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CONTENTS

Introduction	3
--------------------	---

I INTERNATIONAL LEGAL STATUS AND THE PROTECTION OF FORCED MIGRANTSII LABOUR LAW AND SOCIAL INSURANCE

Nebojša Raičević Definition of Refugee in International Law.....	8
Dunja Duić Legal Status and the Protection of Internationally Displaced Persons/Migrants/Asylum Seekers/Refugees and Legally “Invisible” persons, i.e. Stateless Persons in the EU.....	18
Enis Omerović International Law Principles for the Protection of Irregular Migrants with Bosnia and Herzegovina’s Social Characteristics.....	26

II LABOUR LAW AND SOCIAL INSURANCE

CROATIA Helga Špadina National Report.....	50
SERBIA Ivana Simonović National Report - The Right to Health and Health Care of Migrants.....	60
Marija Dragićević National Report - Labour Law and Social Insurance.....	77
NORTH MACEDONIA Aleksandar Ristovski National Report.....	91
BOSNIA AND HERCEGOVINA Ivana Grubešić National Report.....	96

III HUMAN RIGHTS AND ANTIDISCRIMINATION LAW

CROATIA <i>Right of Access to Justice</i> Paula Poretti National Report.....	110
---	-----

<i>Trafficking in Human Beings and Human Smuggling</i>	
Mirjana Kondor Langer	
Lana Kovačić Markić	
National Report.....	120
 <i>Administrative-Legal and Administrative-Judicial Aspects of International Protection of Asylum Seekers and Human Smuggling</i>	
Ana Đanić Čeko	
National Report.....	136
 SERBIA	
<i>Right of Access to Justice</i>	
Nevena Petrušić	
Anđelija Tasić	
National Report.....	148
 <i>Trafficking in Human Beings and Human Smuggling</i>	
Ivan Ilić	
National Report.....	161
 <i>Administrative-Legal and Administrative-Judicial Aspects of International Protection of Asylum Seekers and Human Smuggling</i>	
Dejan Vučetić	
Miloš Prica	
National Report.....	172
 NORTH MACEDONIA	
<i>Right of Access to Justice</i>	
Milka Rakočević	
National Report.....	202
 <i>Trafficking in Human Beings and Human Smuggling</i>	
Aleksandra Gruevska Drakulevski	
National Report.....	211
 <i>Administrative-Legal and Administrative-Judicial Aspects of International Protection of Asylum Seekers and Human Smuggling</i>	
Ivana Šumanovska Spasovska	
National Report.....	220
 BOSNIA AND HERCEGOVINA	
<i>Right of Access to Justice</i>	
Dženana Radončić	
National Report.....	234
 <i>Trafficking in Human Beings and Human Smuggling</i>	
Nezir Pivić	
National Report.....	258

*Administrative-Legal and Administrative-Judicial Aspects of International
Protection of Asylum Seekers and Human Smuggling*

Senada Zatagić

Maša Alijević

National Report.....264

IV INTERNATIONAL PRIVATE LAW

CROATIA

Legal Framework

Mirela Župan

Martina Drventić

National Report.....276

SERBIA

Legal Framework

Sanja Marjanović

National Report.....293

NORTH MACEDONIA

Legal Framework

Toni Deskoski

Vangel Dokovski

National Report.....310

BOSNIA AND HERCEGOVINA

Legal Framework

Larisa Velić

National Report.....317

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NATIONAL REPORT

This report provides an overview of the legal solutions in the Republic of North Macedonia on the project topic. The legal framework includes the Private International Law Act of 2020¹⁴¹⁷, the International and Provisional Protection Act of 2018¹⁴¹⁸, and the Act on Legalization of Public Documents in International Affairs of 2012¹⁴¹⁹. Given the lack of accessible practice of the competent authorities in North Macedonia, the national report was prepared based on an analysis of the applicable legal solutions. North Macedonia, as a transit country, is not the country of destination of internationally displaced persons, refugees, asylum seekers and other “invisible” persons without identification documents (IDs).

