

**LEGAL AND POLITICAL RETROSPECTIVE OF THE EUROPEAN MIGRATION CRISIS
IN 2015 IN NORTH MACEDONIA**

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Abstract

In March 2016, the Balkan Route was closed; the refugees and migrants continued transiting through the Republic of North Macedonia, using irregular means to reach the desired destination. Although the institutions were monitoring and controlling the south border with the help of the Army and foreign police officers from the EU Member States on grounds of bilateral agreements, a great number of the refugees and migrants used the services of smugglers, exposing themselves to risk upon their health, safety and freedom. This required amendment and adoption of new regulations which relate to the asylum system. The aim of this article is to make a comprehensive overview of the various practices, policies, and procedures in relation to the borders' control and migration policies in the Republic of North Macedonia. The article emphasizes the key challenges faced by the asylum seekers and the refugees during the asylum procedure and during realization of other rights. An analysis is made of the current legal framework and corpus of laws regulating entry and exit in the territory, security of borders and borders' management as well as laws regulating the rights and status of foreigners in the country. A particular emphasis is given to asylum procedures and policies to accommodate.

Keywords: border management; migration; legal framework; refugees; asylum; North Macedonia

Introduction: an overview of migration challenges and strategies

Since independence in 1991 Macedonia hosted refugees from Bosnia and Herzegovina, Albania and Kosovo. Very few of them remained in the country. Before, during and after the European migration crisis starting from 2015, Macedonia was subject to an increasing flow of people using the country as a corridor for onward travel to Western Europe, from Greece in particular. Since 2015, the greatest numbers of asylum applications were registered in 2015, with a total of 16607; declining the number and arriving at 1693 in 2020 (UNHCR, 2022). The asylum seekers were coming from countries outside the Balkans and Europe and a vast majority of these applications were submitted by applicants coming from the world's most vulnerable countries such as Afghanistan, Pakistan, and Somalia asylum applications (UNHCR, 2021a).

As the migration crisis in Europe occurred, the country apart from the regular process of harmonization of legislation made frequent changes in the legal framework. Even before the migration crisis in Europe, evidence showed that the country is sufficiently aligned in regard to the directives concerning the procedures for granting and withdrawing international protection (with a focus on the Asylum Procedure Directive) (Andeva and Necev, 2015). Country's efforts to cooperate on managing the refugee crisis were evident but were seen in the eyes of the international community with a slight reserve as to whether they are really implemented in practice. With a Memorandum for dealing with the refugee crisis (Government of the Republic of Macedonia, 2015) several countries from the Balkan route have

made small steps towards addressing challenges. The summit in Vienna in September 2016, was a crucial milestone in the process with which the Balkan route was closed and consequently repatriation agreements was subject to planning with North African states, Afghanistan, and Pakistan. Euronews correspondent Gábor Tanács reported that “countries along the Balkan route have a habit of bickering – but also of cooperating” (Euronews, 2016).

The challenges of the state were multifaceted. At first, the capacity to host. The government argued that it could not take more people into its territory without ensuring that they would continue their journey onward. The foreign affairs minister then declared “How many migrants will enter Macedonia depends on how many migrants will be accepted in EU member states. As much as that number will be, we will let them transit through the Republic of Macedonia.” (Government of Republic of Macedonia, 2016). At least 12,000 people were stranded for about two months on Idomeni, on the Greek side of the border, in makeshift tent camps and living in substandard conditions (Anadolu Agency, 2016).

Several times, tensions escalated into violent clashes between the Macedonian security forces and the refugees who tried to break through. Tensions eased only when Greece began moving refugees to other camps, away from the border area. The push backs at the border in 2016, in the so called “the March of Hope” clearly marked the history. Refugees in extreme humanitarian conditions trying to enter the country from Greece. A block of the Greek-Macedonian border was evident on March, 14th where hundreds of refugees were placed in the border camp of Idomeni with a craving to enter Macedonia on foot using another crossing (ECRE, 2016). This event provoked several debates and activities. Supported by non-governmental organizations and human rights activists and lawyers, several people have also sent official applications to the European Court of Human Rights demanding their right to have basic rights. Five cases are registered against North Macedonia. Relying on Article 4 of Protocol No. 4 (prohibition of collective expulsion) and Article 13 (right to an effective remedy) of the European Convention, the applicants complain because there was not an individual assessment of their cases in regards to their deportation and they did not have any opportunity to oppose it (European Court of Human Rights, 2022a:2). Additionally, they gave arguments that there was not access to a legal process and procedure before the national authorities for their deportation to Greece, connecting it to a violation of Article 13 of the Convention. The Court nevertheless examined whether, by the sole passing of the border on an irregular basis, the applicants had avoided an effective procedure for an entry legally based. The lack of individual removal decisions had been a consequence of their own conduct and that there are no violations (European Court of Human Rights, 2022b).

