

1. INTRODUCTION

Macedonian Young Lawyers Association (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. In its work, MYLA is supported by the UN High Commissioner for Refugees and is unique organization in the country working on asylum issues.

As an organization active in the field of human rights, MYLA is submitting this report in the frame of the Universal Periodic Review of Republic of Macedonia by the UN Human Rights Council. The Report aims to identify the main priorities and key recommendations to enhance respect for the human rights in the country in the field of asylum and statelessness issues.

2. SCOPE OF INTERNATIONAL OBLIGATIONS

On January 18, 1994 Republic of Macedonia signed and ratified the 1951 Convention and 1967 Protocol relating to the status of refugees. The country has as well signed the 1954 Convention relating to the Status of Stateless Persons¹. As a potential candidate for EU membership, the country is in process of approximation of its national legislation with the EU *aquis*.

3. LEGAL FRAMEWORK / INSTITUTIONAL ISSUES

3.1 Constitution- The Constitution of the Republic of Macedonia² guarantees the right of asylum “*to aliens and stateless persons persecuted for reasons of their democratic political belief and action*”.

3.2 Law on asylum and temporary protection- *The Law on the Movement and Residence of Aliens* of 1992 was the first Macedonian law which contained provisions on asylum. Eleven years later in 2003, the Law on asylum and temporary protection (in the text latter: LAMP) was adopted. The LAMP is amended several times and in 2008 the category person under subsidiary protection was introduced, following by changes made in the applicant’s right to use appropriate remedy- administrative dispute against the decisions of the first instance authority in front of competent court. On 08 of January 2013 amended LAMP entered into force, containing further clarification of the concept of safe country of origin and third safe country; the assessment of facts and circumstances that are essential for making a decision in the asylum procedure, etc.

3.3 Law on Foreigners- The Law on Foreigners contains a definition for stateless persons, which is in compliance with the 1954 Convention Relating to the Status of Stateless Persons. Article 2(2) of the Law provides that „*A foreigner is also a stateless person that is a person who is not considered as a citizen by any State under the operation of its law*”³. In R.Macedonia there are no formalized procedures for determining statelessness⁴ and under Article 80 from the Law on Foreigners, stateless person can be issued temporary residence permit on humanitarian grounds and a travel document.

3.4 Law on citizenship- The Law on Citizenship was enacted in November 1992 and provided that citizens who possessed republican citizenship of the Socialist Republic of Macedonia (SRM) and the citizenship of SFRY became citizens of the new state ex lege. The 1992 Law allowed for facilitated naturalization of all those originating from other republics of former SFRY who were legally domiciled in SRM and possessed a

¹ Among other, the country has signed and ratified The European convention of Nationality, European Convention of human rights, International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of Discrimination against Women, International Covenant on Civil and Political Rights, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as The Convention on the Rights of the Child.

² Constitution of the Republic of Macedonia <http://www.sobranie.mk/en/?ItemID=9F7452BF44EE814B8DB897C1858B71FF>

³ Law on Foreigners, Official Gazette of the Republic of Macedonia, No. 35/06

⁴ According internal report from January 2011 from the UNHCR office in Skopje, one person has been recognized as stateless in the course of processing an application for naturalization

SRM ID card. Further, the 1992 Law was amended three times, in 2004, 2008 and 2011 and includes other important safeguards against statelessness such as: grant of citizenship to foundlings, women and men have equal rights to pass on their citizenship to children born both inside and outside of the country, and children born out of wedlock have the same rights to acquire nationality as do children born in wedlock.

3.5 Institutional issues

Ministry of Interior of the Republic of Macedonia (MoI)

- *Section for asylum (SfA)*- administrative body within MoI deciding upon asylum applications.
- *Section for foreigners (SfF)* - administrative body within MoI, responsible for dealing (among other things) with determination of statelessness.
- *Section for citizenship (SfC)*- administrative body within MoI dealing with determination of citizenship.

Ministry of labour and social policy of the Republic of Macedonia (MLSP)

- *The Reception Centre for asylum seekers in Vizbegovo (RC)* has capacity for 150 people and offers different and separate accommodation units for asylum-seekers, single male or female and families.
- *Centre for Social Work within Ministry of labour and social policy* is responsible body for appointing a legal guardian for the unaccompanied minors.

4 PROMOTION AND PROTECTION OF HUMAN RIGHTS

4.1 Access to documentation and citizenship

4.1.1 Right of documentation of asylum seekers

According to MYLA's information and field work, the process of issuing identification documents for asylum seekers is slow and many of the registered asylum seekers are never provided with identification document. In 2011 for 740 asylum seekers no identification document was issued. In 2012, for 636 registered asylum seekers, only 18 IDs were issued. In 2013 some improvement was made taking in consideration that till mid June 486 people requested asylum in the country and 17 IDs were issued. Additionally, despite the provisions in the law, asylum seekers are not photographed and fingerprinted immediately after submitting asylum application and they are not informed by the state for their rights and obligations due to lack of translators from their countries of origin.