I. Legal framework

1. The International and Provisional Protection Act (2018)

1.1. Introduction

In North Macedonia, foreigners who are persecuted by their country of origin may be granted protection (asylum) in compliance with the ratified international agreements, as well as the domestic sources of law.

The Constitution of the Republic of North Macedonia (Article 29, para. 2) prescribes that: “The Republic guarantees the right of asylum to foreign subjects and stateless persons persecuted for their democratic beliefs, political convictions and activities. “

In the context of this national report, the issues of interest were first addressed in the International and Provisional Protection Act (2018). First of all, this legislative act provides

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¹⁴¹⁷ Закон за меѓународно приватно право, „Службен весник на Република Северна Македонија“ бр. 32/2020./Private International Law Act (PIL Act), *Official Gazette of the Republic of North Macedonia*, no. 32/2020.

¹⁴¹⁸ Закон за меѓународна и привремена заштита, „Службен весник на Република Македонија“ бр. 64/ 2018/ International and Provisional Protection Act, *Official Gazette of the Republic of Macedonia* no. 64/2018.

¹⁴¹⁹ Закон за легализација на јавните исправи во меѓународниот сообраќај, „Службен весник на Република Македонија“ бр. 74/2012./Act on Legalization of Public Documents in International Affairs, *Official Gazette of the Republic of Macedonia*, no. 74/2012.

definitions of terms used in this Act. For this national report, the following terms are particularly relevant:

- "Family members" shall mean a spouse, provided that the marriage was concluded before the arrival in the Republic of Macedonia, an unmarried partner, minor children who are not married, parents of minor children, provided that the minor children have been granted the right to asylum, or another adult in accordance with the law.¹⁴²⁰
- A "minor" shall mean a foreigner who has not reached the age of 18.¹⁴²¹
- An "unaccompanied minor" shall mean a foreigner under the age of 18, who enters the territory of the Republic of Macedonia without being accompanied by a parent or guardian, or is left unaccompanied after entering the territory of the Republic of Macedonia, or who is deprived of effective care.¹⁴²²
- "Country of origin" shall mean the country whose nationality is held by a foreigner or, in case of stateless persons, the country of former habitual residence.¹⁴²³

1.2. The legal status of asylum seekers regulated by the International and Provisional Protection Act (2018), observed from the perspective of Private International Law

The conditions and procedure for the acquisition and termination of the right to asylum of a foreigner or a stateless person, as well as the rights and duties of applicants (asylum seekers) and persons who have been granted the right to asylum in the Republic of Macedonia, are regulated by the International and Provisional Protection Act (2018)¹⁴²⁴, which replaced the former Asylum and Temporary Protection Act (2007). The new International and Provisional Protection Act was drafted based on accepted international standards, and it is aimed at improving the legal status of refugees. This comprehensive legislative act regulates various protection aspects, including the right to family reunification which is fairly important in Private International Law.

The Act distinguishes three categories of persons who may seek protection in the Republic of Macedonia: (a) a recognized refugee; (b) a person under subsidiary protection¹⁴²⁵, and (c) a person under temporary protection.¹⁴²⁶

The legal status of a **recognized refugee** is granted on the basis of the 1951 Convention relating to the Legal Status of Refugees, and the 1967 Protocol on the Legal Status of Refugees. **A person under subsidiary protection** is an alien who does not qualify as a person with refugee status; the Republic of Macedonia will recognize such person's right to asylum and allow him/her to remain within its territory, as there are reasons to believe that the person is likely to face a real risk of sustaining serious injuries if he/she returns to the country of origin (of which he is a national), or to the country of person's previous habitual residence in case he/she is a stateless person.

¹⁴²⁰Article 2 (para. 1, item 9), International and Provisional Protection Act (2018).

¹⁴²¹Article 2 (para. 1, item 10), International and Provisional Protection Act (2018).

¹⁴²²Article 2 (para. 1, item 11), International and Provisional Protection Act (2018).