The activities, strategies, and challenges between 2015 and 2016 has been also explained through dividing this year into three key periods (Koshevaliska, 2021). The first one comprising the period before the adoption of the new amendments of the Law on asylum and subsidiary protection until June 18, 2015. This period is characterized by illegal entry of migrants and their transit through the country; loss of lives and unlawful detention of migrants in the Reception Center “Gazi Baba” in Skopje from January 1, 2015 till June 15, 2015. The second period starts from June 19, 2015 when the amendments of the law were adopted until March 7, 2016 the day when the Balkan route was closed. With the amendments, the administrative institution responsible for the asylum procedure is established to be the Sector for Asylum, at the Ministry of Interior. A foreigner expresses the intention for applying for asylum, at a border crossing, either verbally or in writing and the intention should be declared to a police officer. Within 72 hours an asylum application shall be submitted at the Sector for Asylum of the Ministry. After those 72 hours, the migrants were left with two choices, either immediately leave the country or to apply for asylum. The Ministry with the assistance of the UNHCR in the country, issued a comprehensive brochure about the asylum procedure, rights and obligations as an asylum seeker (Ministry of Interior, 2020). Due to the large influx of migrants and the urgent need for help from the Macedonian police to be able to patrol the southern border, a state of crisis was declared on the territory of the southern and northern borders and it was constantly being extended. With the state of crisis, an opportunity for new legislative measures came along, and that is to allow the Macedonian army to be included side by side with the Macedonian police; and also the possibility for police forces from EU and Visegrad Group to assist the Macedonian police in patrolling, but also intercepting migrant

smuggling. These and other challenges that were evident at that time were a trigger and motivation for the decisive role of Frontex in this regard, to step in and be responsible of the management of the borders outside the European Union (EU, 2016). The third period is starting from March 2016 and still ongoing, when the Balkan route is closed but there is still number of migrants transiting through the territory of the country (Koshevaliska, 2021).

The 33nrolmened flow of migrants and transiting the country has made the cover in the news followed by discussions which had an impact on the public perception of migrant movements in the country (Andeva, 2017). Political parties in position and opposition had many debates and discussions, which often went in different directions and were used for political parties' interests. One of the posed questions was whether migrants are considered a threat or not (Deutsche Welle, 2017). In the middle of the migrants' crisis in 2015, the Minister of Foreign Affairs Nikola Popovski announced the need of building a fence on the south border, similar to what Hungary did to stop the large influx of migrants (Netpress, 2015). The Social Democratic Union (a leading opposition party till 2017 elections) reacted to this statement sending the message that the crisis is not to be solved with fences, but with systemic solutions (NOVA TV, 2015). Evidence shows that immigration has evolved in the political debate in Western Europe and immigration-related topics in crucial times in politics such as before elections are evident but also shows that there is no evident polarization between right and left; only that immigration can shape how centrist parties position themselves on these topics (Dancygies and Margalit, 2019). Migration, and especially immigration issues in the political discourse in Macedonia has been part of the political parties' rhetoric but, if we analyze what were the major concerns of the political parties in 2015, we will see that priority was given to the cross-party bargaining over the electoral model rather than what is happening with the migrants (Popova, 2015). Nevertheless, the political setting and the general situation with accommodating migrants on Macedonian territory, reinforced a rhetoric filled with prejudice and thus influenced the societal perception of migrants. Through press conferences and tribunes, in 2017, VMRO-DPMNE (leading opposition party from 2017) encouraged the citizens to believe that Macedonia will no longer be a transit zone and that the country has adopted a strategy for migrants, which provides for the construction of apartments, camps, and the issuing of citizenships of refugees (NOVA TV, 2017) (Deutsche Welle, 2017).

4. Legal framework

As stated above, Macedonia has been facing refugee and migratory movements since the 90's. Having this in mind, the amendments of the legal acts and provisions is understandable. The amendments of the legal acts, as well as the adoption and ratification of new ones is developing the legislation of the country, in terms of giving a proper response to the upcoming migratory movements.