Recommendations: *The Ministry of interior (SfA) to be more effective in the process of issuing of the identity documents;*

4.1.2 Birth Registration, Personal Documentation and Citizenship (Recommendation number 8)

The problem with birth registration in R. Macedonia still persists⁵. Children born to undocumented parents of undetermined or unknown citizenship are unable to complete their birth registration, which may mean that they will be unable to prove their nationality.

Birth registration encounters implementation problems due to the inability of some of the parents in meeting the evidentiary requirements, and the fact that full registration is not carried out automatically when the authorities first learn of the birth. One of the evidentiary requirements for the parents is to provide identification documentation, which for some is impossible to meet, and enables perpetuation of the cycle of undocumented parents transferring their problems with documentation to the next generation⁶. Additionally, in order for personal ID to be obtained, legally registered residence is required, impossible for those living in illegal settlements. In

⁵ The FYR of Macedonia Mid-term Implementation Assessment - http://www.upr-info.org/followup/assessments/session18/macedonia_FYR/MIA-Macedonia_FYR.pdf

⁶ Incomplete birth registration is possible if the father is not properly documented, the absence of the mother's proof of identity blocks registration of both the parents' and the child's name in the birth registry.

some cases a DNA test is required for children born (in hospital or in domestic conditions) before 2002, which is an expensive evidence to be provided (around 500 Euros) charged to the person seeking registration.

At the moment, according information obtained by MYLA`s field work, there are 186 persons who are still facing the problem of unregistered births. Additionally, there are 153 persons who are still facing the problem of unregistered personal name. Most of these persons are Roma, Ashkali and Egyptians, who have suffered forced displacement, and usually live in illegal settlements⁷.

Recommendation:

- *Acced to 1961 Convention on the Reduction of Statelessness and establish formal procedures for determination of statelessness;*
- *Simplify evidentiary requirements and administrative procedures necessary to complete registration of birth for children whose parents are without documents or expired documents; ensure that children, whose citizenship is not determined at birth, are placed in an appropriate procedure to ensure that they confirm or acquire citizenship; enable registration of residence for undocumented persons, or persons living in illegal settlement;*

4.1.3 Long- term habitual residents and access to citizenship

Even though many of the persons who after the dissolution of SFRY had registered domicile and have been permanently living in R. Macedonia and had a genuine and effective link to the country are citizens today, some due to lack of legal knowledge and awareness, didn't apply for Macedonian citizenship and currently are considered to be stateless.

MYLA`s conducted field visits show that there are **391** long-term habitual residents (LTHR) still face the problem of unregulated Macedonian citizenship. These people may under the current citizenship legislation acquire Macedonian citizenship through ordinary naturalisation, most often either on basis of marriage to Macedonian national, or after eight years legal and continuous residence in the country. In order to obtain thus obtaining Alien Residence Permit for temporary residence they are required to produce certificate of nonconviction and certificate that there is no criminal procedure pending against them in the country of origin. Many of them born in R. Macedonia never registered residence in the country considered to be their country of origin and are unable to obtain such certificates. In addition they face great challenge in regulating their legal residence in the country, if they do not have a valid travel document from their country of origin. Consequently, their children face the same problem (second generation of LTHR), further straightening the existing perpetuated situation. Without legal residence, there are no chances for their eventual naturalization.

Recommendations: *Establishing permanent residence in the country for persons who were affected with the dissolution of former SFRY and simplifying evidentiary requirements and administrative procedures necessary for obtaining Macedonian citizenship.*

4.2 Access to health care

The registered asylum seekers are entitled to basic health care services in the country. There is a limited access of the asylum seekers to the health care. There is one doctor in the Reception center twice a week that does the medical investigation without presence of an interpreter. The primary health care is given in duration of 9 hours per week, or 3 hours over three days a week. Asylum seekers are not subjected under special medical examination after their arrival in the country.

Recommendations: *The asylum seekers should be medically examined immediately after their accommodation in the Reception Centre and continuous presence of medical person in the Centre is essential.*

⁷As well confirmed with the survey conducted and presented in the Summary Report on the Social Inclusion Project, UNHCR September 2011

4.3 Unaccompanied minor asylum seekers

In R. Macedonia there is no formal age assessment procedure for determination of the age of child seeking asylum. LATP establishes the principle of providing special care for unaccompanied minors and according the Family law a guardian should be appointed as soon as possible. The procedure is urgent and takes in average 21 day, starting from the day when the request is submitted to the Center for social work. However, on the field MYLA recorded shortcomings in this procedure.

In all monitored cases, the Centre for Social Work appoints legal *guardians for special cases*. The guardian is appointed during the stay of the minor at the RC and has narrow obligations concerning the protection of the interest of the child. MYLA monitored that in the last three years none of the appointed guardians established any contact with the minors. Additionally, none of the appointed guardians addressed MYLA for providing legal aid for the minor in the asylum procedure. Another concern is the fact that unaccompanied minors are not always accommodate separately from the adult asylum seekers residing in RC and there is high risk of victimization of the minors. There are no qualified interpreters in the RC. The access to education is limited.