¹⁴²³Article 2 (para. 1, item 12), International and Provisional Protection Act (2018).

¹⁴²⁴International and Provisional Protection Act, "Official Gazette of the Republic of Macedonia" no. 64/2018

¹⁴²⁵The category "person under subsidiary protection" was introduced by the amendments to the Asylum and Provisional Protection Act (2007). Previously, that Act provided for another category - "person under humanitarian protection", but this category was abolished by legal amendments in 2008.

¹⁴²⁶Pursuant to Article 2 of the International and Provisional Protection Act (2018)

Serious injuries include the death penalty or execution; torture or inhuman or degrading treatment or punishment; serious and individual threats to life or personality of a civilian; indiscriminate violence in cases of international or internal armed conflict.¹⁴²⁷ **"Temporary protection"** is granted in a special procedure in the event of a mass influx or an imminent threat of a mass influx of displaced persons from third countries, in case the displaced persons are unable to return to their country of origin, and especially if there is a risk that the asylum procedure cannot be implemented in the interest of the displaced persons and other persons seeking international protection due to the mass influx.¹⁴²⁸

1.2.1. Personal status

The International and Provisional Protection Act provides a number of standards in terms of the legal status of recognized refugees. The personal status (legal and contractual capacity) of a recognized refugee is an issue that is not regulated in the International and Provisional Protection Act. Although the title of Article 67 is "personal status and the right of residence", Article 67 of this Act contains only one provision on the status of refugees, according to which persons with a refugee status have the right to reside in the territory of the Republic of Macedonia. For inexplicable reasons, the legislator failed to regulate their personal status, unlike the previous legislative act on this matter, which provided for the application of domestic law in regulating personal status. By failing to regulate this issue, the legislator has inadvertently created a situation in which the court (and the enforcement body) will have to apply the national PIL Act to determine the legal and contractual capacity of recognized refugees.

1.2.2. Family reunification

The right to family reunification has special significance for the legal status of recognized refugees, and persons under subsidiary protection. Upon their request, the members of the nuclear family of a person with refugee status and a person under subsidiary protection shall be subject to the procedure for recognition of their right to asylum. The members of the nuclear family are considered to be the spouse (provided that the marriage was concluded before the arrival to the Republic of North Macedonia), the unmarried partner, minor children who are not married, the parents of minor children (provided that minor children have been granted asylum), and other persons in accordance with the law. The person with a refugee status shall acquire the right to reunification with the members of the nuclear family only after being granted the refugee status, while the person under subsidiary protection shall acquire the right to family reunification two years after he/she has been granted the status of a person under subsidiary protection.¹⁴²⁹

1.2.3. Conclusion

Based on the analysis of the cited legal solutions, it can be concluded that the domestic legislation of the Republic of North Macedonia, in terms of the legal status of refugees, fully corresponds to the commitments undertaken by accession to the 1951 Convention relating to the Legal Status of Refugees (the Refugees Convention, 1951) and the 1967 Protocol relating to the status of refugees. Moreover, in terms of certain rights, the minimum standards prescribed in

¹⁴²⁷Article 9 of the International and Provisional Protection Act (2018).

¹⁴²⁸Article 2 (para.1, item 3), International and Provisional Protection Act (2018).

¹⁴²⁹See: Article 16 of the International and Provisional Protection Act (2018).

international law have been exceeded. Thus, from the date of delivery of the decision on the recognition of the status of a person under subsidiary protection, persons under subsidiary protection shall be equal with the citizens of the Republic of North Macedonia in terms of exercising social protection rights prescribed in the Social Protection Act; they may also exercise the right to healthcare protection under the same conditions as the citizens of the Republic of Macedonia until they acquire the status of an insured person in accordance with the Health Insurance Act. Persons under subsidiary protection have the same rights and obligations as the foreigners who have been granted a temporary residence in the territory of the Republic of North Macedonia.¹⁴³⁰ The persons who have been granted the right to temporary protection are regarded as a special category of protected persons. The Government may grant temporary protection to this category of persons in the event of a mass influx of persons coming directly from a country where their lives, security or liberty have been endangered by war, civil war, occupation, internal conflict accompanied by violence, or mass violations of human rights. In the Republic of North Macedonia, temporary protection shall be granted for a period of one year. The total duration (period of validity) of temporary protection shall not exceed three years.¹⁴³¹

