UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR Annotated Comments on the

Proposed Law on International and Temporary Protection

Skopje, January, 2018

I N T R O D U C T I O N

I. ASSESSMENT ON THE SITUATION IN THE AREA TO BE REGULATED WITH THE LAW AND REASONS FOR ADOPTING THE LAW

In the Republic of Macedonia's legislation, the Constitutionally proclaimed right to asylum, which the Republic guarantees to foreigners and stateless persons, persecuted for democratic political convictions and actions (Article 29, paragraph 2 of the Constitution) is regulated with the Law on Asylum and Temporary Protection (Official Gazette of the Republic of Macedonia, no. 49/03, 66/07, 142/08, 146/09, 166/12, 101/15, 152/15, 55/16 and 71/16).

Integration into the European Union is a clearly and unequivocally expressed strategic interest and a priority goal of the Republic of Macedonia, until its fully-fledged membership in the European Union. One of the basic demands for integration of the Republic of Macedonia in the European Union is the alignment of the national legislation with that of the European Union.

In that context, such alignment with the European acquis i.e. legislation is being done with the new Draft Law on International and Temporary Protection, in the area of asylum, i.e. international protection.

The subject Draft Law was drawn up by an inter-departmental working group, consisted of representatives of all the relevant institutions (Ministry of Interior and Ministry of Labour and Social Policy), which have authority in the procedure, as well as the process of integration of asylum-seekers, in partnership with the Office of the UNHCR (the UN High Commissioner for Refugees) in Skopje, as well as expert advisory support through the European Commission's TAIEX instrument (Technical Assistance and Information Exchange Instrument).

The Draft Law was submitted for an opinion to the European Commission in Brussels, and it incorporates their remarks.

II. GOALS, PRINCIPLES AND BASIC SOLUTIONS OF THE DRAFT LAW

The Draft Law for International and Temporary Protection is based on:

- Respecting the constitutionally-guaranteed right to asylum; and
- Respect for human rights and freedoms set out with the Constitution, the law and ratified international treaties;

III. ASSESSMENT OF THE FINANCIAL IMPLICATIONS OF THE DRAFT LAW ON THE BUDGET AND OTHER PUBLIC FUNDS

The Draft Law on International and Temporary Protection has no financial implications on the Budget of the Republic of Macedonia.

IV. ASSESSMENT OF THE FUNDS NEEDED FOR ENFORCING THE LAW AND MANNER OF THEIR PROCUREMENT, AS WELL AS DATA ON WHETHER THE LAW'S ENFORCEMENT IMPLIES MATERIAL OBLIGATIONS FOR SPECIFIC ENTITIES

The enforcement of the Draft Law on International and Temporary Protection does not require additional funds from the Budget of the Republic of Macedonia.

V. OVERVIEW OF REGULATIONS OF OTHER LEGAL SYSTEMS AND COMPLIANCE OF THE DRAFT LAW ON INTERNATIONAL AND TEMPORARY PROTECTION WITH THE LAW OF THE EUROPEAN UNION

The proposed Law will mean the partial alignment with the European Directives in the area of asylum, i.e. international protection, including: **1. DIRECTIVE 2011/95/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL** of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status of refugees or for persons eligible for subsidiary protection, and for the content of the protection granted; **2. DIRECTIVE 2013/32/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL** of 26 June 2013 on common procedures for granting and withdrawing international protection (recast); **3. DIRECTIVE 2013/33/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL** of 26 June 2013 laying down standards for the reception of applicants for international protection (recast); and **4. 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.

VI. REGULATIONS NEEDING TO BE ADOPTED FOR THE ENFORCEMENT OF THE LAW

The adoption of the proposed Law implies the adoption of bylaws, the content of which is envisaged in the provisions of the proposed law.

LAW
ON INTERNATIONAL AND TEMPORARY PROTECTION

CHAPTER I
GENERAL PROVISIONS

Subject-Matter of the Law
Article 1

(1) This Law regulates the conditions and procedure for granting international protection (hereinafter: asylum), as well as cessation, revocation and cancellation of the right to asylum of a foreigner or a stateless person (hereinafter: foreigner), as well as the rights and obligations of applicants and persons to whom asylum has been granted in the Republic of Macedonia.

(2) This Law regulates the conditions under which the Republic of Macedonia may grant temporary protection, as well as the rights and obligations of the persons under temporary protection.

Meaning of Certain Expressions
Article 2

Certain expressions used in this Law shall have the following meaning:

(1) "International protection shall mean refugee status or subsidiary protection status;

(2) "Geneva Convention" shall mean the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees.

(3) "Temporary protection" shall mean protection granted in a separate procedure in the event of mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, particularly if there is a risk for the asylum granting procedure not to be conducted due to the mass influx, and the separate procedure is in the interest of the displaced persons and other persons in need of international protection.

Comment on Article 2(3): Temporary protection schemes (TPs) are complementary to the international refugee protection regime and have been developed as a response to humanitarian crises and complex or mixed population movements. They can be used to fill gaps in the international refugee protection regime and in the national response systems and capacity, in particular when the existing response mechanism is not suitable or adequate. TPs manifest themselves through specific arrangements depending on the situation or region. As providing temporary protection is a humanitarian and non-political act, the schemes need to be flexible enough to react speedily to a crisis or disaster, while providing a minimum level of protection. Acknowledging the challenges States face when faced with population movements, UNHCR recognizes that there are situations beyond mass influxes, in which there may be other grounds for granting TPs. Such scenarios would be: 1) large-scale influxes of asylum-seekers or other similar humanitarian crises, 2) complex or mixed cross-border population movements, including boat-arrivals and rescue at sea scenarios, 3) fluid or transitional contexts, e.g. at the beginning of a crisis where the exact cause and character of the movement may be uncertain, or at the end of a crisis, when the motivation for departure may need further assessment and 4) other exceptional and temporary conditions in the country of origin necessitating international protection and which prevent return in safety and dignity. In each of these scenarios, individual status determination is not applicable of feasible. As such, **UNHCR invites the Government to reconsider the scope of the suggested temporary protection regime to also include the above mentioned categories.**

See the UN High Commissioner for Refugees (UNHCR), Guidelines on Temporary Protection or Stay Arrangements, February 2014, available at:

http://www.refworld.org/docid/52fba2404.html

(4) “Mass influx” or “imminent mass influx” shall mean the imminent arrival of a large number of displaced persons coming from specific countries or geographic areas, regardless of whether their arrival is spontaneous or organized.

Comment on Article 2(4): UNHCR proposes to follow the wording of 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 amend the word “organized” to “aided”, in the sense that the notion “aided” better reflects involvement of external agents.

(5) “Foreigner” in this Law shall mean a person who is not a citizen of the Republic of Macedonia, as well as a stateless person, i.e. a person that is not considered a citizen of any country under the operation of its law.

(6) “Applicant” means a foreigner who seeks international protection from the Republic of Macedonia, who has expressed intention or has submitted an application for asylum, in respect of which a final decision has not yet been taken in the procedure for asylum granting.

(7) “Refugee” is a foreigner, i.e. a person who owing to a 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 nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, if s/he is a stateless person is outside the country of his former habitual residence as a result of such fear; is unable or unwilling to return to it”

(8) ”Refugee status” shall mean the recognition of a foreigner as a refugee.

(9) “Person under subsidiary protection” shall mean a foreigner who meets the conditions for granting status of subsidiary protection in the sense of Article 9 of this Law.

(10) ”Subsidiary protection status” shall mean the recognition of a foreigner as a person under subsidiary protection.

(11) “Family members” shall mean spouse, in case the marriage was concluded prior to the arrival in the Republic of Macedonia, unmarried partner, minor children who are unmarried, parents of minor children provided that the minors have been granted asylum, or another adult responsible person pursuant to Law;

Comment on Article 2(11): Please refer to comments on Article 16.

(12) “Minor” shall mean a foreigner below the age of 18 years;

(13) “Unaccompanied minor” shall mean a foreigner below the age of 18 years, who arrives on the territory of the Republic of Macedonia unaccompanied by a parent or guardian for him or her or a minor who was left unaccompanied after he or she has entered the territory of the Republic of Macedonia, or a minor who is not effectively taken care of.

Comment on Article 2(12-13): UNHCR suggest using the term “child” instead of “minor”, in line with the terminology of the Convention on the Rights of the Child. UNHCR would also like to note that a distinction between unaccompanied and separated children is made on the international level and invite the Government to reflect this in the law. The notions are defined in the Inter-Agency Guiding Principles on Unaccompanied and Separated Children (2004) as:

“Separated children are those separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members. Unaccompanied children (also called unaccompanied

minors) are children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so."

(14) "Country of origin" shall mean the country or countries of nationality or, for stateless persons, country or countries of former habitual residence.

Right to Asylum
Article 3

The right to asylum shall mean international protection that is granted by the Republic of Macedonia under terms and procedure stipulated by this Law, to the following categories of persons:

- Persons with refugee status (refugee under the 1951 Geneva Convention and the 1967 Protocol (hereinafter: "Geneva Convention") and
- Persons under subsidiary protection, pursuant to the provisions of this Law.

Applicant
Article 4

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

(2) The application for asylum from paragraph (1) of this Article shall mean a request made by a foreigner, who can be understood to seek international protection in the sense of Article 3 of this Law.

Person with a Refugee Status
Article 5

Person with a refugee status shall mean a foreigner, who, upon the examination of his or her request, was granted refugee status and was found to meet the requirements set out in the Geneva Convention, or 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 nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence, is unable to, or owing to such fear, unwilling to return to it.

Acts of Persecution
Article 6

(1) Acts of persecution in the sense of Article 1 A of the Geneva Convention must:

- be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15 paragraph (2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or
- be an accumulation of various measures, including violations of human rights which are sufficiently severe as to affect an individual in a similar manner as mentioned in paragraph (1) indent 1 of this Article.

(2) The acts of persecution from paragraph (1) of this Article may, inter alia, take the form of:

- acts of physical or mental violence, including acts of sexual violence;
- legal, administrative, police and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;
- prosecution or punishment which is disproportionate or discriminatory;
- denial of judicial redress resulting in a disproportionate or discriminatory punishment;
- prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling within the scope of the grounds for exclusion as set out in Article 8 paragraph (1) of this Law; and
- acts of a gender-specific or child-specific nature.

Comment on Article 6(1-2): In UNHCR's view, and as UNHCR has highlighted in its comments to the EU Qualification Directive 2004/83/EC (EU QD) at the time, the interpretation of what constitutes persecution needs to be flexible, adaptable and sufficiently open to accommodate its changing forms. The current wording of this article implies that persecution can be exhaustively defined. As there is no universally acceptable definition of "persecution", UNHCR would strongly recommend at least to replace the word "must" with the word **"may"** in the first sentence.

