

Submission to the Human Rights Council for the 46 Session of the
Universal Periodic Review

NORTH MACEDONIA

MACEDONIAN YOUNG LAWYERS ASSOCIATION (MYLA)

Macedonian Young Lawyers Association - MYLA

Address: Donbas No.14/1-6, 1000 Skopje, Republic of North Macedonia

Phone: +38923220870

E-mail: contact@myla.org.mk

Web page: myla.org.mk

INTRODUCTION

1. North Macedonia faced a challenging refugee crisis in the course of 2015 – 2016. Hundreds of thousands of refugees made their way towards Europe through the Western Balkan Route. Since then, laws were changed but the institutions are still reflecting on some of the issues that arose from the crisis. Lack of implementation of national legislation is still a problem and although seen as a transitory country, the policies in place must be responsive to the situations and challenges. Although no proper analysis of the situation is performed, N.Macedonia is still in a situation of crisis proclaimed by the Parliament, for now until the end of 2023, when this matter will be decided upon again¹.
2. The Macedonian Young Lawyers Association (MYLA) makes this submission to the Universal Periodical Review (UPR) on the human rights challenges pertaining to the issues of asylum and migration, with a specific focus on the asylum system. Also, this submission will address the longstanding structural deficiencies in the penitentiary system in N.Macedonia.
3. MYLA is a nongovernmental organization established in 2003, providing free legal counselling and representation to people forced to flee and stateless persons, as well to people deprived of liberty (prisoners and detainees) in procedures before relevant authorities, assuring the exercise of their rights.

PREVIOUS UPR

4. There are three other UPR reports for N.Macedonia, the first cycle in 2009, in 2014 and 2019. In the third cycle several countries submitted recommendations on the concerned topics. Mexico recommended to N.Macedonia to put an end to the policy of detention and expulsion of migrants and consider alternatives to detention of asylum seekers, particularly unaccompanied minors. The resolvment of the issue with alternatives to detention was recommended from Belarus as well, with addition to ensuring the protection of the rights of migrants and asylum seekers in accordance with international standards. Switzerland recommended to put an end to detention, refoulement and abusive expulsions of migrants and asylum seekers and ensure their proper and due registration and Austria recommended promotion of inclusive education by ensuring access to education for all children, specifically those without identity documentation. Indonesia recommended to intensify efforts to effectively implement the Strategy on the Integration of Refugees and Foreign Nationals 2015–2025. Last but not least, Indonesia and Uruguay recommended to consider the ratification of ICRMW.

¹ A crisis situation on the south and north border in N.Macedonia is declared pursuant to the Law on Crisis Management every six months by the Parliament.

ISSUES RELATING TO THE ASYLUM/MIGRATION IN THE COUNTRY

5. Since the refugee crisis in 2015-2016, N.Macedonia turned into a transit country. After the closure of the borders, the push-backs and the informal deportation of refugees to neighboring countries became a more common practice. Regardless of the closed borders, migrants are still transiting. Thus, irregular migration, smuggling and the risk of human trafficking became very problematic and many incidents occurred in the past period.
6. Generally, the Macedonian asylum legislation, is in line with international standards for the protection of persons in need of international protection, even though it is expected for N.Macedonia to further align its legislation with the European acquis. The partial inclusion of directives' provisions may lead to serious violations of the asylum seekers and refugees' rights. It is inevitable to mention that there is a lack of proper and effective implementation.
7. The asylum applications are not adequately assessed, according to the relevant reports for the country of origin (CoO) of the applicant and there is no proper consideration of the merits of the claim. They often grant status based on the current humanitarian situation of the applicant, whether a single mother, UASC or other vulnerable group, and not on the fear of persecution or serious harm. Also, the Sector for asylum (SfA)² doesn't take into consideration other, not so common grounds for protection, according to the Geneva Convention.
8. The Administrative Court and the High Administrative Court focuses mainly on procedural aspects rather than on the merit of the asylum claims when taking decisions, and cases returned to the administrative authority often remain unchanged. The decisions of the ECtHR are hardly applied as a source of domestic law.

Access to territory and procedure

9. According to the Macedonian laws, a foreigner may submit an asylum application before the police at a border crossing point, at the nearest police station, in the Reception Centre for Foreigners or to the SfA. However, through the years, there were several cases in which the asylum requests were not registered on time or at all, and even cases of push back were reported by MYLA to the authorities.³

² The SfA is the administrative authority that is responsible for the asylum procedure within the Ministry of Interior.

