

## Trends in asylum- seeking in light of Macedonia's accession processes in the European Union

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### Abstract:

Western European countries have been at the front line of developing instruments designed to control and restrict flows ever since the 1970s when the problem of unwanted immigration and asylum flows began to emerge. Their policy responses subsequently set a standard or pattern for other, 'new' asylum countries or transit countries on Europe's borders, at the same time influencing towards more restrictive policies in this area. The European Union's further integration through building the Common European Asylum System (CEAS) influence towards creating common standards on determination and harmonizing the level of human rights among the EU countries. These processes however, on the other side are producing negative impact on the protection regimes in EU, making it more difficult for the forced migrants to reach the "shores" of Europe and benefit from the asylum. The Republic of Macedonia is a candidate country for European Union membership since 2005 and the accession to EU has been defined as one of the highest strategic priorities for the government<sup>i</sup>. The country present the democratic capacities in a light that shows that the State ensures law, procedure, standards and legal understanding through which it will protect those in need and ensures legitimacy in front of the international democratic public, thus following the development and further integration of the European policies through establishing asylum system and policies synchronized with the EU's 'acquis'.

After the Bosnian crisis and the Kosovo war, Republic of Macedonia faced with significant number of so- called "new asylum seekers", asylum seekers coming from countries outside the Balkans and Europe. According the UNHCR official statistical data in 2011, 740 asylum applications<sup>ii</sup> were submitted in front of the Section for asylum- Ministry of interior. None of these asylum- seekers was granted with convention (refugee) status or complementary protection status<sup>iii</sup>. In 2008, the number of asylum applications was 50, following by increases in the numbers in 2009- 90, then 2010 with 180 asylum applications.

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## INTRODUCTION

Central to all discussions about asylum policies is the fundamental distinction between asylum-seekers and economic migrants. The former category is made up exclusively of those who seek refuge in countries other than their own because they have a well founded fear of political, racial or religious persecution. The second embraces all those who seek to live and work abroad for their own economic advantage and interest. These motivations are not just psychologically distinct, but more important legally distinct. On the other side, the chances of gaining asylum protection depend greatly upon the recipient country's procedures used in the process of assessing asylum cases. Even most founded and compelling claim for international protection can fail if it is not fully and fairly considered by the respective authorities. After nearly a decade of European cooperation on asylum policy, the EU committed towards creation of common policies within a political and human rights border context - it created the Common European Asylum System (CEAS) in 1999 at the Tampere European Council<sup>iv</sup>. The CEAS itself presents an integrated system for regulating asylum policy and practice, so it can ensure similar reception conditions and level of protection in all Member States of the Union. It consists of a body of Directives (binding on Member States as to the result to be achieved) and Regulations (which are directly binding on Member States), which together form organized body of law- EU's asylum *acquis*<sup>v</sup>. Hence, Member States have been willing to cede some power to the EU level in the area of asylum, even though this policy area is directly related to national security and national interest of each concerned country. This behavior can be explained through the combination of two mainstream European integration theories, i.e. *neo-functionalism* and *liberal intergovernmentalism*. Through the point of view of the neo-functionalist it is logical for asylum policy to be ceded to the supranational level for a multitude of reasons related to ensuring the functionality of the previously established EU policies, namely the enactment of the Single European Act (SEA) and the implementation of the single market<sup>vi</sup>. At the same time as would Andrew Moravcsik argue, it is in the best (national) interest of the Member States, based on reasons such as national security, political costs and economic costs (today and in future)

to integrate the asylum policy<sup>vii</sup>. This argument from by the supporters of the liberal intergovernmentalism is as well backed up with the fact that the surrounding nature of migration and asylum is highly unpredictable.

Through analyzing in perspective the Macedonian asylum legislation and its synchronization with the one of EU, along with observing the effects of the implementation of the CEAS in the unpredictable and changing environment of asylum and migration, this policy brief tends to discover the main reason for the increased number of asylum seekers in the Republic of Macedonia in 2011 and the current development of the country's asylum policy as response towards it.

## CURRENT TRENDS IN ASYLUM

### SEEKING AND RECOGNITION RATES IN THE REPUBLIC OF MACEDONIA

The United Nations Convention Relating to the Status of Refugees 1951 ('the Refugee Convention') and the Protocol on the Status of Refugees (1967) ('the Protocol') are the primary sources of international obligations in relation to refugees. The Refugee Convention was drafted as a consequence of the Second World War to address the issue of refugees fleeing from the Nazi regime<sup>viii</sup>. The Convention was drafted between 1948 and 1951 by a combination of United Nations organs, ad hoc committees and a conference of plenipotentiaries of 26 states<sup>ix</sup>. On January 18, 1994 Republic of Macedonia signed and ratified the Refugee Convention and 1967 Protocol. The United Nations High Commission on Refugees was also established in 1950 by the United Nations General Assembly as a refugee agency with a mandate to 'lead and coordinate international action for the worldwide protection of refugees'<sup>x</sup>.