Macedonia is located in the center of the Balkan Peninsula, hence it is more incline to migration and refugee movements. Also, the European Union enlargement in Southeast Europe have caused the increasing of the scope and pace of transit and illegal migration in Macedonia. These migration movements are incorporated in couple of legal acts. For example, the Law on foreigners is giving a definition of who is considered as a foreigner, as well as, in what circumstances the foreigner stays illegally in the country.

The provisions of the Law on foreigners' state that "a foreigner stays illegally in the country, if:

- He/she has entered illegally into the Republic of North Macedonia;
- Does not possess a valid and recognized travel document with a visa or residence permit;
- Visa is cancelled, revoked or its validity is reduced;
- The visa has expired;

- The right of residence is withdrawn;
- Stays longer than three months during the six-months period from the date of arrival, and does not need visa to entry the country; or
- Is rejected by the procedure applied for asylum and does not leave the territory of the Republic of Macedonia within the specified term.” (Law on foreigners)

This Law on foreigners, as well as the Criminal Code of the Republic of Macedonia (Official Gazette no. 37/1996 of 06.08.1996 year) are regulating the help of foreigners to enter illegally in the country and transit (Article 148 of the Law on foreigners) through the country, and the consequences for the perpetrators of that crime. The Criminal Code of the Republic of North Macedonia is specifying the penalties which follow in the case of smuggling of migrants. (Article 418-b of the Criminal Code) In terms of the legislation, the issue of asylum is also in relation to migratory movements. As previously mentioned by Nenovska (2017), in 1994, the Republic of Macedonia ratified the Convention on the Status of Refugees of 1951 and the Protocol on the Status of Refugees of 1967. The right of asylum to foreigners and stateless persons expelled because of democratic political convictions and activities were guaranteed, initially by the Law on Movement and Residence of Foreigners. Later, in August 2003, the Law on Asylum and temporary protection was adopted. According to this Law, there are two types of international protection:

- Refugees (refugee under the Convention on the Status of Refugees 1951 and the Protocol on the Status of Refugees of 1967) and
- A person under subsidiary protection. (Law on asylum and temporary protection)

The Law on Asylum and Temporary Protection was amended in order to give proper response to these migration issues. The amendments to the Law on Asylum and Temporary Protection which enacted in June 18, 2015, state that persons who illegally enter the territory of the Republic of Macedonia and express their intention to apply for asylum or to transit through the country have the right to expect a response within seventy-two hours of their application. (Law on asylum and temporary protection) To regulate their transit and/or residence, the Macedonian government was forced to declare a crisis situation in the regions of southern and northern state borders. Therefore, the crisis situation was declared on the 19th of August 2015 (Official gazette of the Republic of Macedonia, 2015). The amendments of the Law on Asylum and Temporary Protection, were giving the right of the refugees to cross the country legally within 72 hours. To be precise, border crossings were registered at the Border cross point or at the nearest Transit center Vinojug, where migrants and asylum seekers were registered and were issued a permit – a registration list or an Intention to seek for asylum, that permitted them to either cross the country within 72 hours or apply for asylum at the nearest Police offices. All these measures were adopted by the Government and according to Nenovska (2017), “they differ a lot from the previous legal provisions relating to migrants before and during the migrant crisis. Previously, the transfer of migrants by any means, was meant as a crime which is punishable with imprisonment. With the adoption of new legislation, migrants can use transport organized by the state from the south to the northern border of the country. Clearly, these measures are undertaken in order to transfer, as many as possible, migrants to the following transit countries. Thus the Republic of North Macedonia would reduce number of refugees who would come, and also the number of asylum seekers in the country.”

The migration crisis of 2015 have brought itself many national and international measures and decisions, which were ad hoc implemented. There have been many European directives which entered in force in order to give the migration crisis a positive feedback. Having in mind these ad hoc measures, in April 2018, there was a new Law on International and Temporary Protection (Official gazette of the Republic of Macedonia No. 64 from 11.4.2018) adopted, which, put out of force the previous Law on Asylum and Temporary Protection. The main reason for adoption of a New Law was the alignment of the Law with the European Directives in the field of asylum and temporary protection. More concretely,