Furthermore, it will depend on the circumstances of each case whether prejudicial actions or threats would amount to persecution. While international and regional human rights treaties and the corresponding jurisprudence and decisions of the respective supervisory bodies influence the interpretation of the 1951 Refugee Convention, persecution cannot and should not be defined solely on the basis of serious or severe human rights violations. Severe discrimination, or the cumulative effect of various measures not in themselves amounting to persecution or severe violations of human rights, either alone or in combination with other adverse factors, can give rise to a well-founded fear of persecution; or, in other words, could make life in the country of origin so insecure from many perspectives for the individual concerned, that the only way out of the predicament is to leave the country of origin. Although there may be situations where a violation of human rights cannot formally be attributed to a government because of its inability to provide protection against "violations" by a non-state actor, refugee protection is to be granted independently from the responsibility of the country of origin for the persecutory act.

UNHCR would therefore encourage the Government to consider whether it would be more appropriate to define persecution more generally in the law and further explain the definition in guidelines or by-laws. A simple definition drawing upon the UNHCR *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status* (UNHCR RSD Handbook) could read:

"Threats to life or freedom and other serious human rights violations can constitute persecution. In addition, lesser forms of harm may cumulatively constitute persecution".

(3) There must be a connection between the acts of persecution as qualified in paragraph (1) and the reasons of persecution mentioned in Article 7 of this Law, in the event of absence of protection against such acts.

Comment on Article 6(3): There is a discrepancy between the current wording of the law and international standards, including the EU Qualification Directive (recast) 2011/95/EU. It is generally agreed that in assessing persecution, there must be a connection between the acts of persecution on one hand, with **either** the reasons for persecution **or** the absence of protection on the other. In the words of the EU QD (recast), article 9(3) *In accordance with point (d) of Article 2, there must be a* ***connection between the reasons*** *mentioned in Article 10* ***and the acts of persecution*** *as qualified in paragraph 1 of this Article* ***or the absence of protection*** *against such acts.(emphasis added).*

The formulation, such as it currently reads, creates a link between the acts and the reasons in the event of absence of protection, but fails to fully reflect all situation where persecution can arise, irrespective of whether it is at the hands of state or non-state actors. Thus, UNHCR proposes that

the article is amended to directly reflect the above formulation from the EU Qualification Directive (Recast), and change “in the absence of” with **“or the absence of protection against such acts”**.

Furthermore, UNHCR suggests to, in addition to the reference to Article 7, insert a reference to Article 2(7), which contains the definition of a refugee and should thus stand as basis for the “reasons for persecution”.

Reasons for Persecution
Article 7

(1) When assessing the reasons for which a person, owing to well-founded fear would be persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, the following elements concerning race, religion, nationality, membership of a particular social group, or political opinion shall be especially taken into account:

(2) The concept of race shall, in particular, include considerations of colour, descent or membership of a particular ethnic group.

(3) The concept of religion shall in particular include holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;

(4) The concept of nationality shall not be confined to citizenship or lack thereof but shall, in particular, include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State.

(5) The concept of group shall be considered to form a particular social group where members of this group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it. This group has a distinct identity in the country of origin, because it is perceived as being different by the surrounding society.

(6) Depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law. Gender-related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group.

(7) The concept of political opinion shall, in particular, include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution and to their policies or methods, whether or not the applicant has acted upon his/her beliefs.

(8) When assessing if an applicant has a well-founded fear of being persecuted, it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.

Reasons for Exclusion from a Refugee Status
Article 8

(1) A foreigner shall be excluded from being granted refugee status if:

- he or she is under protection or assistance from organs or agencies of the United Nations, other than the United Nations High Commissioner for Refugees;

- the foreigner has been granted by the competent authorities of the Republic of Macedonia equal rights and obligations that are enjoyed by the citizens of the Republic of Macedonia;

- if protection under paragraph 1, indent 1 of this Article has ceased for any reason, without the status of this person being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, that foreigner shall be entitled to international protection pursuant to the provisions of this Law;

(2) A foreigner shall be excluded from a refugee status where there are serious reasons for considering that:

- he or she has committed a crime against peace, humanity or a war crime, as defined in the international acts drawn up to make provision in respect of such crimes;

Comment on Article 8(2) indent 1: UNHCR suggest to fully align the provision with article 1F(a) of the 1951 Refugee Convention, which refers to an applicant being excluded if s/he has committed a "crime against humanity". This would also be in line with the globally recognized definition in the Rome Statute of the International Criminal Court, which the State has been legally bound by since 2002.

- he or she has committed a serious non-political crime outside the territory of the Republic of Macedonia prior to his or her admission as a refugee

- he or she has been guilty of acts contrary to the purposes and principles of the United Nations.

(3) The provision from paragraph 2 of this Article applies to persons who incite or participate in the act of committing crimes or acts as defined in paragraph (2) of this Article.

Comment on Article 8(3): UNHCR notes that the content of article 8(3) is already included in article 8(2), for which reason it is suggested to delete this article as it is superfluous. The modes of individual responsibility listed in this provision ("incites or participates in") form part of the exclusion criteria under Article 1F or here article 8(2). This is so because the terms "has committed" and "has been guilty of" require a determination, in each individual case, of individual responsibility for acts within the scope of this provision, including as a perpetrator, through instigating or other forms of participation in the commission of such crimes or acts.

A Person under Subsidiary Protection
Article 9

(1) A person under subsidiary protection is a foreigner who does not qualify as a person with a refugee status, and to whom the Republic of Macedonia shall grant asylum and shall allow him or her to remain on the territory of the country, because there are substantial reasons to believe that if the person returns in his or her country, or in the case of stateless persons, in the country of former habitual residence, he or she will face a real risk of serious harm.

(2) Serious harm, in terms of paragraph (1) of this Article, consists of:

- death penalty or execution;

- torture or inhuman or degrading treatment or punishment; or

- serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

Comment on 9(2) indent 3: UNHCR would suggest to reformulate the indent to **'a threat to a person's life or freedom by reason of indiscriminate violence or other events seriously disturbing public order'**.

First of all, UNHCR notes that the nexus with a Convention ground is very relevant in situations of systematic or generalized violations of human rights. It is only in situations where such violations have no link to a Convention ground that subsidiary forms of protection are relevant. UNHCR would therefore prefer a clarification to the effect that subsidiary protection should apply only if there is no link between the risk or threat of harm and any of the five Convention grounds.

UNHCR's *"Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Refugee Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions"* notes that Article 1A(2), corresponding to article 2(7) in this Proposal, applies to persons fleeing situations of armed conflict and violence when there is a causal link between the person's well-founded fear of being persecuted and a 1951 Refugee Convention ground. No higher level of severity or seriousness of the harm is required for the harm to amount to persecution in situations of armed conflict and violence compared to other situations, nor it is relevant or appropriate to assess whether applicants would be treated any worse than may ordinarily be "expected" in situations of armed conflict and violence. The overall context of a situation of armed conflict and violence can compound the effect of harms on a person, giving rise in certain circumstances to harm that amounts to persecution.

Even in situations where the harm would not amount to persecution, an individual may be in need of international protection. Consequently, it is pertinent that the notion of an "individual" threat should not lead to an additional threshold and higher burden of proof as situations of generalized violence are characterized precisely by the indiscriminate and unpredictable nature of the risks civilians may face. In fact, in interpreting the corresponding article of the EU QD, the European Union Court of Justice has ruled that persons fleeing indiscriminate violence do not necessarily need to prove that they are specifically targeted for reasons of factors particular to his personal circumstances. The threat to life or person may exist where the degree of indiscriminate violence characterizing the armed conflict is such that a person solely for the reason of being present in the region would face a real risk of being subject to the threat.

(Elgafaji v. Staatssecretaris van Justitie, C-465/07, European Union: Court of Justice of the European Union, 17 February 2009, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62007CJ0465:EN:HTML)

Reasons for Exclusion from Subsidiary Protection
Article 10

Comment on Article 10: Given the close linkages between refugee status and subsidiary protection, UNHCR considers that the same exclusion grounds should be applied under either category. UNHCR therefore recommends that the grounds for exclusion from subsidiary protection based on a person's involvement in criminal conduct in Article 10 be modelled on Article 1F of the 1951 Refugee Convention (and replicate Article 8 of this Proposal).

(1) A foreigner shall be excluded from enjoying subsidiary protection where there are serious reasons for considering that:

- he or she has committed a crime against peace, humanity or a war crime, as defined in the international acts drawn up to make provision in respect of such crimes;

Comment on Article 10(1) indent 1: UNHCR suggest to fully align the provision with article 1F(a) of the 1951 Refugee Convention, which refers to an applicant being excluded if s/he has committed a "crime against humanity". Therefore, we suggest to align the indent with its equivalent under article 8, by adding the phrase "crime against" before the term "humanity".

- he or she has committed a serious crime or
- he or she has been guilty of acts contrary to the purposes and principles of the United Nations

- he or she constitutes a danger to the security of the Republic of Macedonia.

Comment on Article 10(1) indent 4: UNHCR would like to draw attention to the fact that the grounds for exclusion enumerated in the 1951 Refugee Convention are exhaustive. UNHCR recommends, therefore, that the exact wording of the exclusion criteria of the 1951 Refugee Convention are retained. A distinction should be made between reasons for exclusion and exemption from certain rights following a particular protection status. While the 1951 Refugee Convention does not allow for exclusion from refugee status on the basis of constituting a danger to security, article 32 and 33 of the Convention allow authorities to exempt refugees or persons under subsidiary protection from certain rights, which has been granted to them in accordance with their status. As such, determination that a person poses a threat to the national security or public order of the State would justify expulsion based on Article 32 and the exception under article 33(2). However, constituting a "danger to security" is not sufficient in itself to exclude a person from receiving protective status. The permissible exception under Article 33(2) of the 1951 Refugee Convention is already included in Article 14 (2) of the Proposal. For these reasons, UNHCR recommends to delete article 10(1) indent 4.

(2) A foreigner shall be excluded from enjoying subsidiary protection in case he or she incites or in any other manner participates in committing crimes or acts as defined in paragraph (1) of this Article.

Comment on Article 10(2): For the same reasons as listed in the comment to Article 8(3), UNHCR proposes to delete this paragraph.