The term refugee is defined in Article 1A (2) of the Refugee Convention as a person: [*who*] *owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unwilling or unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it*<sup>xi</sup>. The Convention was initially limited to Europeans who had fled their coun-



tries of origin after the World War II. Article 1A (2) of the Convention defines a refugee as a person who has a well-founded fear of being persecuted 'as a result of events occurring before 1 January 1951'. However, the 1967 Protocol subsequently expanded the definition so that the provisions of the Convention could be applied without geographic or time limitations. The first obligation, which is called the principle of "non-refoulement" is one of the most important obligations provided by the Refugee Convention. Article 33 of the Refugee Convention provides that: "*No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion*". Accordingly, a State party to the Convention is obliged not to return a person to their country of origin if a person fulfils the definition of a refugee. This obligation includes ensuring that authorities properly identify and protect people who are entitled to refugee status. In this context we must make a distinction between refugee and an asylum seeker. The term refugee is often used to refer to any person who has fled his or her home country for any reason, not only for a political, religious or societal reasons but also economic problems, poverty, natural disaster, civil war and disturbance<sup>xii</sup>. However, in legal terms a refugee is a person whose status has been recognized under the Refugee Convention as provided in the Macedonian Law on Asylum and Temporary Protection<sup>xiii</sup>. An asylum seeker on the other hand, is a person who has left their country of origin, has applied for recognition as a refugee in another country and is waiting for a decision with respect to their application<sup>xiv</sup>.

In the past ten years we have witnessed a more restrictive trend (to different degrees) in Europe on the asylum granting rates. The response of the Governments of the EU countries to the mixed flows of people has been characterised by an overriding effort (through sophisticated border controls and various border management activities) to prevent migrants, including people fleeing prosecution, from reaching their borders<sup>xv</sup>. Although securitised asylum policies have been a defining feature of EU asylum policy cooperation since its inception, the securitisation of asylum in the EU intensified as a consequence of the EU's counter terrorism response<sup>xvi</sup>. Elspeth Guild explored the impact of EU's anti terrorist measures on the forced migration, thus demonstrating that the focus on enhancing external border control has inevitably placed forced migrants at

the centre of the national security debates<sup>xvii</sup>. Another reason for this restrictive trend can be the fact that governments are uncertain about the economic capacity of their own welfare systems in times of economic crises where restrictive budgets are synonyms for maintaining the country's economy alive. However, these current trends and EU's security approach towards asylum (though codified in the supranational legislative content of the asylum *acquis*) are in contradiction with the right to leave one's country under the Universal Declaration of Human Rights<sup>xviii</sup> and substantially undermines the "duty to protect", which is central to the right to seek asylum. EU has to bear in mind the fact that it is a major player within the system of international refugee protection and restrictive actions have (and will have in future) severe impact on the global asylum space and as such contribute to substantial weakening of the asylum norms.

After the Bosnian crisis and the Kosovo war, Republic of Macedonia faced with significant and moreover increased number of asylum seekers coming from countries outside the Balkans and Europe. In 2008, there were 50 lodged asylum applications, following by increases in the numbers in 2009- 90, then 2010 with 180 asylum applications. According the UNHCR official statistical data in 2011, **740** asylum applications<sup>xix</sup> were submitted in front of the Section for asylum- Ministry of interior as a first instance authority. Vast majority of these applications were submitted by applicants coming from the world's most vulnerable countries such as Afghanistan- **427** applications, Pakistan- **172** and Somalia- **53** asylum applications. This means that the annual change 2010- 2011 is 311 per cent<sup>xx</sup>.

The official UNHCR statistical data for asylum recognition rates for 2011 are not yet published, but according the statistical data provided by the Macedonian Young Lawyers` Association (MYLA)<sup>xxi</sup> in 2011, 744 asylum seekers coming mostly from Central Asia, Middle East and North Africa were provided with legal aid by this organization. During this period, the NGO received 62 first instance decisions with which the asylum application was rejected and 399 first instance decisions for termination of the procedure on lodged asylum application on the ground that the applicant failed to appear on the scheduled interview before the respected first instance authority. No asylum seeker was granted with refugee status or any other form of complementary protection (i.e subsidiary protection) in 2011.