the provisions of the Directive 2011/95/EU (European Parliament, 2011) of the European Parliament was incorporated in this Law. The provisions are about the standards which need to be met by persons who are citizens of third countries or are stateless persons in order to qualify as beneficiaries of international protection, for equal status for refugees or for persons entitled to subsidiary protection and for the content of the protection provided. This new Law defines certain categories of significance for this area, including the principle of family unity of asylum seekers, the reasons for the suspension and cancellation of the right to asylum have been established and the possibility of limiting the freedom of movement of asylum seekers in exceptional circumstances. It is also provided that every applicant has the right of access to the labor market only in the event that the Department for Asylum does not pass decision within nine months from submission of the request. Hence, this Law of 2018 regulates the “terms and provisions for obtaining the international protection or the temporary protection, as well as cessation, revocation and cancellation of a right to asylum of a foreigner or a stateless person, as well as the rights and obligations of the applicants and persons to whom asylum has been granted in the Republic of N. Macedonia.” (Official gazette of the Republic of Macedonia No. 64 from 11.4.2018).

The progress was evident in the implementation of the new legal solutions in the years of 2020-2021, by the civil society and the academic community is assessed as further harmonization of the national regulations with the international instruments and with a better, more balanced approach in the treatment of migrants and asylum seekers. (Ministry of Foreign Affairs, 2022)

Later on, The Resolution on Migration Policy of North Macedonia 2021-2025 was adopted by the Parliament of the Republic of North Macedonia on the 23.12.2021. This resolution aims at supporting the national institutions in improving the management of the demographic and migration dynamics in the country. It also shows the relevant aspects of monitoring and evaluation of the progress in the implementation of the migration policy measures and activities, including the monitoring of implementation of the Laws which cover the migration issues. The Resolution includes five strategic areas: Supporting framework, Reliable and relevant data on external migration; managing regular migration, Control and management of irregular migration; and Building partnerships and international cooperation (United Nations, 2022).

As an accompanying document to this Resolution is the Action Plan according to which the measures and activities have been identified based on each of the strategic areas, strategic objectives, and specific strategic objectives that should provide for efficient management of the migration processes.

5. Institutional framework and implementation

The institutional framework in the Republic of North Macedonia was improved how the institutions could give proper response to the migrations processes. The implementation of the newly adopted and/or amended legal acts of the Republic of North Macedonia during the migration crisis of 2015 have made the institutions act proactively. The institutional capacities were strengthened to be obtained better response to the migrants/refugees and the asylum seekers. For example, the Macedonian Ministry of Interior decided to spread the police officers throughout the borders of the country, especially on the northern and the southern border lines, how they can ensure internal peace and stability in the country, and to provide safe transit of migrants and refugees across the country. Furthermore, the Centre for Crisis Management took measures to establish infrastructures to provide basic living conditions to the migrants while they were on the territory of Macedonia. Concrete decisions by the Centre were adopted, among which the most significant are:

- Public utility company “Komunalec” Gevgelija to pump more water from the well to provide a greater amount of potable water;
- The water from the well, to be fenced and secured by appropriate official;

- Center for crisis management to provide tanks with drinking water from neighboring municipalities;
- Few barracks to be installed in order to accept migrants who want to rest and spend the night in the shelter;
- The municipality of Gevgelija, in cooperation with UNHCR to take action to build a septic pit and to hire a firm for its discharge;
- The Border Police to provide safe direction to the refugees/migrants to other vehicles. (Center for crisis management, 2015)

Beside the existing measures, which emerged from key national decisions, additional measures were also promptly implemented, partly as a result of decisions made and policies enacted by other countries along the so-called Western Balkan route. One of these decisions was the closure of the southern borders. When Croatia and Serbia decided not to allow migrants from countries that were not affected by armed conflicts to continue their journeys, the government of Macedonia decided that from the beginning of November 19, 2015, only migrants from Syria, Afghanistan and Iraq would be permitted entry to the country (Mileski, 2018).

After the introduction of the selective approach based on the refugees' originating country, it has led to illegal crossings of the country. For North Macedonia as a small and transit country, the main problem during the refugee crisis was the illegal transiting through the country. Many criminal groups for smuggling of refugees have been made, which were coordinated with criminal groups from Greece and Turkey. Most of the refugees were looking forward entering the EU countries, so the main policies of North Macedonia had to cover the smuggling of migrants and refugees, rather than hosting the refugees and providing international protection.

6. International cooperation

The international cooperation in such a crisis is inevitable. When the consequences arose on the borderlines of the country, the authorities realized that the national capacities are not enough to answer properly to this phenomenon. The Macedonian neighboring countries felt the same burden. The national authorities from the Balkan countries asked for EU help and then, there was a mini- summit organized in Brussels, where a 17 points Action Plan was agreed on the 25th of October 2015. (European Commission, 2015) EU leaders and representatives of Balkan countries agreed to adopt a 17 points plan of Action for cooperation in dealing with the influx of refugees on the Balkans.