(3) The Republic of Macedonia may exclude the right to subsidiary protection to a foreigner if he or she prior to the admission in the Republic of Macedonia has committed one or several crimes which were not defined in paragraph 1 of this Article, and which are sanctioned with prison had they been committed in the Republic of Macedonia and in case he or she left their country of origin solely in order to avoid sanctions for the perpetrated crimes.

Comment on Article 10(3): The scope of Article 1F, replicated in the draft law in Article 10(1) indent 1-3, is sufficiently broad to address a person's involvement in serious criminal acts which may be contemplated by Article 10(3), for which reason UNHCR proposes to delete this article as superfluous.

International Protection Sur Place
Article 11

A foreigner who is already on the territory of the Republic of Macedonia may be granted international protection sur place pursuant to Articles 5 and 9 of this Law and in cases when well-founded fear of being persecuted or a real risk of suffering serious harm is based on events which have taken place or activities in which he or she engaged since he or she left the country of origin, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin.

Comment on Article 11: A person who was not a refugee when he left his country, but who becomes a refugee at a later date, is called a refugee "*sur place*". S/he may become a refugee sur place as a result of his own actions, such as associating with refugees already recognized, or expressing his political views in his country of residence. (UNHCR RSD Handbook paras 94-96).

It is important to note that even where it cannot be established that the applicant has already held the convictions or orientations in the country of origin, the asylum-seeker is entitled to the right of freedom of expression, freedom of religion and freedom of association, within the limits defined in Article 2 of the 1951 Refugee Convention and other human rights instruments. Such freedoms

include the right to change one's religion or convictions, which could occur subsequent to departure e.g. due to disaffection with the religion or policies of the country of origin, or greater awareness of the impact of certain policies. As such, UNHCR proposes to delete the last part of the sentence after the comma (in particular where it is established that the activities constitute the expression and continuation of conviction or orientations held in the country of origin.

Actors of Persecution or Serious Harm
Article 12

Actors of persecution or serious harm shall include:

- the State;
- parties or organizations controlling the country or a substantial part of the territory of the State; and
- non-state actors, if it can be demonstrated that the actors mentioned in indents 1 and 2 of this Article, including international organisations, are unable or unwilling to provide protection against persecution or serious harm, as defined by Article 13 of this Law.

Actors of Protection
Article 13

(1) Protection against persecution or serious harm can only be provided by:

- the State or
- parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State if able/willing to offer protection in accordance with paragraph 2 of this Article.

(2) Granting protection under paragraph (1) of this Article shall mean taking reasonable steps to prevent the persecution or suffering of serious harm, inter alia, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm and when the applicant has access to such protection.

Comment on Article 13: UNHCR suggests to delete 13(1) indent 2 (parties or organizations…).

In UNHCR's opinion, and as highlighted in UNHCR's comments to the EU Qualification Directive, national protection can generally only be provided by the State, and not by non-State actors. While the notion of "parties" in this article can be widely interpreted, the fact that it is listed separately from the "State" indicates that it is any other entity controlling a substantial part of the territory.

Under international law, parties and organizations do not have the attributes of a state and do not have the same obligations. In practice, this means that their ability to enforce the rule of law is limited, as is their ability to render protection. In UNHCR's view, refugee status should not be denied on the basis of an assumption that the threatened individual could be protected by parties or organizations, including international organizations, if that assumption cannot be challenged or assailed. It would, in UNHCR's view, be inappropriate to equate national protection provided by States with the exercise of a certain administrative authority and control over territory by parties. Such control is often temporary and without the range of functions required of a State, including the ability to readmit nationals to the territory or to exercise other basic functions of government. As such non-state bodies lack the attributes of a State, they are not parties to international human rights treaties, and therefore cannot be held accountable for their actions as can a State. In practice, this generally has meant that their ability to enforce the rule of law is limited.

The Non-Refoulement Principle
Article 14

(1) An applicant, a person with a refugee status or a person under subsidiary protection shall not be expelled or in any manner returned to the borders of the country:

- where his or her life or freedom would be in danger for reasons of race, religion, nationality, membership of a social group or political opinion or

- where he or she would be subjected to torture, inhuman or degrading treatment or punishment.

(2) The prohibition from paragraph (1) indent 1 of this Article shall not refer to a foreigner who constitutes a danger to the national security of the Republic of Macedonia or who, having been convicted by a final judgment of a crime or a particularly serious crime, constitutes a danger to the community of the Republic of Macedonia.

(3) The foreigner from paragraph (1) indent 2 of this Article, who owing to reasons in terms of Articles 8 and 10 of this Law cannot enjoy the right to asylum in the Republic of Macedonia, shall be permitted to remain on the territory of the Republic of Macedonia as long as he or she would be subjected to persecution, torture, inhuman or degrading treatment or punishment in their country of nationality or in the case of stateless persons, in the country of habitual residence.

Comment on Article 14: UNHCR commends the willingness to reflect the State's international obligations relating to *non-refoulement* in article 14. While article 33(1) of the 1951 Refugee Convention defines the circumstances under which refugees can be *refouled*, article 33(2) aims a protecting the safety of the country of refuge or of the community. The provision hinges on the assessment that the refugees in question is a danger to the national security of the country or, having been convicted by a final judgement of a particularly serious crime, poses a danger to the community. As article 33(2) allows for restriction and exception to the humanitarian principles of offering refuge to persecuted individuals, it is important that these exceptions are interpreted narrowly. UNHCR would suggest to use the exact wording of article 33 of the 1951 Refugee Convention in article 14(1) indent 1("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") and article 14(2). ("whom there are reasonable grounds for regarding as a danger to the security of the country in which he is…"

In addition, UNHCR notes that the threshold in article 14(3) is higher than in the Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment, which only requires that there are "substantial grounds for believing that he would be in danger of being subjected to torture" as opposed to the current wording in this article "he would be subjected to torture…" As the prohibition from torture is non-derogable, it is strongly recommended to amend this article in accordance with international standards. Should the Government wish, it could replace this by including a general reference to *non-refoulement* under the 1951 Refugee Convention and international human rights law instead of including a substantive test. The text could be based on Article 21(1) of the EU QD and read:

'The Republic of Macedonia shall respect the principle of *non-refoulement* in accordance with its international obligations and shall allow a right to remain on the territory of the Republic of Macedonia to any alien, who owing to reasons in terms of Article 8 or 10 of this Law cannot enjoy the right to asylum in the Republic.'

Family Unity
Article 15

(1) As part of the asylum granting procedure, the applicant is guaranteed maintenance of family unity.

(2) The principle of family unity in terms of paragraph (1) of this Article shall not apply for family members that do not meet individually the requirement for granting status under the Law, if:

- there are reasons for exclusion under Articles 8 and 10 of this Law.

Comment on Article 15(2): The current wording implies that family members who would be excluded from refugee or subsidiary protection status individually are also excluded from the right to family unity. This is directly at odds with the country's international obligations.

The right to family life is recognized as universal and is reflected in numerous international treaties (see for example article 16 of the Universal Declaration of Human Rights, article 23 of the International Covenant on Civil and Political Rights, article 8 of the ECHR). The right to family unity is inherent in recognizing the right to family life and the family as a group. This right applies to all human beings, regardless of their status. As such, persons excluded from refugee or subsidiary protection status also have a right to family unity and cannot be exempted from it. For these reasons, UNHCR proposes to delete article 15(2).

Should the purpose of the article be to note that family members are excluded from obtaining refugee status or subsidiary protection on the basis of family reunification in case they would be excludable from obtaining refugee or subsidiary protection individually, UNHCR suggests to reformulate the article to better reflect this. While UNHCR advocates for a derivative status for family members, it is clear that formal refugee status should not be granted to a family member if s/he falls within the terms of one of the exclusion clauses (UNHCR RSD Handbook, para. 188) or if it is incompatible with his personal legal status, such as citizen of the country of asylum (UNHCR RSD Handbook, para. 184). Nevertheless, even in such a situation, the principle of family unity remains and family members may be entitled to family reunification and a residence permit.

Family Reunification
Article 16

(1) For members of the nuclear family of the person with a refugee status and the person under subsidiary protection, a procedure for granting asylum shall be conducted, at their own request.

Comment on Article 16 (1, 3): Article 16(1) limits the scope of family reunification to procedures for assessing the asylum claims of the family members. In UNHCR's view, members of the same family should be given the same status as the principal applicant (derivative status). The principle of family unity derives from the Final Act of the 1951 United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons and from human rights law. Most EU Member States provide for a derivative status for family members of refugees. This is also, in UNHCR's experience, generally the most practical way to proceed. However, there are situations where this principle of derivative status is not to be followed, i.e. where family members wish to apply for asylum in their own right, or where the grant of derivative status would be incompatible with their personal status, e.g. because they are nationals of the host country, or because their nationality entitles them to a better standard. However, this should not be made the rule, which the current wording of the article does.

UNHCR suggests to include a notion reflecting that family members who do not individually meet the criteria for international protection shall have a right to enjoy family reunification on other grounds and a reference to the Law on Foreigners. Such a notion could be inspired by the EU QD (recast), which in its article 23(2) states that: "Member States shall ensure that family members of the beneficiary of international protection who do not individually qualify for such protection are entitled to claim the benefits referred to in Articles 24 to 35, in accordance with national procedures and as far as is compatible with the personal legal status of the family member."

In other words, family members of a person granted international protection are entitled to residence permits and a wide array of other rights in accordance with national procedures in order to maintain the principle of family unity even though they would not individually qualify for international protection.

(2) Members of nuclear family in terms of paragraph (1) of this Article, shall be: a spouse, in case the marriage was concluded prior to the arrival in the Republic of Macedonia, unmarried partner, minor children who are unmarried, and parents of minor children, in case the minors have been granted asylum, and other adult persons pursuant to Law

Comment on Article 16(2): It is a generally agreed fact that the family is the fundamental unit of society entitled to protection by society and the State (UN General Assembly, Universal Declaration of Human Rights, 10 December 1948,217 A (III), Article 16(3)). In keeping with this fundamental principle, members of refugee families should be given every opportunity to be reunited (Conclusion of the Executive Committee of UNHCR No 1 (XXVI) – 1975). Countries should make every effort to ensure the reunification of separated refugee families, with the least possible delay (Conclusion of the Executive Committee of UNHCR No 24 (XXXII) – 1981 – Family Reunification).