According to the UNHCR Statistical Yearbooks, in 2008-47 positive decisions (1 refugee status and 46 decisions for persons under subsidiary protection), 17 rejected, 61 otherwise closed and 100 pending cases at the end of the year. The following 2009-20 were rejected, 92 otherwise closed cases in first instance and 75 pending cases at the end of the year. In 2010 there were 9 rejected, 80 otherwise closed first instance decisions and 161 pending cases. Following the official statistical data no person has been granted any form of asylum in the Republic of Macedonia since mid-2008.

## **ASYLUM POLICIES AND THEIR PRACTICAL IMPLEMENTATION IN THE MACEDONIAN ASYLUM SYSTEM**

### ***THE DEVELOPMENT OF THE DOMESTIC LAW AND ASYLUM POLICIES***

The chances of gaining asylum protection depend greatly upon the country's procedures used to assess asylum cases. Even the most founded and compelling claim for international protection can fail if it is not fully and fairly considered by the respective authorities.

Article 29 of the Constitution of the Republic of Macedonia *inter alia* entitles aliens in the country to enjoy freedoms and rights guaranteed by the Constitution, under conditions established by law and international treaties, at the same time guaranteeing the right of asylum "to aliens and stateless persons persecuted for reasons of their democratic political belief and action"<sup>xxii</sup>. On January 18, 1994 the Republic of Macedonia signed and ratified the 1951 Convention and 1967 Protocol relating to the status of refugees with which it guarantees the right to seek asylum to foreigners and stateless persons "expelled" because of their democratic political beliefs and activities. In the period between 1992 and 1995 a number of 32,000 to 35,000 cases were registered from the Bosnian refugee crisis. The Ministry of Interior at that time was conducting a process of policy-making of illegal immigration in the country. In 1999 the first steps towards establishing a separate organizational unit - Section for Asylum and Illegal Immigration were taken in order to facilitate the refugee issue. In the same period, the country faced a massive influx of about 360,000 refugees due to the war crisis in Kosovo. Following the trends in this area in the European Union (EU), in March 1999 the Govern-

ment adopted a decision with which all refugees were provided with status of temporary humanitarian assisted persons (Directive on temporary protection in EU was adopted 2001). Simultaneously, the Section for Asylum and Illegal Immigration began to act upon individual requests submitted for recognition of refugee status. In December 2002, the Government adopted the National Action Plan on Asylum and Migration. In August 2003 the new Law on Asylum and Temporary Protection<sup>xxiii</sup> which as such is the spine of the Macedonian asylum system was adopted. In April 2006, the Government of the Republic of Macedonia adopted the module for asylum suggested in the EU report of the country's progress in order to establish a compatible legal and institutional framework with the one of the EU in the field of asylum, migration and visa issues. In 2007 through amendment and modification of the Law on Asylum and Temporary Protection, a new kind of international protection was introduced - the right to asylum for subsidiary protection. In October 2008 another Law amending the Law on Asylum and Temporary Protection (LATP) - the term person under humanitarian protection was replaced with the term person under subsidiary protection, following by changes made in the applicant's right to use appropriate remedy - namely the possibility of an administrative dispute against the decisions of the first instance authority in front of a competent court. Last amendments to this law were made in 2009.

The Law on Asylum and Temporary Protection (LATP) *inter alia* determines conditions and procedure for determination of asylum, prohibits *refoulement* and regulates the rights and obligations of persons granted asylum as recognized refugees or asylum due to subsidiary protection, and those under temporary protection. Some of the provisions of LATP are elaborated in the Rules on the Form of an Application for Recognition of the Right to Asylum, the Manner of Fingerprinting and Photographing Asylum Seekers, the Form and Procedure of Issuance and Replacement of Documents for Asylum Seekers and Persons to Whom a Right to Asylum or Temporary Protection has been Recognized in the Republic of Macedonia and on the Manner of Making such Registration. Rights and duties of asylum beneficiaries are stipulated by the Law on Social Protection, the Law on the Employment and Work of Aliens, the Law on Citizenship of the Republic of Macedonia etc. Provisions applicable in asylum proceedings can be found in the Law on General Administrative Procedure, the Law on Administrative Disputes and the Law on Aliens<sup>xxiv</sup>.



