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Introduction

The project "Legal Status and Protection of Internationally Displaced Persons, Refugees, Asylum Seekers and 'Invisible' Persons without IDs" is a project of the South East European Law School Network implemented by the Faculty of Law of the University of Niš (Serbia), as the project lead, and Faculty of Law, University of Zenica (Bosnia and Herzegovina), Iustinianus Primus Faculty of Law, Ss. Cyril and Methodius University of Skopje (North Macedonia) and Faculty of Law, Josip Juraj Strossmayer University of Osijek (Croatia) as project partners.

Within the project the national experts involved developed a *A Guide to Good Practice* where the national reports explain the legal position of these persons as regulated by different branches of law (e.g. Public International Law, Private International Law, Social Protection and Labour Law, Human Rights, European Law and related asylum policy, etc).

Having in mind the scientific approach to the development of the national reports the Editorial Board of the SEE Law Journal decided the guide to good practices in the English language to be published as a special issue of the journal. The *Guide to Good Practice* will also be published in a version of the language of the authors by the project consortium.

We strongly believe that by publishing the *Guide to Good Practice* in the SEE Law Journal we will contribute to better understanding of the position of the Internationally Displaced Persons, Refugees, Asylum Seekers and 'Invisible' Persons without IDs and improving the national policies.

Prof. Dr. Neda Zdraveva

Editor-in-chief

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NATIONAL REPORT

For more than 30 years since the independence of North Macedonia, the legal framework for the protection of refugees has been constantly the subject matter of its shaping, regulating and harmonising with the international instruments adopted by the OUN and the Council of Europe, as well as with the EU law.⁴²⁴

The basic law that, *inter alia*, regulates the legal status and duties of asylum seekers and persons granted the right to asylum in North Macedonia is the Law on International and Temporary Protection.⁴²⁵ This law also governs the labour and social security law status of three categories of persons, who are the subject matter of analysis in this report, and they are: asylum seekers, persons with recognised refugee status and persons with recognised status under subsidiary protection. The status of these persons, from the aspect of labour and social rights, is further regulated by several special laws (Law on Employment Relationships⁴²⁶, Law on Employment and Work of Aliens⁴²⁷, Law on Employment and Insurance in the event of Unemployment⁴²⁸, Law on Healthcare insurance⁴²⁹, Law on Social Welfare⁴³⁰, Law on the Protection of the Rights of the Child⁴³¹, etc.), and also of the by-laws (Strategy on Integration of Refugees 2008–2015⁴³², Resolution on the Migration Policy in the Republic of Macedonia 2015–2020 with the Action Plan for the Migration Policy of the Republic of Macedonia 2015–2020⁴³³).

The fundamental rights in the area of labour law and social law that belong to asylum seekers up to the moment of issuing the final decision in the procedure for the recognition of the right to

⁴²⁴ In the entire past period, Macedonia has faced challenges related to coping with several refugee crises. These are: crisis 1991 after the events in Albania, resulting in taking care of 1,200 people; crisis 1992 in military activities in Bosnia and Herzegovina; Kosovo and Metohija crisis 1999, after which North Macedonia took care of over 360,000 people; civil armed conflict in 2001, where 86,954 internally displaced persons were registered, and the migrant crisis 2015, where over 400,000 refugees passed through North Macedonia on their way to west European countries.

⁴²⁵ See: 3 Law on Asylum and Temporary Protection, *Off. Gazette of the RM*, no. 64 of 11.4.2018). The Law on Asylum and Temporary Protection (hereinafter: LATP) replaces the previous Law on Asylum and Temporary Protection, which had been applied by entering into force of the Law on Asylum and Temporary Protection 2018.

⁴²⁶ *Official Gazette of the Republic of Macedonia*, no. 62, 2005.

⁴²⁷ *Official Gazette of the Republic of Macedonia*, no. 217, 2015.

⁴²⁸ *Official Gazette of the Republic of Macedonia*, no. 37, 1997.

⁴²⁹ *Official Gazette of the Republic of Macedonia*, no. 25, 2000.

⁴³⁰ *Official Gazette of the Republic of Macedonia*, no. 104, 2019.

⁴³¹ *Official Gazette of the Republic of Macedonia*, no. 23, 2001.

⁴³² About that, see: Government of the RM, Ministry for Labour and Social Policy, *Strategy for the integration of refugees and aliens in the Republic of Macedonia 2008–2015*, December 2008.

