

Information provided by the Government of North Macedonia on the questions raised by the mandate of the Special Rapporteur on the Human Rights of Migrants of 22 December 2020, the Government of North Macedonia provides the following information

Regarding the question number 1 – We enclose the original text of the required legislation:

Applicant

Article 4

(1) Applicant shall be a foreigner that seeks international protection from the Republic of Macedonia, who has expressed intention or submitted an asylum application, in respect of which a final decision has not been taken in the procedure for recognition of the right to asylum.

(2) Asylum application referred to in paragraph (1) of this Article shall be an application submitted by a foreigner that can be understood as an application for international protection.

Intention for submission of an asylum application

Article 25

(1) A foreigner may express the intention (hereinafter: has expressed intention) for submission of an application for recognition of the right to asylum, verbally or in writing, before a police officer of the Ministry of Interior at a border crossing point or within the territory of the Republic of Macedonia.

(2) The police officer referred to in paragraph (1) of this Article shall note down the personal and other data of the foreigner who has expressed intention, shall photograph him/her, shall fingerprint him/her, shall issue a copy of the certificate for the expressed intention and shall refer him/her to submit an asylum application before an authorized official in the premises of the Sector for Asylum within 72 hours.

(3) The foreigner who has expressed an intention shall be obliged to cooperate and to enable the police officer to obtain the data referred to in paragraph (2) of this Article.

(4) In the event the foreigner who has expressed intention cannot be fingerprinted for medical and other reasons, which he/she did not cause intentionally, the foreigner shall be obliged to enable the police officer to fingerprint him/her at the moment those reasons have ceased to exist.

(5) The police officers shall deliver the data about the foreigner who has expressed intention to the Sector for Asylum.

(6) Should the foreigner not act in accordance with the provisions referred to in paragraphs (2), (3) and (4) of this Article, he/she shall be treated in accordance with the regulations on foreigners.

Submission of an asylum application

Article 26

(1) The asylum procedure shall begin at the moment of submission of an asylum application by the applicant.

(2) 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 Sector for Asylum.

(3) In the event the application is submitted to the police at a border crossing point, at the nearest police station or in the Reception Centre for Foreigners, the police officer referred to in paragraph (1) of this Article shall escort the applicant to the Reception Centre for Asylum Seekers.

(4) An applicant who resides on the territory of the Republic of Macedonia shall submit an asylum application to the Sector for Asylum.

(5) In the events of family reunification, the application may be submitted to a diplomatic-consular representation of the Republic of Macedonia abroad.

Unlawful entry and residence in the Republic of Macedonia

Article 27

An applicant who has unlawfully entered or unlawfully resides on the territory of the Republic of Macedonia, and is coming directly from a country where his/her life or freedom were in danger as defined in Articles 5 and 9 of this Law, shall not be treated in accordance with the regulations on foreigners, provided that he/she immediately expresses intention or submits an asylum application, and if he/she gives an elaboration of the well-founded reason for his unlawful entry or residence.

Manner of submission of an asylum application

Article 28

(1) The asylum application shall be submitted in written or oral form with a transcript, in Macedonian language and its Cyrillic alphabet, or, if that is not possible, in the language of the country of origin, in some of the widely spoken foreign languages or in a language for which it can reasonably be presumed to be understood by the applicant.

(2) After the submission of the asylum application, the applicant will be photographed and fingerprinted.

(3) After the reception of the asylum application by the Sector for Asylum, an initial interview for registration of the applicant shall be conducted, by filling out a stipulated form.

(4) After the submission of the asylum application, the Sector for Asylum, within three working days, shall issue a certificate to the applicant containing a seal, number and date of submission, which certifies the applicant's status and proves that the applicant is allowed to stay on the territory of the Republic of Macedonia during the course of the procedure for his asylum application.

(5) In the event of failure to issue the certificate within the deadline referred to in paragraph (4) of this Article, the applicant shall have the right to file an appeal to the Sector for Asylum within 15 days since the expiration of the deadline.

(6) The head of the immediate higher organizational unit of the Ministry of Interior with authority competent for taking decisions on appeals shall decide upon the appeal referred to in paragraph (5) of this Article, within 15 days of the submission of the appeal.

(7) In the event of simultaneous submission of a large number of asylum applications, the deadline for issuing a certificate by the Sector for Asylum laid down in paragraph (4) of this Article may be extended by 10 working days.