In Republic of Macedonia two ministries share the responsibility regarding the procedure and care of the asylum seekers- the Ministry of interior and the Ministry of Labor and Social Policy. The Section for asylum processes the asylum applications, whether the application is submitted at the border crossing, inside the territory of the country or at the airport. During the asylum procedure, including the appeal period, asylum seekers are allowed to stay in the country; additionally the state covers all costs for their care and residence. With fair and thorough procedures benefit both refugees and host countries, mainly by producing high quality asylum decisions at first instance<sup>xxv</sup>.

### ***CURRENT SITUATION AF THE ASYLUM POLICIES IMPLEMENTATION***

Republic of Macedonia's asylum policies and legal framework is undoubtedly influenced by the example and scheme set by the European Union's in so to say 'externalization' of it's immigration and asylum policies. One aspect of these policies is the use of readmission agreements, which have made transit countries surrounding the EU responsible for accepting rejected asylum seekers or illegal migrants who passed through their territories. These repatriation schemes are based on a bilateral agreements launched with countries considered as a priority for the EU on the basis of a double standard elaborated by the General Affairs and External Relations (GAER) Council in November 2004<sup>xxvi</sup>. Countries such as Albania, Bosnia and Herzegovina, Republic of Macedonia, Hong Kong, Macao, Moldova, Montenegro, Pakistan, Russia, Serbia, Sri Lanka, and Ukraine were part of the deal (their agreements today are fully operative). The factors employed by the Community in selecting the States with which will negotiate readmission agreements were the following: "[first], migration pressure on particular Member States, as well as the EU as a whole; [second], the geographical position of countries, including considerations of regional coherence and neighbourhood" (para.3)<sup>xxvii</sup>. With *Council Decisions 2007/817/EC of 8 November 2007 on the conclusion of Agreements between the European Community and the Former Yugoslav Republic of Macedonia on the readmission of persons residing without authorisation*<sup>xxviii</sup>, the country became one of the four Western Balkans "partner country" in the field of readmission. From the signed

agreement we can see that three actors are involved in the readmission process- the State that requests readmission (requesting State), the State that is requested to readmit (requested State), and the person to be readmitted (either irregular migrant or rejected asylum seeker, meant as an individual who is not in need of international protection). The common readmission policy basically aims towards pursuing three important objectives:

1. Fight against unauthorised immigration by facilitating the return of nationals as well as third country nationals illegally residing in the territory of the EU through the issuance, for instance, of travel documents. In this regard, it may be added that readmission agreements for the return of third country nationals are usually based on transit through the territory of the requested States.
2. Establishing "buffer zone" of third countries responsible both to readmit immigrants from the EU and to intercept migrants en route to the EU (Coleman 2009: 61).
3. Promotion of readmission agreements between third countries themselves (including transit and source countries), thereby broadening the number of States able to receive migrants.

The other more influential aspect of externalization is through the EU accession processes, which is far more significant in defining the Macedonian asylum policies today. The EU accession processes obliges future EU member states to adapt their immigration and asylum legislation and practices to conform to the existing EU rules. Thus, EU candidate countries have to adopt provisions on border controls, visa regimes and asylum systems to bring them in line with EU standards. On 17 December 2005 the European Council granted candidate status to the Republic of Macedonia<sup>xxix</sup>, which then started to approximate its legislation to EU *Acquis*. The Consolidated Version of the Treaty on the Functioning of EU<sup>xxx</sup> states that the common policy on asylum, subsidiary protection and temporary protection must be in accordance with the Refugee Convention, the 1967 Protocol and other relevant treaties<sup>xxxi</sup>, and that the European Parliament and the European Council shall





adopt measures for a common European asylum system<sup>xxxii</sup>. Article 18 of the EU Charter of Fundamental Rights enshrines the right to asylum. Relevant EU acts in the area of asylum are the following:

- The Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof<sup>xxxiii</sup>
- The Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers<sup>xxxiv</sup>
- The Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted<sup>xxxv</sup>
- The Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status<sup>xxxvi</sup>
- The Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national<sup>xxxvii</sup>
- The Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification<sup>xxxviii</sup>
- Recasts of: Reception Directive and Dublin Regulation of 3 December 2008, Qualification Directive and Procedures Directive of 21 October 2009 and Eurodac Regulation of 10 September 2009<sup>xxxix</sup>
- The Court of Justice of EU is competent *inter alia* to review a particular EU legal act, such as Directive, in the light of international law