³ For example in the MYLA's Report for the State of asylum in Republic of North Macedonia 2020 you can find information about the push back of asylum seekers in Greece, pg.13 available on www.myla.org.mk

10. In 2022, according to the authorities in N. Macedonia, they have prevented 27.394⁴ illegal crossings of the state borders in the country, even though this number refers also to those caught within the territory of the country.
11. Deportations were also detected all along Serbia to N. Macedonia, N.Macedonia to Greece and Serbia etc. These informal deportations are not in accordance with the official legal procedures and readmission agreements for return of third country nationals. Since almost all of these returns are conducted outside of the legal procedure there is extremely high risk for the people to be subject of human rights violations. From April 2023, FRONTEX is operating on the south border with Greece, but only the screening processes are improved; the informal deportations remain.
12. Another problem is the access to free legal aid according to the Law on Free Legal Aid (LFLA). Even though there are provisions in the law providing the right to free legal aid for asylum seekers, they are not implemented in practice and the system has not yet fully started to function.⁵ On the other side, foreigners that are detained as witnesses in criminal procedures don't have effective access to legal aid, nor information on their rights, and can't submit asylum request until they give a statement before the court in the procedures against the smugglers.
13. Refugees and migrants are still present at both Macedonian transit centres (TCs), Tabanovce and Vinojug. The TCs don't have legal status, so as the people accommodated inside. Also, the procedure for reception and referral are not defined, thus the whole process is not regulated and depends from the arbitrary conduct of the police. However, the movements are mostly voluntary, with the majority's intention to return to Greece.

Freedom of movement and detention

14. In order to adjust with EU Directive, into the Law on International and Temporary Protection there are few provisions that regulate the deprivation of freedom of movement of asylum seekers allowing detention for up to three months with the possibility for extension for three more months with a decision of the Ministry of Interior, and thus violating the Constitution (Article 12) and the international obligations accepted. So, taking into account the facilities and the manner where under the law, the asylum seekers are held, indeed can be classified as a deprivation of liberty while these processes are birocratic and acquire resources.
15. Moreover, in practice, foreigners are being held in the Reception Centre for Foreigners to be witnesses in the criminal procedure against the smugglers, although there is no legal provision that permits detention of migrant witnesses. Children of different age, are very often detained as well. There are no alternatives to detention in place, neither for UASC/families, nor for any other vulnerable category.

Integration

⁴ Decision for an answer to a request for free access to information of public importance no.16.1.21194/4 from 25.09.2023 of the Mol.

⁵ EU screening report 2023 for North Macedonia, pg.90

16. Even though in the course of 2017, a Strategy for integration of refugees and foreigners was prepared by the Ministry of Labor and Social Policy, it was never adopted, which creates a legal uncertainty in the integration processes of refugees and migrants in the country.

17. The law provides for naturalization of refugees residing in the country under preferred conditions. Individuals under subsidiary protection may naturalize as same as any other foreigners, thus acquiring document from the CoO, even though in practice the authorities require these documents from the recognized refugees as well.

18. The law provides the granting of a refugee status, and the government has established a system for providing protection to refugees, although a refugee status was not granted since 2016, making the subsidiary protection the prevalent form of protection. Also, the family reunification process for those under subsidiary protection can be done after 2 years of the granted status, and not immediately as the recognized refugees, which may significantly affect the right to family unity.

19. Around 100 refugees from the Kosovo crisis in 1999, applied for Macedonian citizenship and only 8 were granted in 2023. However, most of the cases are still pending due to inability to obtain documentation from the CoO. There are 250 Kosovo refugees left in the country since 1999 and there are still no durable solutions for regulation of their status, even though the Government gave a pledge on the Global Refugee Forum in 2019.

20. Asylum seekers are not issued a personal identification number, which in turn limited individuals' access to several government services, including education, right to work and social welfare programs.

Child rights and care

21. There is no effective child protective system for the migrant and refugee children in place. UASC above 12 years are accommodated in the RC for asylum seekers, as well as all children with families. Moreover, children are not always accommodated separately from the adults in TCs and there is high risk of victimization of the minors. The access to education is limited.

22. The appointed guardians cannot follow every case thoroughly, because of lack of staff. In the past years, the guardians in the TCs rarely sought asylum on behalf of the children, with explanation that is not in their best interest, so they continued traveling on the irregular routes.

23. The children continued to be held in immigration detention as witnesses in proceedings against smugglers or as victims in the process.

24. For elimination of all difficulties in the access of primary education, especially for asylum seekers, it is preferable for the state to implement the existing laws and bylaws properly toward these children and to facilitate the conditions for their enrolment, providing inclusion through special programs accordingly. The state should apply the same concept



for the secondary education.