(8) The Sector for Asylum within the Ministry of Interior shall notify the applicants in written and oral form, in a language they may reasonably be presumed to understand and within a deadline not longer than 15 days from the day of submission of the asylum application on the manner of conducting the asylum procedure, the rights and obligations of the applicants in that procedure, the possible consequences in the event that they fail to comply with their obligations and do not cooperate with the competent authorities, as well as about the reception conditions, the right to legal assistance, as well as the right to contact persons providing legal assistance, representatives of the High Commissioner for Refugees and non-governmental humanitarian organizations, in all phases of the procedure, wherever the applicants may be.

Article 30

(1) The applicant shall be obliged to submit the complete documentation at his/her disposal as soon as possible, and to present information regarding his/her age, family relations, identity, nationality, countries and places of former residence, previously submitted asylum applications, travel itineraries, identification and travel documents and reasons for submitting an asylum application.

(2) The Sector for Asylum shall examine the submitted asylum application separately, taking in consideration all facts and circumstances that are relevant to taking the decision, including:

- all relevant facts from various sources, such as the European Asylum Support Office (EASO) and the United Nations High Commissioner for Refugees (UNHCR) and relevant international human rights organizations, which pertain to the country of origin at the moment of taking a decision for the submitted application, including the laws and regulations in the country of origin and the manner in which they are applied;

- relevant statements and documentation presented by the applicant, including information about whether the applicant has been or may be subject to persecution or serious harm;

- the individual situation and personal circumstances of the applicant, including factors such as origin, sex and age, with the purpose of assessing whether, on the basis of the applicant's personal conditions, the acts to which he/she has been or may be exposed would amount to persecution or serious harm;

- whether the activities taken by the applicant, following his/her leaving of the country of origin, were taken for the sole purpose of creating the necessary conditions for submitting an asylum application, so as to assess whether those activities would expose him/her to persecution or serious harm, if he/she returns in that country; and

- whether the applicant could reasonably be expected to avail himself of the protection of another country where he/she could assert nationality;

(3) In the event the applicant does not support, by documented or other evidence, certain aspects of his/her statements and does not justify certain facts and circumstances regarding his/her application, the applicant's statement shall be considered credible if:

- the applicant has made a genuine effort to substantiate his/her application,

- all relevant elements at the applicant's disposal have been submitted, and a satisfactory explanation has been given regarding any lack of other relevant elements,

- the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case,

- the applicant submitted an asylum application at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and

- the general credibility of the applicant has been established.

Principle of non-refoulement

Article 14

(1) An applicant, a person with a refugee status or a person under subsidiary protection cannot be expelled or returned in any manner whatsoever to the frontiers of state:

- where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion; or
- where he/she would be subjected to torture, inhuman or degrading treatment or punishment.

(2) The prohibition referred to in paragraph (1), indent 1 of this Article shall not apply to a foreigner who constitutes a danger to the security of the Republic of Macedonia, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the citizens of the Republic of Macedonia.

(3) The foreigner referred to in paragraph (1), indent 2 of this Article who cannot enjoy the right to asylum in the Republic of Macedonia owing to the reasons referred to in Articles 8 and 10 of this Law, shall be allowed to remain on the territory of the Republic of Macedonia as long as the country of his nationality, or in the event of a stateless person, the country of former habitual residence, would be subjected to persecution, torture, inhuman or degrading treatment or punishment.

Legal assistance

Article 22

(1) The applicants shall have the right to legal assistance and clarification regarding the conditions and asylum procedure, as well as the right to free legal assistance in all phases of the procedure, in accordance with the regulations on free legal assistance.

(2) The applicants may, in all phases of the procedure, contact persons providing legal assistance and the representatives of the High Commissioner for Refugees.

(3) The representatives of the High Commissioner for Refugees shall be entitled to access to and contact with the applicants in all phases of the procedure, wherever they may be.

Regarding the question number 2 - The border policing is performed in accordance with the national legislation which to a large extent is already harmonized with the EU legislation in this area. Actions in all areas of the border policing including as well the illegal migration, are in line with the EU standards and with full respect for the fundamental rights. One of our priorities is protecting vulnerable categories of persons, including unaccompanied minors regardless of their formal status (asylum seekers, persons with illegal stay, victims of trafficking, etc.). In that direction, besides the relevant laws, fully are implemented the standard operative procedures as well- SOPs for dealing with children - foreigners and SOPs for dealing with persons of vulnerable categories - foreigners, that had been developed exactly with the purpose to reply to new migration trends in a more appropriate manner. When applying these procedures, the principles contained in

the Convention on the Rights of the Child are particularly respected, namely the principle of non-discrimination, the best interests of the child, confidentiality and the principle of non-refoulement.