⁴³³ *Official Gazette of the Republic of Macedonia*, no. 8, 2016.

asylum are the *right to basic healthcare services*, according to the regulations on healthcare insurance; *social welfare*, in accordance with the regulations on social welfare, and the *right to work within accommodation centres*, as well as the *right to free access to labour market* no longer than nine months from lodging an application for the recognition of asylum.⁴³⁴

Persons with recognised refugee status generally have the same rights and duties as the nationals of North Macedonia in the domain of labour and social rights. Within the framework of labour law, refugees may perform activities and establish employment relationship in the same way as the nationals of North Macedonia. The only exception from this general right occurs in a case provided for by this law, and whereby, as a condition, the person is required to have the North Macedonia nationality.⁴³⁵ It refers to the workplaces in the public sector, which is regulated by a special law providing for the RNM nationality as a general requirement for establishing employment relationship.⁴³⁶

Besides the equal right to work, refugees, comparing to the RNM nationals, have the same right to employment relationship (regulated by the Law on Employment Relationship and Collective Labour Agreements).

In the domain of social rights, refugees have the same access to the right to healthcare, pension and disability insurance in case of unemployment as well as the RNM nationals, according to the special laws (Law on Pension and Healthcare Insurance, Law on Healthcare Insurance, and Law on

Employment and Insurance in case of Unemployment). Before acquiring the capacity of an insured person, in compliance with the Law on Healthcare Insurance, a person with refugee status has the right to health care under the same conditions as the RNM nationals.⁴³⁷ From the date of delivery the decision on the recognition of refugee status, the person with refugee status is made equal with the RNM nationals, as well as in relation to exercising the rights to social welfare, laid down by the Law on Social Welfare.⁴³⁸

The status of persons under subsidiary protection is formally made equal to the status of aliens granted temporary residence in the territory of the RNM.⁴³⁹ Persons under subsidiary protection enjoy the rights in the domain of labour law (right to work, and access to labour market), identical to persons with the recognised refugee status, but the difference is that the former obtain a work permit issued for a period of one year and it is renewed, while the latter can obtain a work permit valid for an indefinite period.⁴⁴⁰ Persons under subsidiary protection also exercise their rights in the domain of social rights (social security, including also health care and social welfare).

The actual access to the labour market, i.e. employment of persons under subsidiary protection and temporary protection also depends on the concrete measures that are an integral part of the integration process of these persons in North Macedonia. The integration process of refugees in North Macedonia is realised in accordance with the Strategy on Refugees and Aliens 2008–2015 and the National Action Plan (NAP) 2009. In 2017, the Draft Strategy for the Integration of Refugees and Aliens 2017–2027 was drafted, which has not been adopted by the RNM Assembly

⁴³⁴ About that, see: The LATP, art. 61 para 1

⁴³⁵ About that, see: The LATP, art. 68 para 1

⁴³⁶ For example, the general requirement for applying for a job of an administrative servant is that the applicant is the national of the RN Macedonia (Law on Administrative Servants).

⁴³⁷ About that, see: The LATP, art. 72.

⁴³⁸ About that, see: The LATP, art. 71.

⁴³⁹ The LATP, art.77 para 2

⁴⁴⁰ About that, see: The Law on Employment and Work of Aliens, art. 10 paras. 1 and 9.

even after five years of its drafting. The reasons for the non-adoption of the proposed Strategy are political by nature.⁴⁴¹ In any case, just as the previous, so the new Strategy points out the context of local integration as one of the most significant permanent solutions in relation to the refugees in North Macedonia. One of the most significant sectors for supporting the integration of refugees in North Macedonia is to provide free access to employment to these persons. Even though persons under international and temporary protection formally have the right to free access to the labour market, in reality asylum seekers are faced with restrictions in exercising these rights during the process of recognising the right to asylum. The procedure for realising the right to asylum can take longer than the legally stipulated nine months (e.g., if the asylum seekers asylum application is rejected and the procedure for exercising the right has been initiated before the competent court, which may take for more than two years).⁴⁴² In that case, the asylum seeker can be faced with real problems at the labour market and with a legal vacuum, arising from the restrictions laid down by the Law on Employment and Work of Aliens. Namely, according to the Law on the Employment and Work of Aliens, ID card number and personal identification number for aliens are listed among other data collected by the RNM Employment Agency for issuing a work permit (necessary for registering at the Agency).⁴⁴³ If such persons do not have a personal identification number, the Agency ascertains that there is no legal basis and possibility to issue a work permit to such alien, including an asylum seeker as well. The Ministry of Internal Affairs (Asylum Sector), however, does not issue a personal identification number to a person whose asylum application has been rejected, no matter if the procedure has been initiated for that person before the competent Court⁴⁴⁴. All that makes integration of such persons into Macedonian society difficult. The Draft Strategy for the Integration of Refugees and Aliens 2017–2027 provides for making refugees equal to Macedonian nationals and their inclusion as a group into the active measures within the National Employment Programme.⁴⁴⁵ The Strategy foresees several action points to facilitate employment of refugees.