States have positive obligations towards individuals who are unable to enjoy the right to family life and family unity in another State, which follows from international and regional human rights provisions. The ECtHR has noted that "the boundaries between the State's positive and negative obligations under [Article 8 ECHR] do not lend themselves to precise definition", yet, "The applicable principles are, nonetheless, similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation". (Jeunesse v. Netherlands, Application no. 12738/10, ECtHR Grand Chamber, 3 October 2014). Key among the factors requiring consideration are whether the family separation was voluntary or not, which the Court has recognized is not the case for refugees and persons fleeing armed conflict, i.e. beneficiaries of subsidiary protection, and whether there are insurmountable obstacles to family life being enjoyed elsewhere. The ECtHR has recognized that the situation of both refugees and persons who have fled conflict is different as regard family reunification from that of persons who have left their country of origin for other reasons. While it emphasizes that Article 8 ECHR does not guarantee a right to choose the most suitable place to develop family life, the Court distinguishes "the interruption of family life [due to flight from] … a genuine fear of persecution" or from a situation of indiscriminate violence meaning that the person could not "be said to have voluntarily left family members behind" from other migration situations, where family life can be resumed in the country of origin. The discretion of Member States to deny family unity where there are major or insurmountable obstacles to developing family life elsewhere is thus significantly limited.

UNHCR notes that the definition of nuclear family and thus family members entitled to family reunification is narrow, and suggests to adopt a more inclusive definition for the purpose of family reunification. UNHCR's ExCom Conclusion No. 24 notes in this respect that: "It is hoped that countries of asylum will apply liberal criteria in identifying those family members who can be admitted with a view to promoting a comprehensive reunification of the family." UNHCR considers that a nuclear family is generally consisting of spouses and their minor or dependent, unmarried children and minor siblings. Spouses are to be understood as including those engaged to be married, those who have entered into a customary marriage and who have long-established partnerships. In UNHCR's view, family unit should not be limited to families formed prior to arrival in the State. This finds support in a 2012 decision by the ECtHR, which could not find a justification for a different treatment of pre- and post-flight spouses. (Hode and Abdi v. The United Kingdom, (Application no. 22341/09), Council of Europe: European Court of Human Rights, 6 November 2012, available at: http://www.refworld.org/cases,ECHR,509b93792.html). In addition, UNHCR highlights the important element of dependency among family members, physical, financial, psychological and emotional, which need to be considered when assessing, which may speak for a broader definition of family members. The dependency principle considers that, in most circumstances, the family unit is composed of more that the customary notion of a nuclear family (husband, wife and minor children). This principle recognizes that familial relationships are sometimes broader than blood lineage, and that in many societies, extended family members such as parents, brothers and sisters, adult

children, grandparents, uncles, aunts, nieces and nephews, etc., are financially and emotionally tied to the principal breadwinner or head of the family unit.

At a minimum, UNHCR suggests to include the definition as provided for in the Family Law in either this law or in a subsequent by-law:

"A family is a living community of parents and children and other family members, provided that they live in a common household. A family is formed by the birth of children and by adoption".

(3) The principle of family reunification from paragraph (1) of this Article shall not be valid if:

- there are reasons for exclusion under Articles 8 and 10 of this Law

Comment on Article 16(3): For reasons specified in the comment to Article 15(2), UNHCR suggests to delete this.

(4) The right to family reunification with nuclear family members, the person with refugee status acquires after being granted refugee status, while the person under subsidiary protection, acquires it two years following granting of status of subsidiary protection.

Comment on Article 16(4): The humanitarian needs of persons benefiting from subsidiary protection are no different from those who are refugees under the Convention. Differences in entitlements, such as the introduction of an impediment of two years before a person who is a beneficiary of subsidiary protection can enjoy her/his right to family reunification is therefore restrictive and not justified. Such restrictions can be expected to have a particularly harmful effect on children with subsidiary protection and may not be in line with the State's obligations under the Convention on the Rights of the Child, article 3 to ensure the child's best interests are a primary consideration, and the obligations under Article 10(1) of the CRC which requires States to deal with applications by a child or his or her parents for the purpose of family reunification "in a positive, humane and expeditious manner". Even the European Commission has noted that "[T]he humanitarian protection needs of persons benefiting from subsidiary protection do not differ from those of refugees." It therefore encourages Member States "to adopt rules that grant similar rights to refugees and beneficiaries of temporary or subsidiary protection". (see: European Commission, *Communication from the Commission to the European Parliament and the Council of 2014 on guidance for application of Directive 2003/86/EC on the right to family reunification*, Com (2014)210 final, 3 April 2014, available at: http://www.refworld.org/docid/583d7d0b7.html).

For these reasons, UNHCR suggest to reformulate Article 16(4) to recognize that the right to family unity for a person under subsidiary protection starts immediately when the status is granted.

Safe Country of Origin
Article 17

(1) A safe country of origin is a country where the citizens or stateless persons who habitually reside in it are safe from persecution owing to reasons as defined in Article 5 of this Law or from suffering serious harm as defined in Article 9 of this Law, which is assessed on the basis of observance of human rights laid down in the international acts, existence of democratic institutions (democratic processes, elections, political pluralism, freedom of thought and public expression of thought, availability and efficiency of legal protection) and stability of the country.

(2) In making the assessment for a safe country of origin in terms of paragraph (1) of this Article for the applicant, account shall be taken, inter alia, of the extent to which protection is provided against persecution or mistreatment by:

- the relevant laws and regulations of the country and the manner in which they are applied;

- observance of the rights and freedoms stipulated in the European Convention for the Protection of Human Rights and Fundamental Freedoms and/or the International Covenant for Civil and Political Rights and/or the United Nations Convention against Torture, in particular the rights from which derogation cannot be made under Article 15 paragraph 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;

- respect for the non-refoulement principle in accordance with the Geneva Convention

- provision for a system of effective remedies against violations of those rights and freedoms.

(3) The applicant during the procedure for granting asylum shall be allowed to challenge that the country of origin is safe for him or her.

Comment on Article 17 (3): The applicant should be able to challenge the application of the safe country of origin concept both in law and practice. Burden of proof should be shared between the asylum authorities and the applicant, in addition to which an individual examination, prior notification of the intention to designate a country as safe and other essential safeguards are required. Article 36 (1) of the Asylum Procedures Directive (recast) presents a good example setting the standard of engagement of the applicant, offering the possibility for the applicant to submit any serious grounds for considering that the country of origin is not safe for him/her, instead of imposing requirements for proving it.

UNHCR suggests to reformulate para. 3 as follows:

"In making the assessment whether the country of origin is safe, individual examination of the application shall be undertaken, during which the asylum-seeker shall have an effective opportunity to challenge the application of the safe country of origin concept in light of his or her particular circumstances. The applicant shall be informed about the intention of the determining authority to apply the safe country of origin concept to his or her application."

Further, the safe country of origin concept shall only be applied where precise, impartial, and up-to-date information from a range of different sources is available on the safety of a particular country. This is also what is required under the European Commission's proposal for an Asylum Procedures Regulation (see Article 47(2) of the proposal). UNHCR therefore recommends to add a paragraph to Article 17:

"The assessment of whether a third country may be designated as a safe country of origin in accordance with this Article shall be based on precise, impartial, and up-to-date information from a range of sources of information, including the United Nations High Commissioner for Refugees, the Council of Europe as well as other relevant organizations."

(4) The Minister of Interior in cooperation with the Minister of Foreign Affairs shall prescribe the list of safe countries of origin.

First Country of Asylum
Article 18

(1) First country of asylum is a country that would readmit the applicant on the following grounds:

- he or she has been recognised in that country as a refugee and he or she can still avail himself/herself of that protection;

- he or she otherwise enjoys sufficient protection in that country, including benefiting from the principle of non-refoulement.

(2) The applicant during the procedure for granting asylum shall be allowed to challenge that the first country of asylum is safe for him or her.

Safe Third Country
Article 19

(1) A safe third country is a country where the applicant has stayed prior to the arrival in the Republic of Macedonia and where it can be presumed that he or she may return safe from persecution as defined in Article 5 of this Law, or from suffering serious harm in terms of Article 9 of this Law or from torture, inhuman or degrading treatment or punishment.

Comment on Article 19: The primary responsibility for international protection remains with the country where an asylum claim is lodged. In UNHCR's view, transit alone is not a sufficient connection or meaningful link, unless there is a formal agreement for the allocation of responsibility for determining refugee status between countries with comparable asylum systems and standards. Transit is often the result of fortuitous circumstances and does not necessarily imply the existence of any meaningful link or connection. Neither does a simple entitlement to entry without actual presence constitute a meaningful link. ExCom conclusion No. 85 (XLIX) 1998a notes that it needs to be established that the third country will treat the asylum-seeker in accordance with accepted international standards, will ensure effective protection against *refoulement* and will provide the asylum seeker with the possibility to seek and enjoy asylum. The connection to the "safe" country must furthermore be such that it is **reasonable** for the applicant to return there. In light of ExCom Conclusion No. 15 (XXX)-1979, the existence of a **meaningful link** between the potential country of return and the applicant shall be verified before any responsibility sharing arrangement may be considered. The applicant shall be allowed to challenge the existence of a connection between him or her and the third country. UNHCR suggest the wording: "…has stayed..." to be changed into: **"…has established a significant connection…"**

The safe third country concept can only be applied when it is in line with the international obligations under the 1951 Refugee Convention and international human rights law obligations, including the principle of *non-refoulement*. UNHCR therefore note that the threshold "*where it can be presumed that he or she may return safe from persecution*" is too low. The safety of the applicant to be returned needs to be ensured. The need for this is also recognized in the APD, referring to *"a country can be considered as a safe third country for a particular applicant where the competent authorities **are satisfied** that the applicant will be treated in the third country in accordance with the following principles…"*. It is suggested to amend the wording "can be presumed" to **"has been established"**.

The Article 38 of the Recast EU APD provides a good example of procedural guarantees and requirements necessary for the application of the "safe third country concept", which the legislator should consider and reflect in the final draft.

UNHCR further notes that admissibility procedures based on safe country concepts should not be applied to individuals with specific needs, including children.

(2) A safe third country shall be considered the country where:

- life and liberty of the applicant are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
- he or she will not face a real risk of serious harm in terms of Article 9, paragraph 2 of this Law;
- the principle of non-refoulement in accordance with the Geneva Convention is respected;
- the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as stipulated in international law is respected; and
- the possibility exists for the applicant to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.

Comment on Article 19(2): Application of the concept of safe third country requires an individual assessment of whether the previous state will readmit the person; grant the person access to a fair

and efficient procedure for determination of his or her protection needs; permit the person to remain; and accord the person standards of treatment commensurate with the 1951 Refugee Convention and international human rights standards, including protection from *refoulement*. Where she or he is entitled to protection, a right of legal stay and a timely durable solution are also required. Application of the 'safe third country' concept requires a careful and individualized case-by-case examination of whether the aforementioned principles in article 19(2) are ensured and whether there exists a connection between the individual and the third country.