2. Private International Law Act (2020)

For a person to be able to obtain the appropriate status, there is often a need to establish his/her personal status (legal and contractual capacity), determine the person's marital status acquired abroad, and provide adequate protection. It often leads to the application of foreign law as the applicable law in certain relations which are directly related to the person's status. As for the categories of persons who are the subject matter of interest in this report, the applicable law is general conflict-of-law rules contained in the Private International Law Act. For these reasons, this part of the report provides an overview of the relevant legal provisions of the Private International Law Act of the Republic of North Macedonia (2020).

2. 1. Establishing legal and contractual capacity

As previously noted, the International and Provisional Protection Act lacks a definition of the personal status of persons covered by this Act. In practice, the legislator's omission to provide this definition is overcome by invoking the conflict-of-law rules contained in the Private International Law Act (hereinafter: the PIL Act). According to the PIL Act of North Macedonia, the legal capacity of a natural person is governed by the law of the state of origin (of which the person is national).¹⁴³² In terms of contractual capacity, the applicable law is again determined by the law of the state of which the person is a citizen.¹⁴³³

A problematic situation may arise in case the person whose personal status is being regulated in North Macedonia has no documents which may be used for establishing his/her citizenship, or in case the person does not have a nationality, or in case the person's nationality cannot be established.

¹⁴³⁰See: Articles 76 and 77, International and Provisional Protection Act (2018).

¹⁴³¹See: Article 82, International and Provisional Protection Act (2018).

¹⁴³²See: Article 15 of the Private International Law Act (PIL Act).

¹⁴³³See: Article 16 of the PIL Act.

In these cases, as well as in all cases where the connecting factor is nationality (which either cannot be established or which the person does not have), the applicable law is determined through subsidiary connecting factors in accordance with Article 5 of the PIL Act. Thus, if the person does not have nationality or his/her nationality cannot be established, the applicable law is determined according to the person's place of habitual residence. If the person has the status of a refugee, the applicable law is determined according to the law of one's state of habitual residence. However, if these persons do not have a place of habitual residence, or if it cannot be established, the applicable law is determined according to their place of residence.

The Private International Law Act includes an autonomous definition of habitual residence. The habitual residence of a natural person is considered to be the place where the person has established a permanent centre of life activities, where a person is not required to fulfil any formality related to applying for or obtaining a residence permit from the competent state authorities. In determining the place of habitual residence, particular consideration shall be given to personal or professional circumstances arising from the person's permanent relationship with that place or the person's intention to create such a relationship.¹⁴³⁴ The characterisation of the habitual residence and residence is performed in accordance with the law of North Macedonia.

2.2. Placing a person under guardianship and provisional protection measure

To provide adequate protection to persons who should be placed under guardianship or provisional protection measures, the Private International Law Act contains a special conflict-of-law rule for determining the applicable law. Thus, according to Article 18 of the PIL Act of North Macedonia regulating legal guardianship and termination of the guardianship, as well as the relationship between the guardian and the protégé (protected person), the applicable law is the law of the state of which the protégé is a national. As for provisional protection measures aimed at foreign nationals and stateless persons present in the territory of North Macedonia, they are determined according to the law of the Republic of North Macedonia, and they are valid as long as the competent state renders a decision on this matter and takes the necessary measures. However, under Article 5 of the PIL Act, if the person does not have nationality or of his/her nationality cannot be determined, the connecting factor (nationality) is replaced either with habitual residence or with residence.