The goal of the **first action point** is to develop cooperation with the local self-government, the Employment Agency, and other key factors for the purpose of finding solutions for sustainable employment and concrete actions for the provision of professional trainings. The functionality of cooperation depends on its decentralisation (e.g. if housing solutions for refugees are transferred to the local level, then the employment initiatives must be placed within the framework of the same municipality.)

The **second action point** refers to the enhancement of the current employment programmes, which in order to include concrete measures for the whole target group. In 2009, the Ministry for

⁴⁴¹ By the end of July 2017, the Parliamentary Commission for Labour and Social Policy included in its agenda the discussion on the proposed Strategy for the Integration of Refugees and Aliens. At several sessions, the Commission discussed the “issues” announced by the Strategy proposal, *inter alia*, the proposal to build social apartments for thousands of refugees that would settle down in the Republic of Macedonia. Then, some “facts” were also presented that refugees were detrimental to the state, that the state put refugees and migrants before its citizens, reminding about detrimental consequences that would be caused by refugees during their transit through the country, that they represented danger for the citizens and that they would contribute to the rise of crime rate. (See: Helsinki Committee, *Godišen izveštaj za 2017. za pravata na begalcite, migrantite i baratelite na azil vo Republika (Annual report 2017: Rights of refugees, migrants and asylum seekers in the Republic of Macedonia)*, https://mhc.org.mk/wp-content/uploads/2019/05/Help_On_Route_-_MK__3_.pdf. Accessed 20. 6. 2021).

⁴⁴² About that, see: Cvetanovska, A, *Tekovni predizvici za integracijata na begalcite, migrantite i baratelite na azil prosledena so diskriminacija, ksenofobija i krivični dela od omraza*, Makedonsko združenie na mladi pravnici, septembra 2020, p. 13.

⁴⁴³ About that, see: Law on the Employment and Work of Foreigners, art. 21 paragraph 2 item 4.

⁴⁴⁴ Cvetanovska, A, *op. cit.*, p.15.

⁴⁴⁵ Stamenkovski, A and Sofijanov, B, *Kvartalen monitoring izveštaj za politikite i uslugite za migrantite na teritorija na Opština Gevgelija (oktomvri 2017–oktomvri 2018)*, p. 11.

Labour and Social Policy and the Employment Agency, in cooperation with the UNHCR, started to apply special programmes for the employment of refugees. The programme is focused to three models as the most suitable ones for providing sustainable opportunities for employment: self-employment model, measures for subsidised employment, and acquiring professional skills through professional trainings and courses.

The self-employment model provides financial support to refugees who want to start up as sole traders. In the starting period, the programme supports opening ten small and medium enterprises in the area of crafts, such as carpentry, welding, etc. Besides the wide scope of support for sole traders, none of the projects has been a success. A significant number of this target group were self-employed in the country of origin, but the majority of them were part of grey economy, which does not employ formal skills in business management. Henceforth, the main causes why these programmes have failed are the lack of skills for business operations, advanced knowledge for work, and capacities in coping with administrative procedures, as well as uncertainties related to the issuance of a new identity card by the Ministry of Internal Affairs. The model of subsidised employment proved more successful than the self-employment model, particularly in the combination with the model of acquiring professional skills. The measures consist of the provision of financial support for covering the gross salaries to persons of the target group in the duration of six months, with the employer's obligation to extend an employment agreement for a two-year period. Before starting a subsidised employment, the refugees go through a professional training at the workplace with the same employers.

Professional trainings are essentially significant in the implementation of a sustainable basis for future employment opportunities. Most trainings are implemented according to the “Professional development programme with a known employer” model, and then the same “known employer” offers employment agreements to those who attend such trainings.

