procedure, although it seems that, for the moment, personal interview has been regularly *de facto* maintained by the asylum authorities both in the fast track procedure.

Like in the EU’s context,<sup>32</sup> the employment of the fast track procedure, that predominates the current Macedonian asylum practice, is particularly sensitive as it may lead to outright rejection of the application made by an asylum seeker as ‘manifestly unfounded’ (or as inadmissible) on different sensitive grounds. Article 35 of the Asylum Law enlists many such grounds for considering an application as ‘manifestly unfounded,’ more or less, following those stipulated as grounds for determining unfounded and inadmissible applications in the EU’s Procedures Directive 2013/32/EU.<sup>33</sup> In that context, particularly sensitive is the provision of the Asylum Law envisaging an outright rejection of the asylum application during the fast track procedure if the applicant arrives from a ‘safe’ country, the country of origin or a ‘safe’ third country.<sup>34</sup>

The employment of the concept of a ‘safe’ country by states, of course, often raises serious concerns. If not properly administered, that concept may be easily misused by states in order to get around their main international obligations on refugee protection (providing the asylum seeker access to a fair procedure and temporary stay during that procedure, *non refoulement*), as it may lead to a removal of an asylum applicant summarily to an allegedly ‘safe’ country with which he/she has certain ‘links.’<sup>35</sup> The later concept has been endorsed by the UNHCR,<sup>36</sup> and applied by the EU, but its use has been subjected to rigorous conditions, most notably, to the requirement that there would always be an individualized assessment of (in an impartial procedure) and no conclusive presumption on the ‘safety’ of the country of destination.<sup>37</sup>

The Macedonian Asylum Law develops the ‘safe’ country concept in a rather extraordinary fashion. At first, the Asylum Law distinguishes between two categories of ‘safe’ countries: ‘safe countries of origin’, and ‘safe third countries’.<sup>38</sup> For these, the Law follows *mutatis mutandis* the criteria for determining the ‘safety’ of a country developed by the UNHCR

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<sup>30</sup> According to CJEU, personal interview is obligatory as deriving directly from the right to good administration enshrined in the EU Charter on Fundamental Rights: See CJEU’s judgment in *M.M.*

<sup>31</sup> Asylum Law, article 28.

<sup>32</sup> See Cherubini, *Asylum Law in the European Union*, p. 241 et seqq.

<sup>33</sup> Article 32 of the Procedures Directive 2013/32/EU, referring to Article 31(8), and Article 33.

<sup>34</sup> Asylum Law, article 35, paragraph 1, indents 3-6.

<sup>35</sup> Cherubini, *Asylum Law in the European Union*, p. 82.

<sup>36</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR Position Relating to the Resolution on Safe Countries of Origin* (London, 30 November - 1 December 1992), December 1992, available at: <http://www.refworld.org/docid/3fa7c4f04.html> [accessed 7 June 2016], setting out *inter alia* the following factors for determining ‘safety’ of a country: its respect for human rights and the rule of law; its record of not producing refugees; its ratification and compliance with human rights instruments and its accessibility to independent national or international organizations for the purpose of verifying and supervising respect for human rights.

<sup>37</sup> In the context of the EU, the ‘safe’ country concept is certainly related to the functioning of the system established by the (now) Dublin III Regulation 604/2013), that *inter alia* provides for a rebuttable presumption as to the safety of the EU member states following the recent case law of ECtHR and CJEU: article 3 of the Dublin III Regulation. See ECtHR (Grand Chamber), judgment of 21 January 2011, Application No. 30696/09, *M.S.S. v. Belgium and Greece* (*M.S.S.*), and CJEU, judgment of 21 December 2011, Joint cases C-411/10 and C-493/10, *N.S. v. Secretary of State for the Home Department and M.E. and others v. Refugee Applications Commissioner and Minister of Justice, Equality and Law Reform* (*N.S.*), espec. paras. 81 and 94.