Recommendations:

- *The procedure for appointing legal guardians should be urgent and effective;*
- *There is a need for capacity building for the authorities who work with the minors in human trafficking issues.*
- *The appointed guardians should contact the humanitarian organizations who work on asylum issues in order to act in accordance with the principle of best interest of the child.*
- *The state to find alternative accommodation for the minors (in foster families or special centre for minors) because they are accommodated in the same facility with the adults.*

4.4 Free legal aid in the asylum procedure

R. Macedonia fails to provide free and immediate legal aid financed by the State for asylum seekers. NGOs are unable to fill this gap due to limited resources. With the recent amendments of the Law on free legal aid, the asylum seekers are included as beneficiaries of free legal aid. This provision can not be implemented because asylum seekers should first submit request for free legal aid to the Ministry of Justice and to wait for approval for 20 days or maybe more which is to long period. Some of the obstacles are that the asylum seekers can not request for free legal aid because they don't know where to address and additional problem is lack of translators and not possessing documents for identification before the Ministry of Justice. Until now there is no asylum seeker who has applied for free legal aid.

Recommendation: *The procedure for approval for free legal aid should be more efficient for this category of people and the state should grant free legal aid to them without verifying their material status. In that regard coordination should be established between Ministry of Interior, Ministry of Labour and Social Policy and Ministry for Justice as competent authorities for these persons in order to ensure efficient promotion of free legal aid.*

4.5 Access to the procedure

In most of the cases the asylum seekers enter the territory of Macedonia irregularly from Greece, later usually approaching MYLA office for legal aid. Almost all asylum applications are submitted in one police station (police station Cair municipality, PS Butel) even though according the law asylum seekers can submit application in every police station. The law provides opportunity for submitting asylum application directly in the Section for Asylum, but there are only few cases. Almost none application for asylum is register as submitted at the border crossing points or at the airport.

Recommendations: *MYLA recommends the state to provide possibility for the applicant to effectively seek for asylum at the border points and airports.*

4.5 Refugee Status Determination

MYLA observed that only 12 interviews were conducted for 636 asylum seekers that submitted asylum application in 2012. For the rest, the procedure was terminated with a conclusion for stopping of the procedure after they left the RC. In 2013 from 486 asylum seekers only one interview was conducted.

Recognized refugees status was not granted since mid 2008, even though in the past few years there are around 2000 new asylum seekers in R.Macedonia. In 2013 SfA granted status of subsidiary protection to asylum seeker from Afghanistan who is residing as asylum seeker in the country since 2009.

Recommendations: Section for Asylum (SfA) has to ensure effective access to the asylum procedures and to provide fair, individual examination of the asylum applications.

- The authorities to provide translators from the languages of the country of origin of asylum seekers (Farsi, Urdu, Arabic) in order to inform them about their rights and obligations.

4.6 National security cases

In 2011 the first instance authority issued 10 rejecting decisions, in 2012- 5 and in 2013 until mid June 5 more on grounds that the asylum seeker constitutes threat to the national security. All these decisions have been challenged in front of the Administrative Court, following by 8 positive and 4 negative verdicts. In all the cases the first instance authority did not provide and present any evidence for rejecting the asylum seeker, basing their decisions on document issued by the State Security Biro which was consider as a confidential. The legal representative and the asylum seekers did not have access to this document.

Recommendations:

- Section for asylum to provide serious evidence for the reasons for rejecting the asylum seeker and to provide evidence that the stay of the person in the territory of the country constitutes danger to the security of the state.

- The authority should allow effective exercise of the principle of "equality of the arms, by allowing each party of the proceedings to have an opportunity to present his/hers case and to comment of the evidence presented by the opponent.

4.7 Right of effective remedy

The right of legal remedy is prescribed by national legislation and asylum seekers may initiate an administrative dispute against the decision of the Sector for asylum to the Administrative court within 30 days from the day the decision was delivered. The lawsuit suspends the execution of the decision. The Administrative Court should decide for the case within two mounts from the day of submitting of the lawsuit. When the cases are carried out in accelerated procedure, the lawsuit must be submitted within 3 days and the court should decide within 15 day.

In practice in average the Court needs 262 days⁸ to decide upon the lawsuit. In accelerated procedure 76 days⁹ from the submission of the lawsuit. As a general rule the court should decide the dispute based on facts established in the administrative procedure or based on facts established by the court. The Administrative Court usually annul the administrative acts only on procedural grounds and later when the first instance authority brings the second decision, the instructions of the court are not followed. MYLA has 3 cases in which the Administrative Court annulled the administrative act for second time in the same dispute and did not decide upon the merit. Due to this the legal remedy is not effective.

Recommendation: For the cases which are for second time reviewed by the court, the Administrative Court should decide the dispute with verdict which replaces the administrative act.

⁸ Average for 13 lawsuits submitted to Administrative Court in 2013

⁹ One lawsuit submitted in accelerated procedure