The 17 points Action Plan provided an enhanced cooperation among^s the police services of Austria, Slovenia, Slovakia, Croatia, Serbia, and the Czech Republic. There were mixed police patrols distributed on the borderlines, especially between police officers from Serbia and Croatia. These diverse police controls have had positive results in the prevention of migrant smuggling and the detection of forged documents. They have also helped to direct the reception and profiling of migrants.

Later on, the Global Compact on Refugees was adopted on the 17th of December 2018 by the UN General Assembly after two years of extensive consultations led by UNHCR with Member States, international organizations, civil societies, experts etc. It included in itself the refugee crisis in 2015 in the Middle East countries. Even though the Global Compact for Migration is not legally binding, it represents the political will and ambition of the international community as a whole for strengthened cooperation and solidarity with refugees and affected host countries. It has a huge impact on the national programs and strategies. Hence, the report of its implementation notes the progress and division of tasks between the institutions dealing with migration. Responsibilities are divided between the Department of Border Affairs and Migration at the Public Security Bureau of the Ministry of Internal Affairs (dealing with security and border management), the Ministry of Labor and Social Policy (managing access to services and socio-economic integration of migrants and refugees) and the specialized unit of

the Serious and Organized Crime Department, which fights against human trafficking and smuggling (Ministry of Foreign Affairs, 2022).

Furthermore, the international cooperation is seen in the financial assistance to the smaller countries, as well. The European Commission has allocated 4.4 million euros to Macedonia since the start of the refugee crisis. This allowed refugees to have access to basic needs such as food and clothing. Additional 10 million Euros EU assistance was adopted by the European Commission to help Macedonia improve its border and migration management systems in the context of the refugee crisis. This assistance include systematic border checks and border surveillance, identification and registration of third- country nationals crossing the border in a regular and irregular way, combating and prevention of migrant – smugglings, human trafficking and cross-border crime.(European Commission, 2016) The UNHCR has allocated 385.376 USD in the year of 2015 for Macedonia. This budget went higher in 2016 and 2017 and was set to over a million USD financial assistance for Macedonia, to handle the refugee processes. (World Bank, 2023)

North Macedonia as a country which neighbors the European Union (Greece), had to receive this financial help. It had a double impact. At first, the migrants/refugees on the territory of Macedonia were provided all their basic needs, and secondly, Greece was partially relieved from the huge number of migrants which crossed the border towards Macedonia.

The adoption of the international acts and the international cooperation, especially between the EU and the Balkan countries, had a positive impact on responding to the migration crisis.

Conclusion

It has been recognized, especially by the European Union that North Macedonia played a constructive role in management of mixed migration flows. The cooperation with the neighboring countries is evident and there are constant efforts made towards ensuring adequate living conditions for all the migrants staying on the territory. The fight against illegal activities, especially smuggling of migrants is still seen as something to which the country should focus more (European Commission, 2022). In 2021, UNHCR reported that the protection of asylum-seekers and stateless persons is of a concern. In specific these categories were not included in the vaccination scheme. The Refugee Agency also advocate for improved identification and referral of persons in need of international protection and the improvement of the asylum procedure UNHCR (2021b).

According to this, the need for improving the legal acts related to the migration is a necessity. As stated previously, the national legislation has been changing continually, in order to give good response to the migratory movements in the country, especially during a migration crisis, which Macedonia has faced in 2015. Facing the new migratory challenges coming from Ukraine nowadays, the international protection of the refugees must be guaranteed to the refugees, and hence provide the right of asylum. Following the recommendations of the EU and the other international legal acts such as the UN Charter and the Global Compact for Migration, the Macedonian legislation has been improved in terms of giving the suitable conditions, rights and duties to the refugees and the migrants. Even though the progress of the migration policies is slow, the improvements are noticed in the reports by the relevant institutions. The improvements of the institutions in countering migration is an inevitable fact. However, there are policies which need to be undertaken in order the measures and activities for migration to be implemented productively, and therefore to raise the efficiency of the institutional actions. The priorities, such as cooperation with the neighboring countries, fight against smuggling of migrants, the strengthened institutional capacities and international protection should be integrated in the national legislation in order for the country in general, to strengthen the legal and border management of migratory movements even more.

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