<sup>38</sup> Asylum Law, articles 9 and 10.

and applicable in the EU, including the condition that the asylum seeker should have an opportunity to challenge the finding on ‘safety’ by the asylum authorities in the course of the asylum procedure.<sup>39</sup> The Asylum Law adopts mere transit (a ‘delayed stay’) through a third country as a sufficient link for rejecting an asylum application and returning the applicant to the third country that has been found to be ‘safe’ (except for the spouse, children or parents of an asylum seeker when he or her is lawfully residing in RM).<sup>40</sup>

To the above categories, however, Article 10a of the Asylum Law adds a third class of ‘safe’ countries, separately regulated and somewhat oddly phrased in that Article as ‘safe third countries, member states of the European Union, of NATO, or EFTA member states’ (one is left to wonder about the particular choice of these enlisted organizations, though). The reason behind such distinct treatment of the later group of countries from the rest of ‘safe third countries’ (otherwise covered by Article 10) most probably lies in the intention of the legislator to implicitly create a strong presumption for the ‘safety’ of the countries belonging to the international organizations envisaged therein. That could eventually incite a practice of outright rejection of applications made by asylum seekers who have transited through the later countries on grounds of their presumed ‘safety’ and/or their return to these countries. The later impression could not be entirely diminished by the fact that Article 10a formally provides for an individualized assessment of the ‘safety’ of the particular enlisted country according to specified criteria, and for a legal remedy so that the applicant can rebut that presumption (without, however, specifying that remedy).<sup>41</sup> As such, adopted just few months ago, Article 10a of the Asylum Law has been most likely designed to provide an additional legal basis that would enable the enforcement of the post-Zagreb strategy of shutting down the Balkan corridor for migrants and refugees, which lead to the closure of the Macedonian northern and southern borders on March 7, 2016.

Another danger to the effective enjoyment of the rights of asylum seekers that has been identified in the practice of states relates to the potential unfettered use of the ‘public security’ exemption from granting asylum to an applicant (and from *non refoulement*), and that danger is equally present in RM. The ‘threat to the security’ of the country is set in the Asylum Law as one of the permitted exemptions from granting asylum, then as an exemption from *non-refoulement*, and as one of the reasons for rejection of the asylum application in a regular asylum procedure.<sup>42</sup> As to the later, it seems that, while assessing and deciding on asylum applications, so far, the Macedonian asylum authorities have not been entirely immune from unquestionably following the (usually positive) finding of the Directorate for Public Security at the Ministry of the Interior on the existence of a security threat from particular applicants, leading to an outright rejection of their asylum applications. The same can be equally said *mutatis mutandis* for the two Administrative courts when deciding in administrative dispute proceedings instigated against asylum decisions.

The rules of the Asylum Law on return or expulsion of an asylum seeker whose asylum application has been rejected on various grounds, applied *mutatis mutandis* both to an asylum right holder upon cessation of that right pursuant to the cessation clause of Article 38 of the

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<sup>39</sup> *Supra* notes no. 36 and 37.

<sup>40</sup> Asylum Law, article 10.

<sup>41</sup> Interestingly, the second paragraph of Article 10a, in addition to the ratification of the ECHR, specifies only the ratification of the 1951 Geneva convention (without its 1967 Protocol) as a condition for a country to be determined as ‘safe’ third country, obviously in order to include Turkey as a NATO member state. The third requirement for the ‘safety’ of the member states of the enlisted international organizations includes the condition that there are effective remedies and an asylum procedure prescribed by law in place according to the 1951 Geneva Convention.

<sup>42</sup> Asylum Law, articles, 6, 7 and 29.

Asylum Law, generally follows the established international and European patterns.<sup>43</sup> The rejected applicant is provided an opportunity (i.e. an obligation) for voluntary departure within the time limit set out in the decision for rejection of his/her application,<sup>44</sup> with suspended effect of the later limit during pending court proceedings instigated by the applicant against such decision.<sup>45</sup> Failing to depart voluntarily, the applicant would face expulsion from the Republic of Macedonia carried out in accordance with the Asylum Law and the Law on Foreigners.<sup>46</sup> Related to that, it is important to note the significant guarantee of Article 17 of the Asylum Law to the asylum seeker who has immediately applied for asylum that illegal entrance and/or stay of in the Macedonian territory would not be punishable (e.g. by detention),<sup>47</sup> and the guarantees offered to the applicant for asylum of enjoying legal residence, accommodation and care in a Reception Center (or other place of accommodation assigned by the Ministry of Labor and Social Policy upon his/her request) throughout the pending asylum proceedings.<sup>48</sup> The applicant, in turn, has a corresponding duty of not leaving the Reception center (or other place of accommodation) without permission by the authorities.<sup>49</sup>