(3) The applicant during the procedure for granting asylum shall be allowed to challenge that the third country is safe for him/her.

Comment on Article 19(3): While UNHCR welcomes the opportunity of the applicant to rebut the presumption of safety, we note the following: The burden of proof for applying a STC concept rests with the State and is usually based on the general designation of a country as a safe third country. However, the applicant should be given a possibility to rebut the presumption of safety in her/his case. The APD (recast, article 38) provides an example of guaranties related to the application of the safe third country concept, whereby such concept may only be applied where the competent authorities are satisfied that a person seeking asylum will be treated in accordance with the agreed principles for the third country concept clearly indicated in the Directive. In addition, the procedures for applying the concept of safe country need to be clearly spelled out in legislation, including rules requiring a connection between the applicant and the third country, a methodology for how the authorities satisfy themselves on the correct application of the safe country concept, and allowing an individual assessment of and at a minimum allow the applicant to challenge the application of safe third country concept on grounds that the country is not safe in his or her particular circumstances as well as the alleged connection between the country and the applicant. UNHCR also recommends to add a new paragraph preceding current paragraph 3:

"The determining authority may consider a third country to be a safe third country for a particular applicant, after an individual examination of the application, only where it is satisfied of the safety of the third country for a particular applicant in accordance with the criteria established in paragraph 2 and it has established that:
(a) there is a meaningful connection between the applicant and the third country in question on the basis of which it would be reasonable for that person to go to that country.
(b) the applicant has not submitted serious grounds for considering the country not to be a safe third country in his or her particular circumstances."

UNHCR recommends that the paragraph (3) is revised to read:

"(3) The applicant concerned shall have the opportunity to challenge the decision of application of the safe third country concept, on the grounds that the third country is not safe in his/her particular circumstances, and/or the lack of a meaningful connection between him/her and the given third country".

This would also be in line with the EC Asylum Procedures Directive APD (recast) safeguards, as provided by Article 38 (2) c. In addition, the APD recital 42 notes "The designation of a third country as a safe country of origin for the purposes of this Directive cannot establish an absolute guarantee of safety for nationals of that country. By its very nature, the assessment underlying the designation can only take into account the general civil, legal and political circumstances in that country and whether actors of persecution, torture or inhuman or degrading treatment or punishment are subject to sanction in practice when found liable in that country. For this reason, it is important that, where an applicant shows that there are valid reasons to consider the country not to be safe in his or her particular circumstances, the designation of the country as safe can no longer be considered relevant for him or her."

(4) The safe third country principle in terms of paragraph (1) of this Article shall not be valid if the spouse of the applicant, the children or the parents reside legally in the Republic of Macedonia.

(5) The organizational unit competent for asylum (hereinafter: Sector for Asylum), to an applicant whose request is considered inadmissible, pursuant to Article 46 of this Law, shall issue a confirmation, written in the language of the safe third country where he comes from, in order to inform the State bodies of the third country that the application has not been examined in essence in the Republic of Macedonia.

Comment on Article 19(5): UNHCR notes that article 47, referred to in para. 5 of Article 19, does not refer to safe third countries. On the other hand, Article 46, pertaining to inadmissible applications, does.

UNHCR would recommend reviewing the para. above, accordingly.

(6) Where the safe third country does not readmit the applicant, the Republic of Macedonia shall ensure that access to the procedure for granting asylum is given to him or her.

Authorities for Granting Asylum
Article 20

(1) The procedure for granting asylum in the first instance shall be conducted and the decision shall be taken on the part of the Ministry of Interior through the Sector for Asylum.

(2) Administrative dispute in a competent court may be initiated against the decision from paragraph (1) of this Article.

The Role of the United Nations High Commissioner for Refugees in the Procedure for Granting Asylum
Article 21

Comment on Article 21: UNHCR regrets to note that the provision of the Article 21 on the obligation of the authorities to cooperate with UNHCR has been severely limited in a manner which is not in line with the State's obligations under the 1951 Refugee Convention. The draft law article 2 (6) defines an applicant as "a foreigner who seeks international protection from the Republic of Macedonia, who has expressed intention or has submitted an application for asylum, in respect of which a final decision has not been taken yet in the procedure for granting asylum." As a person will be considered an applicant already before submitting his/her asylum application, the asylum procedure is effectively considered to start from that moment, which occurs prior to submission of a formal application. For this reason, limiting cooperation with UNHCR to only after a formal application for asylum has been submitted is at direct odds with UNHCR's supervisory and protection role.

UNHCR as a protection agency, and entrusted on the basis of the 1951 Refugee Convention with a supervisory role, has the responsibility to ensure that all refugees are protected, starting from the right to access to the territory and the right to seek asylum. The High Commissioner's supervisory responsibility is laid down explicitly in paragraph 8(a) of the Statute, in Articles 35 of the 1951 Refugee Convention and Article II of the 1967 Protocol, and requires the 148 states parties to one or both of these treaties to cooperate with the High Commissioner in the exercise of his supervisory. In order to be able to properly exercise its mandate, UNHCR need to enjoy full cooperation of the national authorities, from the first moment persons potentially in need of international protection are identified in the country. UNHCR further points out that the provision of the Article 13 of the current Law on Asylum and International Protection adequately reflects the obligation of the authorities to cooperate with UNHCR in all stages of the procedure for recognition of the right of asylum.

UNHCR suggest the Government to consult the provision of Article 29 of the EU Directive 2013/32/EU – Asylum Procedure Directive recast, which defines the role of UNHCR as follows:
"1. Member States shall allow UNHCR:
(a) to have access to applicants, including those in detention, at the border and in the transit zones;

(b) to have access to information on individual applications for international protection, on the course of the procedure and on the decisions taken, provided that the applicant agrees thereto;
(c) to present its views, in the exercise of its supervisory responsibilities under Article 35 of the 1951 Refugee Convention, to any competent authorities regarding individual applications for international protection at any stage of the procedure.
2. Paragraph 1 shall also apply to an organisation which is working in the territory of the Member State concerned on behalf of UNHCR pursuant to an agreement with that Member State."

We therefore suggest the provision of the Article 21 to be revised, and the words. "from the moment of submitting of an application for granting asylum by the applicant" to be replaced with the words "**in all matters relating to the asylum procedure and system**".

(1) The authorities from Article 21 of this Law shall cooperate with the United Nations High Commissioner for Refugees (hereinafter: the High Commissioner for Refugees) from the moment of submitting of an application for granting asylum by the applicant.

(2) The competent authorities shall, in accordance with this Law, allow the High Commissioner for Refugees to have access to information on individual applications for granting asylum and on the course of the procedure and on the decisions taken, provided that the applicant has agreed previously thereto.

(3) The Ministry of Interior shall prepare and submit to the High Commissioner for Refugees notifications and statistical data referring to the situation of the applicants and the persons with granted asylum in the Republic of Macedonia and referring to the implementation of the Geneva Convention, the provisions of this Law and other regulations in the area of asylum.

(4) The representatives of the High Commissioner for Refugees shall present their opinions, pursuant to Article 35 of the Geneva Convention before any competent body, in accordance with this Law, regarding individual asylum application for recognition of the right to asylum, at any stage of the procedure for granting asylum.

Legal Assistance
Article 22

(1) The applicants shall have the right to free legal assistance and clarification relating to the conditions and procedure for granting asylum, as well as the right to a free legal assistance in all stages of the procedure, pursuant to the regulations for free legal assistance.

(2) The applicants can contact the persons that offer legal assistance and the representatives of the High Commissioner for Refugees in all stages of the procedure.

(3) The representatives of the High Commissioner of Refugees have the right to access and contact with the applicants, in all stages of the procedure, wherever they may be.

CHAPTER II
PROCEDURE FOR GRANTING ASYLUM

1. GENERAL PROVISIONS

Application of the Law on General Administrative Procedure
Article 23

As part of the procedure for granting asylum, the provisions of the Law on General Administrative Procedure are adequately applied, unless otherwise stipulated by this Law.

Relation with the Procedure for Granting Residence Permit of the Law on Foreigners
Article 24

(1) The provisions of the Law on Foreigners shall not apply from the day of expressing intention and submission of the asylum application until the day of taking of the final decision.

(2) The submitted asylum application shall be considered as a withdrawal of the application for issuance of residence permit to a foreigner, as defined in the provisions of the Law on Foreigners.

Intention for Submission of Asylum Application
Article 25

(1) A foreigner may express the intention (hereinafter: has expressed intention) to apply for asylum, in oral or in written form, before a police officer of the Ministry of Interior, on a border crossing point or elsewhere in the territory of the Republic of Macedonia.

(2) The police officer from paragraph (1) of this Article shall note down the personal and other data of the foreigner who has expressed intention, shall photograph him, fingerprint him, shall issue to him or her a copy of the confirmation for expressed intention and shall direct him to apply for asylum within 72 hours before an authorised official in the premises of the Sector for Asylum.

(3) The foreigner who expressed intention is obligated to cooperate and enable the police official to obtain the data from para. 2 of this Article.

(4) In case the foreigner who expressed intention cannot be fingerprinted for medical or other reasons, which he did not cause on purpose, he is obligated to enable the police official to obtain the fingerprints in the moment those reasons have ceased.

(5) The police officials deliver the data of the foreigner who expressed intention to the Sector for Asylum.

(6) Should the foreigner fail to act in compliance with paragraphs (2), (3) and (4) of this Article, he or she will be treated according to the regulations on foreigners.

Submission of Asylum Application
Article 26

(1) A foreigner may submit asylum application before the police on the border crossing point, the nearest police station, in the Reception Centre for Foreigners or to the Sector for Asylum.

(2) In case the application was submitted to the police on the border crossing point, in the nearest police station or in the Reception Centre for Foreigners, the police officer from paragraph (1) of this Article shall escort the applicant to the Reception Centre for Asylum Seekers.

(3) The applicant staying on the territory of the Republic of Macedonia shall apply for asylum in the Sector for Asylum.

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

Unlawful Entry and Residence in the Republic of Macedonia
Article 27

An applicant who has illegally entered or is illegally residing on the territory of the Republic of Macedonia and is coming directly from a country where his or 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 for foreigners, in case he or she immediately expresses intention or applies for asylum and elaborates on the well-founded reasons for his or her illegal entry or residence.

Comment on Article 27: UNHCR proposes to follow the exact wording of article 31 of the 1951 Refugee Convention and replace "immediately expresses intention or applies for asylum and elaborates on the well-founded reasons for his or her illegal entry or residence" with "**present themselves without delay to the authorities and show good cause for their illegal entry or presence**".