The European Commission Progress Report on the country's progress for 2011 in the Chapter 24: Justice, freedom and security, monitored that there has been limited progress on asylum. According the Report, rules

in this area were adopted establishing the role of each institution in the integration of refugees and foreigners. According the EC Report, the reception conditions in the Reception Centre for asylum seekers are satisfactory, but the asylum-seekers still face difficulties accessing information about procedures and social rights, as well as there is no available free legal aid provided by the state. In the Law on free legal aid, according Article 12 paragraph 3, line 1, right to free legal aid is as well recognized for persons whose right to asylum is recognized. It is expected that with the next amendments on this law, which according the Ministry of Justice should be introduced in 2012, asylum seekers will as well be introduced as beneficiaries of this right. Back in 2008 the European Commission monitored that asylum seekers are not provided with identification documents. Today, four years later there has been no progress in speeding up the process of providing asylum seekers with identification documents, though the LATP in Article 39, paragraph 1, point 1 states that "*As documents in the sense of this Law shall be considered: identification document for asylum seeker*", further stating in the next Article 40 that "*The identification document for asylum seeker is valid until the issue of a final decision in the asylum procedure, that is until the expiration of the time period within which the person is obliged to leave the territory of the Republic of Macedonia after the final decision rejecting his application comes into legal force*". In practice, no asylum seeker was provided with an ID card in 2011.

Although the administrative capacity of the first instance authority increased slightly over the last four years (taking in consideration that in 2008 there was no trained personnel, equipment and good budgeting for this administrative body), its efficiency in issuing first instance asylum decisions according the EC can not be considered as satisfactory and according the Report needs to be improved. Further, efforts should be made to consider how to prevent potential abuses of the asylum system. It is as well monitored that problems providing interpretation during scheduled and conducted interviews still persist. Article 29 from LATP in paragraph 1 states that "*When the asylum seeker does not understand the language of the procedure, the Section for Asylum shall provide an interpreter for that person in the language of his country of origin or*



*in the language he understands*" continuing in paragraph 2 that the costs for the interpreter will be covered by the Ministry of Interior.

The overall conclusion concerning the Law on Asylum and Temporary Protection is that it is on the whole approximated with the international law and standards; however there are a number of challenges regarding its further improvement, interpretation and implementation<sup>xi</sup>.

Even though the externalization of the EU policies through the Union's enlargement with the upcoming waves in the Western Balkans will almost certainly mean that countries on the borders of the enlarged EU will assume a larger burden than before as transit/ receiving countries, yet these processes have and will encourage significant advances in refugee protection in these countries. There will be undoubtedly protection benefits derived from combining the process of accession with that of harmonization. By transferring elements of the EU *acquis communautaire* to the applicant state, asylum determination systems are introduced with these jurisdictions which are accompanied by some of the fundamental safeguards common to aspects of the Western European practices<sup>xii</sup>.

#### **REPUBLIC OF MACEDONIA AS A "NEW" COUNTRY OF ASYLUM AND FACTORS INFLUENCING THE ASYLUM SEEKING RATES**

The Balkans and SEE region situated at the Europe's south-eastern margins have experienced particularly intense migratory and asylum flows. These flows along with the social movements especially on the peninsula brought towards various social and systematic changes. Republic of Macedonia (as the most Balkan countries) was never immune to these mixed flows and is known as a country that is generating a notable number of economic migrants (most of them going in EU and seeking "economical" asylum). However, nowadays (as can be seen from the figures above) the country has become at the same time a new country of asylum (new receiving country), experiencing significant rise in numbers of immigrants and/or refugees.

Factors such as violence and oppression in source regions, economic conditions, political and legal context

of neighbouring countries, as well as asylum policies in the countries of destinations, have significant effects on the number and the quality of the applications.

Violence and oppression in source regions, especially after the currently emerged conflicts in North Africa and Libya, are one of the most influential factors that affect the increased numbers of asylum seekers. In 2011, there were 301 000 asylum applicants registered in the EU27. It's estimated that around 90% of these were new applicants and around 10% were repeat applicants. In 2010, there were 259 000 asylum applicants. In 2011, the main countries of citizenship of these applicants were Afghanistan (28 000 or 9% of the total number of applicants), Russia (18 200 or 6%), Pakistan (15 700 or 5%), Iraq (15 200 or 5%) and Serbia (13 900 or 5%)<sup>xiii</sup>. In Republic of Macedonia the percentage of asylum seekers coming from war-torn societies is in line with the numbers of registered asylum seekers in the EU27- Afghanistan 58% and Pakistan 23% of the total number of lodged asylum applications. Another two important factors responsible for becoming a country of migration and/or asylum are the economic expansion of an industrializing state and the role of a transit country. The first factor makes the country an attractive destination for those coming from poorer countries.<sup>xiiii</sup> Thus countries which previously were sending countries have now become receiving countries, due to the increased job opportunities and higher living standards. Even though in reality many of the asylum seekers travel in mixed migratory flows and many of the migrants seek "economical" asylum and as a result abusing the asylum system; this dynamic can not be taken as relevant when discussing about the right to seek asylum as such<sup>xiv</sup> (due to the fact that asylum can be claimed in case of well founded fear of prosecution<sup>xiv</sup>). Further, due to the fact that the first choice destination countries in the west have become more difficult to reach, the complex phenomenon of transit migration occurred. The countries affected by these phenomena are the ones bordering the EU or placed on the periphery of it; or those with stops en route. Many of these countries remain places of transit, with the stopover en route remaining just that. Taking in consideration that the majority of the first instance decisions brought by the respective authority for the period from 2008 to 2011 were not rejecting, but decisions/ cases otherwise closed (meaning decisions for terminating the procedure on lodged asylum application due to the applicant's failure to appear on the scheduled interview) the influence of the second dy-