In terms of jurisdiction, the competent court or authority of the Republic of North Macedonia shall take the necessary provisional measures for the protection of the personality, rights and interests of a foreign national who is present or has property in North Macedonia.¹⁴³⁵

2.3. Establishment and application of foreign law

In North Macedonia, foreign law is treated as the "law" arising from the obligation of the court and other state bodies to apply *ex officio*.¹⁴³⁶ Thus, in civil law relations involving a foreign element the judge is obliged to apply the domestic conflict-of-law rule *ex officio*, to determine the applicable law and to establish the content of the foreign substantive law.

¹⁴³⁴See: Article 6 of the PIL Act.

¹⁴³⁵See: Article 126 (para. 2) of the PIL Act.

¹⁴³⁶See: Article 9 (para. 1) of the PIL Act.

Pursuant to Article 9 (para. 2) of the PIL Act, the competent court or other state body has the authority to determine the content of the applicable foreign law in accordance with the international treaties, and they may also request information on the content of the relevant foreign law from the competent state administration body in charge of judicial affairs.¹⁴³⁷ The PIL Act of North Macedonia also envisages the possibility of active participation of the parties in the process of establishing the content of the applicable foreign law. Thus, the parties to the proceedings may submit a public document or an expert opinion on the content of foreign law, which are not binding on the court. When the content of foreign law cannot be determined, the applicable law is *lex fori* (the law of the Republic of North Macedonia). Under the PIL Act of North Macedonia, the non-application or misapplication of the applicable foreign law is explicitly the legal ground for pursuing a legal remedy.¹⁴³⁸

3. Legalization of foreign public documents

In order to be used in North Macedonia, a foreign public document has to be legalized. Pursuant to the Civil Procedure Act of 2005, a public document means any document issued in a prescribed legal form by a competent body acting within the scope of its authorities, as well as any document issued in such a form by an organization or other institution which has been vested with the public authority, either by law or by a decision of a municipal body based on law.¹⁴³⁹

The use of public documents is regulated by the Act on the Legalisation of Public Documents in International Affairs (2012). Documents issued abroad may be used in the Republic of North Macedonia only if they are certified in accordance with the law of the respective state. The documents issued abroad are not subject to certification if, based on the principle of reciprocity, the documents issued by the Republic of North Macedonia are not subject to certification in the respective state. The foreign public documents which are subject to certification may be used in the Republic of North Macedonia if they are certified by the Ministry of Foreign Affairs or a diplomatic and consular mission of the Republic of North Macedonia abroad.¹⁴⁴⁰ If the competent authority which has been submitted a document issued abroad has some doubts about the authenticity of the submitted document, it shall file a request to the Ministry of Foreign Affairs to verify whether the document was issued by the body specified therein.¹⁴⁴¹ The Republic of North Macedonia is a member of the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (1961); thus, the Convention rules are applicable in case there is a need to abolish unnecessary certification.

II. Conclusion

To obtain certain rights that are directly related to the legal status of persons that are subject to analysis in this national report, it is often necessary to apply the rules of Private International Law. The main problem arising in these situations is how to determine the applicable law in case the person does not have documents that may prove his/her status in the country of origin

¹⁴³⁷See: Article 9 (para. 2) of the PIL Act.

¹⁴³⁸See: Article 10 (para. 2) of the PIL Act.

¹⁴³⁹See: Article 215 (para.1) of the Civil Procedure Act, (2005).

¹⁴⁴⁰See: Article 4 of the Act on the Legalisation of Public Documents in International Affairs (2012).

¹⁴⁴¹See: Article 5 of the Act on the Legalisation of Public Documents in International Affairs (2012).

(regardless of the reason why the person does not have the documents). In the Republic of North Macedonia, general conflict-of-law rules contained in the Private International Law Act (2005) are applied in such circumstances. In case the applicable law cannot be determined by means of nationality as a connecting factor, the applicable law is the law of the state of the habitual residence.

In North Macedonia, there is no practice regarding the application of PIL rules in determining the status of foreign nationals. There are no records on exercising the right to family reunification, nor on the recognition of the status acquired abroad. Given the lack of such cases, the Republic of North Macedonia has been classified as a transit country.