Manner of Submission of the Asylum Application
Article 28

(1) The asylum application shall be submitted in written or oral form through a transcript, in Macedonian, or if it is not possible, in the language of the country of origin, in some of the widely spoken foreign languages or in a language that can be reasonably assumed to be spoken by the applicant.

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

(3) Following the reception of the asylum application, the Sector for Asylum will conduct initial interview for registration of the applicant through filling in a stipulated form.

(4) Following the submission of the asylum application, the Sector for Asylum shall issue a confirmation to the applicant within three working days, containing a stamp, the number and date of submission, thus proving the status of the applicant, certifying that the applicant is permitted to stay on the territory of the Republic of Macedonia during the asylum procedure.

(5) In case of failure to issue the confirmation from paragraph (4) of this Article within the arranged deadline, the applicant has the right to file an appeal to the Sector for Asylum within 15 days since the expiration of deadline.

(6) The head of the immediately higher organisational unit in the Ministry of Interior that is competent for taking decisions on appeals shall decide upon the appeal from paragraph (5) of this Article within 15 days since the receipt of the appeal.

(7) In case of submission of a large number of asylum applications at the same time, the deadline for submission of confirmation on the part of the Sector for Asylum as defined in paragraph (4) of this Article, may be extended by 10 working days.

(8) The Sector for Asylum in the Ministry of Interior shall notify in written and oral form the applicant in a language that can be reasonably presumed to be understandable for him or her and within a timeframe of no more than 15 days since the day of submission of the asylum application on the manner of conducting the procedure for granting asylum, for the rights and obligations of the applicants in that procedure, for the possible consequences in the event of failure to comply with the obligations and in the event of non-cooperation with the competent authorities, as well as in relation with the conditions for accepting the right to legal assistance, as well as the right to contact persons that offer legal assistance, representatives of the High Commissioner for Refugees and non-governmental humanitarian organisations in all stages of the procedure and whatever location of the applicants.

Comment on Article 28 (8): The reformulation of the wording: a language that can be reasonably presumed to be understandable for them", is recommended as follow: "a language that she/he understands and is able to communicate in"

The Obligation to Submit Documents
Article 29

(1) If the applicant has documents in his or her possession, it is necessary to submit them alongside the asylum application in case those are necessary for the asylum procedure, and in particular:

- Travel documents;
- Visas, residence permits or similar documents;
- Identity card or other personal identification documents;
- Birth Certificate and Marriage Certificate;
- Travel tickets and similar, as well as
- Other documents that could be relevant in the procedure for granting asylum.

(2) The documents from paragraph (1) of this Article are kept in the Sector for Asylum during the asylum procedure, and the applicant shall be provided with a copy of the submitted documents, as well as a confirmation that the original documents are kept in the Sector for Asylum.

Assessment of Facts and Circumstances
Article 30

(1) The applicant shall have the duty to submit as soon as possible all the documentation at his or her disposal and inform on his or her age, family ties, identity, citizenships, countries and places of previous residence, previous asylum applications, travel routes, personal and travel documents and reasons for applying for asylum.

(2) The submitted asylum application shall be assessed by the Sector for Asylum on an individual basis and shall include all facts and circumstances, taking into account the following:

- all relevant facts from various sources, such as the European Asylum Support Office (EASO), the High Commissioner for Refugees and the relevant international organisations for human rights, as they relate to the country of origin in the time of making a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied;
- the relevant statements and documentation presented by the applicant, including information on whether the applicant has been or may be subject to persecution or serious harm;
- the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of his or her personal circumstances, the acts to which the applicant has been or may be subject to could be considered persecution or serious harm;
- whether the applicant's activities since leaving the country of origin were engaged in for5 the sole or main purpose of creating the necessary conditions for applying for asylum, so as to assess whether those activities would expose the applicant to persecution or serious harm if returned to that country; and

Comment on Article 30(2) indent 4: UNHCR recalls that the 1951 Refugee Convention applies to all persons whose well-founded fear of persecution arises after they have left their country of origin. It does not, either explicitly or implicitly, contain a provision according to which its protection is unavailable to persons whose claims for asylum are the result of actions abroad. As a State party to the Convention, the Country should allow this principle to guide its interpretation of "*sur place*" claims.

In UNHCR's view, the "*sur place*" analysis does not require an assessment of whether the asylum-seeker has created the situation giving rise to persecution or serious harm by his or her own decision. Rather, as in every case, what is required is that the elements of the refugee definition are in fact fulfilled. The **person who is objectively at risk in his or her country of origin is entitled to protection notwithstanding his or her motivations**, intentions, conduct or other surrounding circumstances. In particular, determining authorities should consider whether post-flight activities may have come to the attention of country of origin authorities, and what consequences this may have. Exposure to risk is the relevant consideration, not the applicant's internal motivation. This is also supported by the ECtHR's recent case of *F.G. v Sweden*, a "sur place" case, in which the Court underlined the State's obligation to assess "of its own motion" whether an applicant would face a risk of ill-treatment, where the State is made aware of facts that could create such a risk. This holds true even if the applicant did not rely on these facts.

UNHCR is especially **concerned** about the potentially **large-scale scope** this provision may have. The provision's open-ended formulation may make it applicable to many other forms of "circumstances" beyond political activities.

Consequently, **UNHCR strongly recommends to delete article 30(2) indent 4.**

- whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship.

Comment on Article 30(2), indent 5: There is no obligation on the part of an applicant under international law to avail him- or herself of the protection of another country where s/he could "assert" nationality. The issue was explicitly discussed by the drafters of the 1951 Refugee Convention. It is regulated in Article 1A(2) (last sentence), which deals with applicants of dual nationality, and in Article 1E of the 1951 Refugee Convention. There is no margin beyond the limits of these provisions. For Article 1E to apply, a person otherwise included in the refugee definition would need to fulfil the requirement of having taken residence in the country and having been recognized by the competent authorities in that country "as having the rights and obligations which are attached to the possession of the nationality of that country". Article 1E is already fully reflected in Article 8(1), indent 2 of this draft Law. For this reason, incorporating article 29(2) indent 5 into national legislation and practice would be inconsistent with Article 1 of the 1951 Refugee Convention. For this reason, **UNHCR strongly recommends to delete this indent.**

(3) If the applicant does not substantiate with documents or other evidence certain aspects of his or her application and does not justify certain facts and circumstances in terms of his or her application, the application shall be considered credible if:

- the applicant has made a genuine effort to substantiate his or her application;
- all relevant elements available to the applicant have been submitted and a satisfactory explanation has been given regarding 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 has applied for asylum at the earliest possible time, unless the applicant can demonstrate a justified reason for not having done so; and
- the general credibility of the applicant has been established.

Right to an Interpreter
Article 31

(1) When the applicant does not speak the language of procedure, the Sector for Asylum shall provide the applicant with an interpreter in the language of the country of origin or in a language that he or she understands.

(2) The expenses for interpreter shall be covered by the Ministry of Interior.

(3) The interpreter shall keep the confidentiality of the data that he or she obtained during the procedure.

(4) The applicants, upon justified request, shall have the right to a same sex interpreter, wherever possible.

Procedure's Openness to Public
Article 32

(1) The public shall be excluded from the interview of the applicant.

(2) The word "public", in terms of paragraph (1) of this Article, does not refer to the person offering legal assistance authorised by the applicant, the guardian, the interpreter and the representative of the High Commissioner for Refugees.

(3) The persons from paragraph (2) of this Article shall be notified in written form on the date, time and place of interview.

(4) The persons that are present during the interview shall keep the confidentiality of the data they obtained during the procedure, unless the asylum applicant explicitly allows them to communicate with the public, and if the authorised official from the Sector for Asylum considers that this will not harm the procedure.

(5) The Sector for Asylum may share data relating with the policy and practice in the area of asylum, that are significant for scientific research.

Minors
Article 33

(1) Pursuant to the Law on Family, the asylum application for a minor shall be submitted by a parent or a guardian.

(2) In the application of the provisions of this Law, the best interests of the child shall be a primary consideration.

(3) In assessing the asylum application of a child, it is necessary to consider the child-specific forms of persecution.

Unaccompanied Minors
Article 34

(1) An unaccompanied person in terms of paragraph (1) of this Article shall be a foreigner who has not turned 18 years, and has arrived on the territory of the Republic of Macedonia, unaccompanied by a parent or guardian or was left unaccompanied following the entrance on the territory of the Republic of Macedonia.

(2) The unaccompanied minors that are in need of protection pursuant to Article 3 of this Law shall be appointed a guardian at the earliest possible convenience pursuant to the Law on Family.

(3) The appointed guardian from paragraph (2) of this Article shall be allowed to inform the unaccompanied minor on the meaning and the possible consequences of the interview, and shall be allowed to actively participate during the interview of the unaccompanied minor conducted by the authorised official of the Sector for Asylum.

(4) With the consent of the unaccompanied minor, the guardian shall take measures to trace the family members of the unaccompanied minor.

Comment on 34(4): With reference to earlier comments to article 15 and 16 on family unity and family reunification, UNHCR would be cautious in transferring the responsibility for initiating family tracing measures from the Ministry of Interior to the guardian. The Final Act of the United Nations

Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons recommends in part B that Governments take the necessary measures for the protection of the refugee's family especially with a view to ensuring that the unity of the refugee's family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country, and the protection of refugees who are minors, in particular unaccompanied children, with special reference to guardianship and adoption. The Convention on the Rights of the Child, Article 22, also recognises that States shall take appropriate measures to ensure that a child receives appropriate protection and humanitarian assistance, and they shall assist a child in family tracing. Article 24(3) of the EU Reception Conditions Directive (2013/33/EU) puts responsibility for family tracing on the States: "Member states shall start tracing the members of the unaccompanied minor's family…" While the legal guardian in practice and in accordance with national law may have the authority to take measures to trace family members, it is suggested to reflect the larger responsibility of the State in this paragraph and refer to the Ministry of Interior instead of the legal guardian.

(5) In the assessment of the asylum application of unaccompanied minors, the best interests of the child shall be a primary consideration.

(6) The manner and procedure of accommodation of unaccompanied minors is prescribed in a bylaw, adopted by the Minister for Labor and Social Policy.

Vulnerable Persons
Article 35

(1) In the application of this Law the special needs of the vulnerable persons that are applicants, persons with refugee status, persons under subsidiary protection or persons under temporary protection shall be taken into consideration.