The purpose of the third action point is to facilitate a full approach to the current measures and programmes by the Employment Agency to the target group. In that way, primarily, a method for providing a work permit to the persons with recognised refugee status and persons under subsidised protection is created.

The fourth action point refers to the recognition of the model for a facilitated access to labour market to certain members of the target group and vulnerable categories (e.g. women with juvenile children, older persons, persons with disabilities). For the purpose of providing support to the employment of women, the measures for enrolling refugee children in kindergartens and pre-school education are taken. The other vulnerable groups are not included in the special measures.

The fifth action point is focused to the proposal of alternative models intended to providing trainings and creating formal workplaces, thereby integrating the target group into the local community. An example of such model is development of social entrepreneurship.

The Draft Strategy for the Integration of Refugees and Aliens 2017–2027 also foresees several action points referring to the mechanisms for the **recognition of their qualifications**. Such is, for instance, the mechanism for evaluating professional skills of adults, which results in an official recognition and official certification of qualifications. This mechanism is, above all, intended for persons who attained some form of qualification or education in the country of origin, and aimed at their adequate registration with the Employment Agency. In this direction, the Workers University in Skopje offered special methods of testing and acquiring appropriate certificates for crafts, e.g. carpentry, masonry, welding, hairdressing and the like. Certificates issued by the

Workers University are recognised at the national level and officially by the Employment Agency, thus facilitating the access to labour market and employment programmes.

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NATIONAL REPORT

1. Access of persons under international protection to the labour market

Exercising the right to work and the work-related rights is significantly made complex by the fact that the issue of labour legislation is within the jurisdiction of the entities of the FBiH, RS and the Brčko District BiH, meaning that many issues in this field are legally regulated in different ways. Yet, it is worth mentioning that BiH as a signatory state to relevant international instruments, guarantees the right to work and the prohibition of forced labour as a significant aspect of the right to work, which also refers to migrants. The right to work and the prohibition of forced work are found as the human rights guaranteed by the constitutions in force in BiH.⁴⁴⁶

The right to work is exercised primarily according to the basic labour law regulations in the area of:

- Labour laws: Labour Law of the FBiH⁴⁴⁷, Labour Law of the RS⁴⁴⁸, Labour Law of the BDBiH⁴⁴⁹
- Laws on mediation in employment: Law on Mediation in Employment and Social Security of Unemployed Persons of the FBiH⁴⁵⁰, Law on Mediation in Employment and the Rights during Unemployment of the RS⁴⁵¹, Law on Employment and the Rights during Unemployment of BDBiH⁴⁵².
- Law on the Prohibition of Discrimination⁴⁵³.

The right to work of regular migrants is exercised on the basis of the Rulebook on the manner of the realisation of the right to work of persons under international protection in Bosnia and Herzegovina, adopted by the Ministry for Human Rights and Refugees 2017.⁴⁵⁴ The personal scope of application of the Rulebook is limited to persons with the regular migrant status (persons granted refugees status by the final decision of the Ministry of Security of BiH and persons granted subsidiary protection by the final decision of the Ministry of Security of BiH) and

⁴⁴⁶ The BiH Constitution does not provide for the explicit right to work, but the prohibition of forced and compulsory labour (article II(3)(c) of the BiH Constitution); the FBiH Constitution provides for the freedom to work (Part II, article 2(I)); the RS Constitution regulates various aspects of the right to work in more detail (right to work, prohibition of forced labour, free choice of occupation and employment, possibility of the employment relationship termination only under conditions laid down by the law, and the right to remuneration – article 39 of the RS Constitution).

⁴⁴⁷ *Official Gazette of the FBiH*, no. 26, 2016; 89, 2018 and 23, 2020 – decision of the Constitutional Court.

⁴⁴⁸ *Official Gazette of RS*, no. 1, 2016 and 66, 2018.

⁴⁴⁹ *Official Gazette of BDBiH*, no. 34, 2019 and 2, 2021.

⁴⁵⁰ *Official Gazette of the FBiH*, no. 41, 2001; 22, 2005; 9, 2008.

⁴⁵¹ *Official Gazette of RS*, no. 30, 2010; 102, 2012; 94, 2019.

⁴⁵² *Official Gazette of BDBiH*, no. 33, 2004; 19, 2007; 25, 2008.

⁴⁵³ *Off. Gazette of BiH*, no. 59, 2009; 66, 2016.

⁴⁵⁴ *Off. Gazette of BiH*, no. 52, 2017.