While enjoying the recognized asylum status, a recognized refugee has a right of residence in the territory of the Republic of Macedonia,<sup>50</sup> and various other rights and duties, including: to acquire property rights, to engage in wage-earning employment or practice a profession (as enjoyed by foreigners according to the Law on Foreigners); to be provided with accommodation under assistance from the central and local authorities (including financial assistance) until he/she would secure own means of subsistence (however, for no longer than two years); to social protection (on equal footing with Macedonian citizens); to basic health services (as Macedonian citizens, until acquiring own capacity of an health insured person); to work (under the same conditions as foreigners) and to enjoy labor rights, healthcare, and pension and

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<sup>43</sup> For latest legal developments in the EU's context See Peers, Steve, 'Irregular Migrants: Can humane treatment be balanced against efficient removal?', 2016, available from: [https://www.academia.edu/18059448/Irregular\\_migrants\\_Can\\_humane\\_treatment\\_be\\_balanced\\_against\\_efficient\\_removal](https://www.academia.edu/18059448/Irregular_migrants_Can_humane_treatment_be_balanced_against_efficient_removal) [7 June 2016].

<sup>44</sup> At least 15 days when the decision has been issued in the ordinary asylum procedure, and 5 days when it has been issued in the fast track procedure. Asylum Law, articles 31(4) 36(1).

<sup>45</sup> Asylum Law, articles 32 and 37.

<sup>46</sup> Asylum Law, article 25.

<sup>47</sup> Until mid 2015, UNHCR recorded a practice espoused by the Macedonian police authorities to keep asylum seekers who have been apprehended together with their smugglers detained in the close Reception Center for Foreigners in Gazi Baba, for the purpose of 'securing evidence' during the entire criminal process against their smugglers (which usually lasted for three or more months). That practice eventually ceased to exist once the amendments to the Asylum Law of 18 June 2015 have allowed asylum seekers to register their application at the border. See UNHCR, '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,' August 2015, available from: <http://www.refworld.org/docid/55c9c70e4.html> [17 May 2016], para. 17.

<sup>48</sup> Asylum Law, article 48. Other rights of asylum seekers specified in that article include the right: to residence; to free legal aid; to basic health services; to social protection; to primary and secondary education; to work (only within the Reception Center, or in the place assigned to him/her and/or to free access to the labor market if the asylum procedure on particular application exceeded one year; and to communicate with the High Commissioner for Refugees or humanitarian NGO for the purpose of obtaining legal assistance.

<sup>49</sup> Asylum Law, article 49. Other duties of the asylum seeker set out in that article include the duty: to cooperate with asylum bodies, in particular to give personal data, data on his property and income, hand over identity and other documents, allow photographing and fingerprinting, and search of his/her luggage or vehicle; to subject himself/herself to medical examinations and vaccines; and to respect the house rules of the Reception center or assigned accommodation and not to demonstrate violent behavior. In case of a 'serious breach' of the last obligation, the asylum seeker might be deprived his/her the right to accommodation or charged to compensate of the damage caused by his/her illegal conduct.

<sup>50</sup> Asylum Law, article 50.



insurance (as Macedonian nationals); and to repatriation of property and transfer of capital in case of his/her resettlement.<sup>51</sup> Beneficiaries of subsidiary protection have the same rights of residence in RM and accommodation (however for a limited period of at least one year, with possible extensions), the same rights to social protection and basic health services, and other rights and obligations equal to those enjoyed by foreigners holding a temporary residence permit in the territory of RM.<sup>52</sup>

Overall, in terms of proper functioning, the Macedonian asylum system has been rather struggling over the last few years. At the normative level, its development has progressed towards achieving full adoption of the international and European asylum standards to a point of being currently mostly aligned with international and EU's asylum rules. At the practical level, however, the Macedonian authorities have faced many difficulties in securing effective enforcement of the already harmonized domestic legislation. Amid the recent massive influx of migrants and refugees travelling along the Balkan route, the necessity for ensuring effective access to proper asylum procedures for asylum seekers transiting through the country and for enjoyment of their asylum rights has not rarely yielded over the exigencies of shifting Government policy priorities and wider European policies and strategies in dealing with the current refugee crisis. As the process of reaching full harmonization with the directives comprising the EU's latest asylum package has already begun, with the assistance from the European Commission and UNHCR, much more attention should be paid on increasing the capacity of Macedonian authorities for ensuring stability in the functioning of the asylum system and effective enforcement of the asylum seeker's rights. After all, the process of building a stable and efficient asylum system should not be seen as a short term end on its own, but as a constant struggle that serves the vital humanitarian purpose of protecting the victims who have been forced to flee their own households against their own will.

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<sup>51</sup> Asylum Law, articles 51-57.

<sup>52</sup> Asylum Law, articles 58-60.