namic can be clearly perceived in the case of Macedonia.

Country's surrounding, meaning the asylum system and its response towards increased number of asylum seekers in the neighbouring countries, as well influence on the increased number of asylum applications in one country. According MYLA data, practically all asylum seekers arriving in the Republic of Macedonia are coming through the EU Member State Greece, through the route "Afghanistan/ Pakistan via Iran via Turkey via Greece". Even though the European Union's further integration through building the Common European Asylum System (CEAS) influence towards creating common standards on determination and harmonizing the level of human rights among the EU countries, still produce side-effects that have negative impact on the protection regimes. Greece is perhaps the champion in failing to adequately respond to the Dublin II agreement<sup>xvii</sup>. The objective of this Regulation is to identify as quickly as possible the Member State responsible for examining an asylum application and prevent abuse of the asylum procedures. Asylum seekers arriving in Greece from Turkey, hardly have the opportunity to seek asylum. Irregular migrants and potential asylum seekers are routinely detained in overcrowded reception centres and in inhuman and degrading conditions. They don't receive any information regarding their right to claim asylum in a language they understand. The procedure for logging an application and the understaffing of the relevant police office in Athens makes submitting the application almost impossible<sup>xlviii</sup>. Greece asylum system eventually came to standstill in 2009, leading to additional piling up of thousands of applications and creation of backlog. In 2011 new law was adopted, but naturally it will take several months before it is effectively implemented. Clearly Greece as a neighbouring country part of the CEAS fails to implement the Dublin II Regulation, which as such is as well confirmed with the infringement proceedings against Greece on 31 January 2009 before the European Court of Justice<sup>xlviii</sup>. Thus, failing to fully and adequately implement CEAS regulations on the very border of the European Union, becomes maybe the most relevant factor for the increased number of asylum application in the Republic of Macedonia.

In the MEP session of 15 February 2011 was concluded that the European asylum system is not only a Greek, Maltese, Italian or Spanish problem, that above all it's a European one. Acknowledging at the same time that "the decision from 21 of January by the European

Court of Human Rights<sup>xlix</sup> is a turning point and that it sends a signal that EU must reform its asylum system". It was underlined the need to re-launch the debate on a suspension mechanism to stop sending asylum seekers back to countries already overloaded<sup>l</sup>.

## CONCLUSION

The quest for membership in the European Union results in adopting and implementing the Union's asylum *acqui* and as such had (and still has) a significant impact on the refugee protection regime in the Republic of Macedonia. The fact that the CEAS most important document- the Dublin II Regulation has its own shortcomings (and further revision and development and is needed), the accession processes however encouraged significant advances in the refugee protection in the country, thus initiating new amendments and improvements in the Law on Asylum and Temporary Protection:

- *In May 2007* in the light of the need to harmonize LAMP with the 2004 Qualification Directive, first amendments introduced subsidiary protection and defined a person under subsidiary protection; further introducing four more cessation clauses (death, acquisition of citizenship, acquisition of residence permit and voluntary departure from the territory of the Republic of Macedonia), which were fortunately erased by the 2009 Amendments of LAMP
- *In October 2008 passed another Law amending the Law on Asylum and Temporary protection (LAMP)* - the term person under humanitarian protection was replaced with the term person under subsidiary protection, following by changes made in the applicant's right to use appropriate remedy- namely the possibility of an administrative dispute against the decisions of the first instance authority in front of competent court.
- *December 2009 third amendments of LAMP most importantly introduced:* Article 9-a "First country of asylum" based on Article 26.1 of the Procedures Directive; Article 24.2 of the