MYLA

ISSUES RELATING TO THE PENITENTARY SYSTEM

N.Macedonia still struggles to establish effective mechanisms for prevention and prosecution of torture and ill-treatment in prisons and places of detention. The CPT in many reports including the last report on its 5th periodic visit to the country notes significant shortcomings in prison and detention facilities management, legislation (new Law on Execution on Sanctions was adopted in 2019 and new amendments are in process of drafting), capacities and enormous corruption. Poor and inhuman conditions of detention, lack of proper healthcare, ill-treatment by staff, inter-prisoner violence, poor food, absence of resocialization efforts. CPT expresses dissatisfaction by the level of commitment of government authorities in addressing these challenges. CPT findings are corroborated with the monitoring reports ⁶of MYLA and Helsinki Committee for Human rights as well as the reports of the Ombudsman, European Commission and the US State Department.

1. **External control mechanism** - In 2019, MYLA with other three CSO's was elected by the Assembly to be part of the new established external oversight mechanism over the work of the police and the prison police. Due to disagreements with the Ombudsman regarding the role and independency of this body, this model of control didn't start to work. Despite the Ombudsman's statement that such mechanism works and is functional, the independence and effectiveness of this body as originally intended to meet the objective cannot be considered as established or functional. There were three announcements from the Assembly so far, but the selection process is still ongoing.
2. The existing complaint mechanisms, both internal (established between prisons and DES) and external (petitions to the Ombudsman and the criminal complaint to the Public prosecutor) to investigate and prosecute complaints related to torture and ill-treatment are still not effective. Through strategic litigation, MYLA tested the newly established mechanism for internal and external control of prison and police authorities and identify 2 cases in which the competent authorities failed to investigate allegations of convicts for excessive use of force by prison police in prison Idrizovo and Bitola.
3. **Material conditions in penitentiary institutions**- MYLA would like to note major structural and longstanding deficiencies in Idrizovo prison (Wings nos. 2, 5 and 8) and the so-called "ambulanta", such as poor levels of hygiene, a deplorable state of repair, high occupancy levels, an intermittent water supply and dilapidated sanitary facilities. There are longstanding deficiencies at Kumanovo Prison (lack of permanent water supply, problem of supplying sufficient medical therapy and no psychiatric support for convicts); in Shtip prison, convicts are placed in rooms intended for serving disciplinary measure due to overcrowding problems.

⁶ MYLA and MHC, Monitoring report on conditions in penitentiary institutions, see more at: www.myla.org.mk

4. A significant problem is the **access to a lawyer free of charge**, for the persons detained in police station when the person cannot afford one. Between 8:00 p.m. in the evening and

8:00 a.m. in the morning, the person deprived from liberty has the right to call a lawyer from the list of lawyers, compiled by the Bar Association and the costs of the lawyer called during night detention shall be covered by the state budget. The right of indigent defense for detained person, as stated in law is not functional. Namely, often the ex-officio defense attorneys do not respond to the calls made by the detained persons or ex officio lawyers had requested to be provided with an informal payment of money to represent the individual in court. There are cases in which detained persons had been denied the right of access to a lawyer during the initial 24 hours of police custody and that they had first met a lawyer when they appeared before a judge or that they had not seen one at all⁷

Recommendations:

- I. Children should not be detained in any grounds. Alternatives to detention for immigration reasons must be available.
- II. The rights of the children and access to child protection mechanisms should be made available and be respected.
- III. The authorities should respect the legal procedure for readmission and expulsion, and should apply a protection-sensitive screening mechanisms to identify and refer those who may be in need of protection, as well to respond to the needs of the most vulnerable.
- IV. The quality of decision-making process in asylum procedures should improve taking into consideration the adequate credibility assessment of the case, individual circumstances, COI reports, and the risk of refoulement.
- V. The state should start the full operationalization of the LFLA regarding asylum seekers.
- VI. The state should amend laws for issuance of a personal number for asylum seekers in order to enjoy the guaranteed rights. A Strategy for Integration of Refugees and Migrants should be adopted.
- VII. The Administrative Court and the High Administrative Court should decide upon the merits of the case and apply ECtHR standards.

⁷ MYLA, 2021, Situation and conditions in the police stations, see more at: www.myla.org.mk

The Law on Foreigners and the LITP should be amended and harmonized with the Constitution with respect of the competence of the body deciding on the deprivation of liberty.

- IX. The status of both TCs and the status of the migrants accommodated there, as well as the procedure for registration, reception and referral must be formally envisaged.
- X. The state should implement structural reforms to improve the situation and conditions in penitentiary institutions, according to recommendations in the reports of Ombudsman, CSO's and CPT and to ensure humane and dignified conditions for convicted persons.
- XI. The state should establish functional external oversight mechanism over the work of the police and the prison police, as prescribed with law with involvement and active participation of the non-governmental sector.
- XII. The state should develop programmes in prisons of rehabilitative activities with a view to improving the quality of life of convicts, as well as resocialisation programmes preparing convicts for more independent living and/or return to their families.
- XIII. The state should establish functional legal aid system for person deprived from liberty, especially for marginalized group and to guarantee them access to free of charge lawyer when detention is during night.