The mechanism for redirection includes not only the Ministry of Interior (MOI), but all other relevant ministries, the Red Cross, as well the international and non-governmental organizations and associations.

In general, all persons with illegal stay (illegal migrants) are accommodated in facilities that are of open type. Temporary detention is imposed only as an extreme measure and is imposed on individual basis. Even in such cases, which are too less in reference to the total number of the illegal migrants, it is striven the detention to be only in exceptional circumstances and in shortest possible time. All persons without exceptions are allowed to full health care, complete medical, psychological and other necessary care.

Regarding the question number 3 – We inform you that unhindered access to the asylum procedure is provided for all persons who wish to apply for asylum.

In order to ensure this, every year officers in the Asylum Sector, train all police officers in charge of acting upon asylum application. At the same time, instructions are prepared for police officers on how to treat asylum seekers. Besides this, with the support of the Office of the High Commissioner for Refugees, information brochures and posters are prepared, which are delivered to the police stations of general competence and the regional centers, and are attached to visible places in order to enable unimpeded access to the asylum procedure.

In terms of question number 4 – Ministry of Interior acts only in accordance with the national legislation that is in compliance with the EU legislation.

Border control, including border surveillance, is performed in accordance with the Law on Border Control, where it is defined as "an activity carried out at the state border when crossing or intending to cross the state border in accordance with the objectives of this Law, which consists of border checks and border surveillance" (Article 3, paragraph 3). Pursuant to Article 3, paragraph 5 of the same Law, border surveillance is "surveillance of the state border between border crossings and surveillance of border crossings outside opening hours in order to prevent circumvention, i.e. avoiding border checks."

This definition is completely in line with the Community Code on the rules governing the movement of persons across borders (Schengen Code of Borders), whereupon in item 11, Article 2, border surveillance has been defined as "the surveillance of borders between border crossing points and the surveillance of border crossing points outside the fixed opening hours, in order to prevent persons from circumventing border checks".

In terms of question number 5 - The emergence of COVID-19 and the measures undertaken to suppress it have a major impact on all areas of border operations, including the situation with the illegal migration.

Since the beginning of the COVID-19 crisis, a number of measures have been undertaken to deal with the pandemic at national level. All undertaken measures have been aimed at protecting public health and protecting the life and health of all persons who are on the territory of the country, regardless of whether they are our citizens, foreign nationals with legal or illegal stay. In this regard, from the aspect of protection against COVID-19, the protocols for dealing with illegal migrants are the same as for our citizens (diagnosis of symptoms, epidemiological surveys, testing for COVID-19 if the conditions are being met, possible hospital treatment when needed, etc.).

There is a medical staff who, among the other things, has also been trained in the initial identification of the COVID-19 symptoms in all facilities where the detected illegal migrants are accommodated (Reception Centre for Foreigners - which is of closed type and under the jurisdiction of the Ministry of Interior and the two Temporary Transit Centers - which are of open type and under the jurisdiction of the Crisis Management Centre and the Ministry of Labour and Social Policy).

Additionally, in order to more effectively control the situation and reduce the risk of possible spread of the infection, at the 28th Session of the Government of the Republic of North Macedonia held on 25.03.2020, a conclusion was reached "in the period of the declared state of emergency due to the emergence of COVID-19 all new asylum seekers, as well as newly detected persons with unregulated stay on the territory of the Republic of North Macedonia, initially for a period of 25 days, to be quarantined in the Temporary Transit Center Vinograd - Gevgelija".

This conclusion, adopted at the proposal of the Ministry of Labour and Social Policy, does not mean preventing or obstructing the access of persons to the mechanism of international protection, the access to the right to apply for an asylum has been unimpeded, and its action is continuously implemented in practice, which is confirmed by the statistical data for 2020.

In terms of question number 6 - Indicators or challenges faced by the governmental institutions or civil society organizations and individuals in protecting the human rights of migrants at international borders, including those in distress at sea and in situations where pushbacks or pullbacks are likely to take place - we inform that the treatment of migrants is in accordance with the national legislation, always emphasizing and prioritizing the protection of human rights. As a continental country, Republic of North Macedonia has no „blue borders,,