Qualification Directive envisages that residence permit for persons under subsidiary protection must be valid for at least one year and this provision was incorporated in Article 58 of LAMP; deleted the fourth paragraph of Article 32 LAMP and amended Article 35;

Effective access to asylum procedures and fair, individual examination of the asylum applications must be ensured for all the asylum seekers applying for asylum in the Republic of Macedonia. Taking in consideration the comments from the EC Progress report and the monitor of the NGO working in this field, the first instance authority must work on improving their capacities in providing free access to the asylum procedure mostly through providing adequate interpretation/ translation in the interviewing phase (so there won't be any delays in the lawfully conducted procedure and the first instance decision upon the submitted asylum application). At the same time it must be ensured that every asylum seeker with lodged asylum application is provided with valid identification document which will guarantee safe and legal movement of the applicant on the territory of the country. With resolving these "technical", but crucial aspects of the asylum procedure, the implementation of the ruling policies and existing legislation will ensure existence of a system which safeguards the basic human rights of each applicant. Finally, there will be no injustices to those who have already been victimized by terrorists and other armed groups.

Comparative experience, especially the case of Central and Eastern European countries accession in the EU, has shown (and it is mirrored in the case of the Republic of Macedonia as well) that "implementing the asylum *acqui* in the less developed asylum systems of the candidate countries raises protection problems. The integrity of border procedures and the quality of first and second instance decisions- taking are cases in point. The most serious issue with respect to transferring the *acqui* during the transformative accession process rests with the assessment of the gaps in protection that it allows"<sup>li</sup>, though this as such requires more deep and broader research.

At the end, if the CEAS logic of protection is accepted elsewhere- EU should provide Macedonia as a transit

country with fragile and still developing institutions and economy, with proper tools and institutional capacity building in order appropriate refugee protection to be provided. This is the only way how EU can at the same time help itself with alleviating the current burden of the increased number of asylum seekers on its Member States.

**The views expressed in the paper are not the views of the Konrad-Adenauer-Stiftung and the Center for Research and Policy Making. They are personal views of the authors.**