(2) Vulnerable persons, in terms of paragraph (1) of this Article, shall be persons without procedural capacity, minors, unaccompanied minors, persons with serious health condition, disabled persons, elderly persons, pregnant women, single parents with minors, victims of human trafficking and persons who were exposed to torture, rape or other serious forms of psychological, physical or sexual violence.

(3) The special needs of the vulnerable persons from paragraph (1) of this Article shall be established through individual assessment of their condition on the part of the competent public institution for social protection.

(4) When accommodating and meeting the life standard of persons from paragraph (2) of this Article, their condition will be addressed through provision of adequate health, psycho-social and other type of assistance.

(5) In the assessment of the asylum application, it is necessary to take into consideration the gender-specific forms of persecution.

(6) The manner and procedure of accommodation of vulnerable persons is prescribed in a bylaw, adopted by the Minister of Labor and Social Policy.

Withdrawal of the Asylum Application
Article 36

(1) The asylum application shall be considered withdrawn and the procedure shall be stopped with a decision in case it is established that the applicant:

- has withdrawn the asylum application;
- has not answered to the invitation for interview in the Sector for Asylum, and has not justified his or her failure to appear within five days of the arranged interview; or
- has left the place of accommodation without approval during the procedure, for a period longer than three days without notifying the competent authority or has not provided approval by the competent authority to leave the place of accommodation.

(2) Against the decision from paragraph (1) of this Article, the applicant may lodge an appeal for initiation of administrative procedure before the competent court within 30 days of the day of submission of the decision.

(3) The appeal shall postpone execution of the decision.

Submission
Article 37

The writs in the asylum procedure shall be submitted in person to the applicant or to his or her parent or guardian or a proxy. In case this is not possible, action will be taken pursuant to the provisions of the Law on General Administrative Procedure.

2. REGULAR PROCEDURE

Conducting Regular Procedure
Article 38

(1) The regular asylum procedure in the first instance shall be implemented by the Sector for Asylum which shall be obliged to take the decision within nine months of the day of submission of the application.

(2) By way of derogation from paragraph (1) of this Article, if the Sector for Asylum, due to justified reasons, cannot take the decision within the timeframe as defined in paragraph (1), the procedure may be extended up to three months.

(3) In the case of paragraph 2 of this Article, the applicant shall be informed of the extension of the time limit for decision and upon request, shall be informed of the reasons of extension of the procedure and the time limit for taking a decision.

Interview of the Applicant
Article 39

(1) Before the Sector for Asylum takes a decision, the applicant will have the opportunity to be interviewed, whereupon the interview may be audio recorded, for which he/she will be previously informed.

(2) Where the applicant is a person without procedural capacity, the interview is conducted in the presence of the guardian or the parent, and a legal representative.

(3) Interview of minors, i.e. unaccompanied minors is conducted in the presence of a parent, i.e. a guardian, and a legal representative.

Comment on 39(3): When interviewing a child, it is important that the obligation to conduct the interview in the presence of a parent as the guardian and a legal representative does not limit the possibilities for the child to speak out of his/her experiences and fears. Article 12 of the Convention on the Rights of the Child stipulates the right of a child to be heard and express his views, and that these should be given due weight in accordance with the age and maturity of the child. There may be situations where a child has reasons not to want a parent to be present during the interview, and this needs to be fully taken into account. This is already partly reflected in article 39(5), where it is noted that family members should not be present during each other interviews unless specifically called for. Yet, the current wording fails to recognize that a child has the right to the presence of a guardian who would not be his/her parent in the interview. For that reason, it is suggested that to amend this provision to read:

"**Where the applicant is a minor, including an unaccompanied child, the interview is conducted in the presence of the guardian or the parent, and a legal representative**."

(4) The interview from paragraph (1) of this Article shall take place in conditions ensuring appropriate confidentiality.

(5) The interview shall take place without the presence of the applicant's family members unless the authorised official of the Sector for Asylum estimates that the presence of other family members is necessary for the examination of the asylum application.

(6) The applicants, upon their justified request, shall have the right to be interviewed by an authorised official of the same sex of the Sector for Asylum within the frames of the possibilities.

(7) The authorised official conducting the interview shall be competent to take into consideration the personal or general circumstances surrounding the applicant, pertaining to the asylum application, including the cultural background or the vulnerability of the applicant, to the possible extent.

(8) The authorised official conducting the interview shall provide an interpreter in order to carry out appropriate communication. Where it is impossible to enable communication in the language preferred by the applicant, the interview shall be conducted in another language which he or she is reasonably assumed to understand and can communicate in.

(9) During the interview the applicant shall present all the facts and evidence that are of relevance for establishing the existence of well-founded fear of persecution in terms of Article 5, or serious violations of Article 9 of this Law.

(10) Transcript shall be made during the interview. The transcript shall be signed by the persons participating in the interview. If the applicant disagrees with the content of the transcript and refuses to sign it, it shall be recorded in the applicant's case file.

(11) The authorised official deciding on the procedure for granting asylum may also take into consideration the fact that the applicant did not appear at the interview unless there are justified reasons for his or her absence.

Examination on the Basis of Granting Asylum for the Purposes of Subsidiary Protection
Article 40

Where it is established that the applicant does not meet the conditions for granting the refugee status pursuant to Article 3 indent 1 of this Law, the Sector for Asylum, as per official duty, shall examine the existence of reasons and conditions for granting asylum for the purposes of subsidiary protection, pursuant to Article 3 indent 2 of this Law.

Reasons for Rejection
Article 41

The asylum application will be rejected in the regular procedure when it is established that:

- there is no well-founded fear of persecution in terms of Article 5 of this Law;
- there is no any serious harm in terms of Article 9 of this Law,
- there are reasons for exclusion from Article 8 and 10 of this Article, and
- the persecution for reasons of Article 5 and serious harm for reasons of Article 9 of this Law shall be limited only to the geographic area of the country of his or her nationality, or if not having a nationality, the country in which he/she had habitual place of residence, and there is a possibility for effective protection in another part of the country, unless it cannot be expected that the person can seek a protection there in light of all the circumstances.

Taking a Decision and Types of Decisions
Article 42

(1) On the basis of the facts and evidence established in the procedure, the Sector for Asylum will take a written decision on granting a refugee status, decision on granting subsidiary protection or decision rejecting the asylum application.

(2) On the basis of the facts and evidence established in the procedure, if both parents were granted a refugee status or subsidiary protection, the Sector for Asylum may take a decision recognising the same status to their minor child who was born and lives on the territory of the Republic of Macedonia.

(3) If one of the parents obtained the status established in paragraph 1 of this Article, the Sector for Asylum may take a decision granting asylum, refugee status or subsidiary protection to a minor who was born and lives on the territory of the Republic of Macedonia.

(4) The decision rejecting the asylum application shall contain the reasons for the rejection of the application and guidelines for the possible legal remedies.

(5) Upon the recognition of the status of a refugee or a person under a subsidiary protection, the Sector for Asylum may adopt a decision on cessation, decision on cancellation or a decision on revocation of the right to asylum in cases determined by this Law.

Right to Appeal and Taking a Decision
Article 43

(1) An applicant may initiate an administrative dispute against the decision of the Sector for Asylum before the competent court within 30 days of the day of delivery of the decision.

(2) The appeal shall postpone the execution of the decision.

(3) The competent court will take the Decision within three months of the day of submission of the appeal.

Subsequent Asylum Application
Article 44

A foreigner may resubmit an asylum application, in case new circumstances have arisen, i.e. the circumstances have changed significantly or when the applicant provided new evidence at the moment of adoption of a final decision, rejecting the previous application.

3. ACCELERATED PROCEDURE

Objective of the procedure
Article 45

(1) The accelerated procedure is conducted when the asylum application is inadmissible or manifestly unfounded unless the application has been submitted by unaccompanied minor and a person with mental disability, as well as a person for which there are evidence or serious indications that he/she was exposed to torture, rape or other serious forms of psychological, physical or sexual violence.

(2) For the persons from paragraph 1 of this article, the Sector for Asylum conducts an interview, pursuant to article 39 of this Law.

Comment on Article 45: UNHCR welcomes that all applicants, whose asylum applications will be treated in the accelerated procedures, are given an interview in accordance with article 39 of this Law. Nevertheless, it is UNHCR's position that accelerated procedures should never be mandatory,

their use should be restricted to certain, well-defined grounds, and all safeguards to ensure the right to a fair procedure must be in place. For this reason, it is suggested to replace "the accelerated procedure is conducted" with **"the accelerated procedure may be conducted".**

Inadmissible Applications
Article 46

The asylum application shall be considered as inadmissible if:

- the person has arrived from a safe third country, where he/she could apply for asylum, unless the person proves that the third country is not safe for him/her or
- if the person has been granted asylum in another country and continues to enjoy the protection provided by that country.
- When upon a submitted asylum application it has been determined that the conditions from article 44 of this Law have not been met.

Comment on Article 46: An application declared inadmissible shall be rejected according to article 48 of this law. The wording of the article "shall be considered" makes the rejection of these claims compulsory. However, as the applicant according to articles 18 and 19 has the right to rebut the presumption of safety in the first country of asylum or a safe third country, it would be more correct to reflect this by replacing "shall be considered" by "**may be considered**".

Manifestly Unfounded Applications
Article 47

The asylum application shall be considered as manifestly unfounded if:

- there are no grounds in the claim for fear of persecution because the application has not been submitted by reasons determined by this Law but for the possibility of employment and better living conditions or when the applicant does not provide any information that he/she would be exposed to persecution or when his or her claims are impossible or contradictory;
- the application is based on deliberate deception or misuse of the procedure for granting asylum;
- the person has arrived from a safe country of origin unless he/she challenges that the country of origin is not safe for him/her,
- the person has arrived from a safe country of origin, which is a Member State of the European Union, unless the person challenges that the country of origin is not safe for him/her;
- without having a reasonable explanation, intentionally includes false statements in his/her asylum application, both in oral and written form, and those statements are substantial and significant for the determination of his/her status;
- without reasonable explanation, he/she has based the application on false identity or forged documents which he/she claims to be authentic;
- deliberately destroys, damages or conceals a travel document, another document or evidence of significance for the procedure in order to obstruct the development of the procedure and to deceive the asylum authorities regarding his or her identity;
- he/she has submitted the asylum application in order to prevent the execution of the decision of expulsion from the territory of the Republic of Macedonia, and the applicant had enough time to previously apply for asylum or
- the applicant's application has been rejected by another country following an examination of the essence of the application in a procedure which contained appropriate procedural guarantees in accordance with the Geneva Convention.