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- <sup>vii</sup> More on this in Moravcsik, Andrew. *The Choice for Europe: social purpose and state power fromMessina to Maastricht*. Ithaca: Cornell University Press, 1998
- <sup>viii</sup> The United Nations High Commission on Refugees (UNHCR), *Convention and Protocol Relating to the Status of Refugees (The Refugee Convention)* at <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>
- <sup>ix</sup> J Vrachnas et al, *Migration and Refugee Law: Principles and Practice in Australia*, Cambridge University Press, 2005 note 26 at p173
- <sup>x</sup> UNHCR website at <http://www.unhcr.org/cgi-bin/texis/vtx/home>
- <sup>xi</sup> UNCHR, *The Refugee Convention*, note 27
- <sup>xii</sup> Germov, note 38 at p xxxix
- <sup>xiii</sup> Official Gazette of the Republic of Macedonia Number 19, Year: LXV, Friday, 13 February 2009
- <sup>xiv</sup> UNHCR website at <http://www.unhcr.org>
- <sup>xv</sup> A. Betts, "Towards Mediterranean Solution? Implications for the Region of Origin", *International Journal of Refugee Law* (18) 2006-3/4, p. 655
- <sup>xvi</sup> Felicity Hattrell, "Redefining the limits of refugee protection? The securitised asylum policies of the CEAS", *National Center for Research of Europe*, December 2010, p.14
- <sup>xvii</sup> Elspeth Guild, "International Terrorism and EU Immigration, Asylum and Borders Policy: The Unexpected Victims of September 11, 2001" *European Foreign Affairs Review* 8 (2003): 332
- <sup>xviii</sup> Universal Declaration of Human Rights, 10 December 1984, Article 13 (2)
- <sup>xix</sup> UNHCR Asylum Levels and Trends in Industrialized Countries- Statistical overview of asylum applications lodged in Europe and selected non- European countries, page 27
- <sup>xx</sup> In 2008 were submitted 50 asylum applications, following by increases in the numbers in 2009 with 90 and 2010 with 180 asylum application.
- <sup>xxi</sup> Macedonian Young Lawyers` Association is a national NGO working on providing free legal aid
- <sup>xxii</sup> Official Gazette of the Republic of Macedonia, available at: [www.slvessnik.com.mk](http://www.slvessnik.com.mk) in Macedonian, no. 52/91 of 22 November 1991, nos. 1/92, 31/98, 91/01, 84/03, 107/05, 3/09 (correction in no. 13/09).
- <sup>xxiii</sup> *Official Gazette of the Republic of Macedonia Number 19, Year: LXV, Friday, 13 February 2009*
- <sup>xxiv</sup> Gavrilovski Zoran, "Legal aid and Advocacy for refugee rights", *Civil Society Research Centre*, 2011
- <sup>xxv</sup> "Resolution for Migration policy of the Republic of Macedonia 2009- 2014"- *Official Gazette of the Republic of Macedonia Number 6/2009*
- <sup>xxvi</sup> Draft Council Conclusions, 2 November 2004cluding
- <sup>xxvii</sup> Draft Council Conclusions, 2 November 2004cluding
- <sup>xxviii</sup> Official Journal of the European Union, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:334:0007:0024:EN:PDF>
- <sup>xxix</sup> [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/87642.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/87642.pdf)
- <sup>xxx</sup> Treaty on the Functioning of EU, Official Journal of EC (OJ) C 83 of 30 March 2010, at: <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2010:083:SOM:EN:HTML>
- <sup>xxxi</sup> *Ibid.*, Art. 78.1
- <sup>xxxii</sup> *Ibid.*, Art. 78.2
- <sup>xxxiii</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:212:0012:0023:EN:PDF>
- <sup>xxxiv</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:EN:PDF>
- <sup>xxxv</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>
- <sup>xxxvi</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF>
- <sup>xxxvii</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003R0343:EN:HTML>
- <sup>xxxviii</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:251:0012:0018:en:PDF>
- <sup>xxxix</sup> [http://ec.europa.eu/home-affairs/doc\\_centre/asylum/asylum\\_intro\\_en.htm](http://ec.europa.eu/home-affairs/doc_centre/asylum/asylum_intro_en.htm)
- <sup>xl</sup> Gavrilovski Zoran, "Legal aid and Advocacy for refugee rights", *Civil Society Research Centre*, 2011, p. 20
- <sup>xli</sup> Byrne Rosemary, Noll Gregor and VeDsted- Hansen Jens, "Understanding Refugee Law in an Enlarged European Union", *EJIL*, 2004, p.369
- <sup>xlii</sup> Eurostat Newsreleas 46/2012, 23 March 2012- The data are provided to Eurostat by the Ministries of Interior, Justice or immigration agencies of the Member States. Apart from statistics on new asylum applicants, these data are supplied by Member States according to the provisions of Article 4 of the Regulation (EC) 862/2007 of 11 July 2007 on Community statistics on migration and international protection.
- <sup>xliiii</sup> "Poverty, International Migration and Asylum", Policy Brief No8, Christina Boswell and Jeff Crisp, United Nation University, WIDER, page 24
- <sup>xliiv</sup> Even if the practice shows that many of the migrants are abusing the asylum system
- <sup>xli v</sup> The 1951 **Convention** relating to the Status of **Refugees** is the key legal document in defining who is a **refugee**, their rights and the legal obligations of states.
- <sup>xli vi</sup> [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_immigration/l33153\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33153_en.htm)
- <sup>xli vii</sup> Triandafyllidou Anna, "Managing Asylum Seeking in Europe: How to Revise the Dublin II Convention", *Freedom, Security, Justice*, Part IV, ELIAMER, p.193- [http://www.notre-europe.eu/fileadmin/IMG/pdf/TGAE2011\\_4b\\_Triandafyllidou\\_1](http://www.notre-europe.eu/fileadmin/IMG/pdf/TGAE2011_4b_Triandafyllidou_1)
- <sup>xli viii</sup> More on the issue in "Sharing Responsibility for Refugee Protection in Europe: Dublin Reconsidered", *The European Council for Refugees and Exiles (ECRE)-* [http://www.unhcr.org/refworld/type.POSITION.ECRE..47f1edc92\\_0.html](http://www.unhcr.org/refworld/type.POSITION.ECRE..47f1edc92_0.html)
- <sup>xli ix</sup> <http://www.echr.coe.int/NR/rdonlyres/8E30641D-6122-439C-9E08-3C712C02A379/0/ListarrGC.pdf>
- <http://www.europarl.europa.eu/news/en/pressroom/content/20110215IPR13705/html/EU-asylum-system-MEPs-debate-with-Commissioner-Malmstr%C3%B6m>
- <sup>l</sup> Byrne Rosemary, Noll Gregor and VeDsted- Hansen Jens, "Understanding Refugee Law in an Enlarged European Union", *EJIL*, 2004, p.370