Comment on Article 47: UNHCR's recognizes the usefulness for national status determination procedures to deal with manifestly unfounded claims in accelerated procedures. That said, UNHCR is concerned with this extensive list of acts that an asylum-seeker performed and which may be considered as deliberately trying to deceive the authorities. In UNHCR's view, there are only two categories which can qualify as manifestly unfounded: claims which are "clearly abusive" (i.e. clearly fraudulent) or claims that "unrelated to the criteria for the granting international protection". This was agreed by the Executive Committee and its member states in 1983, and has further been confirmed in *UNHCR's Position on Manifestly Unfounded Applications for Asylum* in 1992.

Manifestly unfounded claims are claims that at first sight are not related to criteria for international protection or one in which the applicant makes what appears initially to be false statements of a material or substantive nature. Such false statements only render a claim 'manifestly unfounded' if they are relevant for the determination of international protection needs, and if the claim does not contain other elements indicating a need for international protection. The mere fact of having made false statements does not, however, mean that the criteria for international protection may not be met. False statements do not in themselves make the claim manifestly unfounded.

The reference here to "reasonable explanation" for using a false identity or forged documents is open to interpretation and its meaning seems to be left to the individual case worker to decide upon. UNHCR wishes to note that the threshold for deciding what should be a reasonable explanation for the use of forged documents or a false identity need to be sufficiently low. Refugees may use forged documents for a variety of reasons, which do not undermine their need for international protection. Depending on the state of the country the refugee is fleeing from, there may not be a possibility of obtaining ID documents required for travelling. As many refugees are forced to resort to smugglers on their journey to reach a safe destination, they may also be provided with forged documents by the smugglers as the only means of entering the territory. Furthermore the absence of documents or use of false documents is not, per se, a sufficient reason to process the applications in an accelerated manner. A request for asylum should not either be rejected as manifestly unfounded based on the fact that the applicant could have applied for asylum earlier, in case the facts presented by the applicant are linked to need for international protection.

Therefore, UNHCR suggests that article 47 is reworded to state:

"An asylum application may be considered as manifestly unfounded if the application was clearly fraudulent or did not relate to the granting of refugee status."

Taking a Decision
Article 48

(1) If the asylum application is considered to be inadmissible or manifestly unfounded, the Sector for Asylum shall adopt a decision rejecting the asylum application.

(2) Reasons for the rejection of the asylum application shall be stated in the explanation to the decision from paragraph (1) of this Article.

(3) The decision from paragraph 1 of this Article shall be taken within 15 days of the day of the submission of the asylum application.

Appeal against the Decision Rejecting the Application
Article 49

(1) An applicant shall have the right to submit an appeal against the decision rejecting the asylum application within seven days of the day of the delivery of the decision.

(2) The appeal from paragraph (1) of this Article shall postpone the execution of the decision.

(3) The competent court shall decide upon the appeal from paragraph (1) of this Article within 30 days of the day of the submission of the appeal.

CHAPTER III
CESSATION, CANCELLATION AND REVOCATION OF THE RIGHT TO ASYLUM

Cessation of the Asylum
Article 50

(1) The refugee status granted in the Republic of Macedonia shall cease for a person who:

- has voluntarily re-availed himself/herself under protection of the country of his/her nationality,
- after having lost it, has voluntarily re-acquired his or her citizenship,
- obtained new nationality and enjoys protection by the country of his or her new nationality
- has voluntarily re-established him/herself in the country that he/she has left or has remained outside it owing to fear of persecution,
- can no longer refuse to avail himself or herself of the protection by the country of his or her nationality because the circumstances in which asylum has been granted to him/her have ceased to exist, or
- being a stateless person and can return to the country of his or her previous regular place of residence because the circumstances in which asylum has been granted to the person have ceased to exist.

(2) Alongside the reasons stipulated under paragraph (1) of this Article the status of subsidiary protection shall cease if the conditions on the basis of which the status had been approved, no longer exist or have been changed to such an extent that such protection is no longer necessary.

(3) Upon assessment of indents 5 and 6 of paragraph 1 of this article, it shall be considered whether the change in circumstances is of such significant character and is not temporary, that the fear of persecution of the person with the refugee status is no longer considered a reasonable ground.

(4) Indents 4 and 5 of paragraph 1 of this article do not apply to a person with the refugee status who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence.

Comment on Article 50(4): Article 50 incorporates article 1C of the 1951 Refugee Convention into the Proposal. However, the references in article 50(4) to indents 4 and 5 of paragraph 1 are erroneous. They should be linked to indent 5 and 6, which refers to ceased circumstances for refugees and stateless persons as per Article 1C 5-6 of the 1951 Refugee Convention.

(5) For cessation of the right to asylum, because of the reasons stipulated under paragraphs (1) and (2) of this Article, the same procedure shall be implemented as that established by this Law for the granting of the right to asylum.

Cancellation and Revocation of the Refugee Status
Article 51

(1) The refugee status shall be cancelled if it is established that: reasons for exclusion stipulated under Article 8 of this Law were existent before granting asylum in the Republic of Macedonia, or

- the status has been obtained by misrepresenting or not showing facts including the use of forged documents which were decisive for obtaining the refugee status.

Comment on Article 51(1): Reasons to cancel refugee status may relate to both inclusion and exclusion criteria. Noting that article 51(1) indent 1 refers to exclusion reasons and specifically refers to these in article 8 of this Law, UNHCR would suggest to reformulate article 51(1) indent 2 along the same lines in reference to inclusion criteria. A more general wording encompassing a wider range of situations where it is noted that refugee status was erroneously granted in the first place would be more suitable here.

The paragraph 51(1) indent 2 could read for example:

"**When it is subsequently revealed that the basis for granting refugee status was absent in the first place**.

(2) Without prejudice to the duty of the refugee to submit the entire available documentation, the Sector for Asylum which, on individual basis, makes a decision to grant refugee status to a person shall establish that the person is no longer or never was a refugee, without prejudice to his/her duty.

(3) The refugee status shall be revoked if it is established that:

- reasons for exclusion from Article 8 of this Law have arisen,
- the person constitutes a danger to the security of the country or
- the person has been convicted for a particularly serious crime by a final court decision and constitutes a danger to the country.

Comment on Article 51(3) indent 2 and 3: UNHCR refers to revocation of refugee status in situations where a person after recognition engages in conduct through which s/he incurs individual responsibility for crimes or acts within the scope of Article 1F(a) and 1F(c) of the 1951 Refugee Convention. Through these actions, s/he forfeits the right to refugee status.

The grounds included in indents 2 and 3 are not grounds for excluding someone or, thus later, revoking a recognized refugee status. By adding these, there is a risk of departing substantively from the framework of the 1951 Refugee Convention. Indents 2-3 are derived from Article 33(2) of the 1951 Refugee Convention, which does not form part of the eligibility criteria for refugee status. Rather they permit the host State to withdraw the right to protection against *refoulement* under Article 33(1) from a refugee in certain exceptional circumstances. Article 33(2) is directed to those who have already been determined to be refugees. It applies to refugees who become an extremely serious threat to the country of asylum due to the severity of crimes perpetrated by them. It aims to protect the safety of the country of refuge and hinges on the assessment that the refugee in question poses a major actual or future threat. For this reason, Article 33(2) has always been considered as a measure of last resort, taking precedence over and above criminal law sanctions and justified by the exceptional threat posed by the individual – a threat such that it can only be countered by removing the person from the country of asylum. Noting that article 33(2) of the 1951 Refugee Convention is already included in article 14(2) of this Law, UNHCR proposes to delete indent 2 and 3 of article 51(3).

(4) For cancellation and revocation of the refugee status because of the reasons stipulated under paragraphs (1) and (3) of this Article, the same procedure shall be implemented as that established by this Law for the granting of the right to asylum.

Cancellation and Revocation of the Status of Person under Subsidiary Protection
Article 52

(1) The status of a person under subsidiary protection shall be cancelled if it is established that:

- reasons for exclusion stipulated under Article 10 of this Law were existent before granting asylum in the Republic of Macedonia,or

- status of a person under subsidiary protection has been obtained by misrepresenting or not showing facts including the use of forged documents which were decisive for obtaining status of a person under subsidiary protection

(2) Without prejudice to the duty of the person under subsidiary protection to submit the entire available documentation, the Sector for Asylum which, on individual basis, makes a decision to grant status of a person under subsidiary protection to a person shall establish that the person is no longer or never was a person under subsidiary protection, without prejudice to his/her duty.

(3) The status of a person under subsidiary protection shall be revoked if it is established that:

- reasons for exclusion from Article 10 of this Law have arisen,

- the person constitutes a danger to the community or the security of the country, or

- prior to entering the country, the person committed a crime which is punishable by a prison sentence, and the reason for leaving the country of origin was solely avoiding a sentence prescribed by the national legislation of that country.

(4) For cancellation and revocation of the status of a person under subsidiary protection because of the reasons stipulated under paragraphs (1) and (3) of this Article, the same procedure shall be implemented as that established by this Law for the granting o f the right to asylum.

Comment on Article 52: Given the close linkages between refugee status and subsidiary protection, UNHCR recommends that the same grounds for cancellation and revocation as in article 51 also applies to persons under subsidiary protection.

CHAPTER IV
DOCUMENTS

Issuing of Documents
Article 53

(1) In terms of this Law, the following items shall be considered as documents:

- identification document for the applicant;

- identity card for a person with refugee of subsidiary protection status, and travel document for a person with a refugee status pursuant to the Geneva Convention.

(2) A travel document shall be issued for the person under subsidiary protection in accordance with the regulations for foreigners.

(3) The documents from paragraphs (1) and (2) of this Article shall be issued by the Ministry of Interior pursuant to this Law.

(4) The document from paragraph (1) indents 1 and 2 of this Article shall be an identification document which the person shall be obliged to carry with himself/herself and to show it upon request of the official which is authorised by law to legitimise persons.

(5) The person shall be forbidden to deliver the document from paragraphs (1) and (2) of this Article to be used by another person or the person shall be forbidden to use someone else's document as own.

Identification Document for Asylum Applicant
Article 54

(1) Identification document shall be issued to the applicant within 15 days of the day of the submission of the asylum application.

(2) The identification document for applicant shall be valid until the taking of a final decision in the asylum procedure, i.e. by the expiration of the term during which the person is obliged to leave the territory of the Republic of Macedonia following the decision rejecting the application.

(3) The identification document from paragraph (1) of this Article shall confirm the right of residence of the applicant within the validity period of the identification document stipulated in paragraph (2) of this Article.

Identity Card
Article 55

(1) The person with a refugee status and the person with a subsidiary protection over 18 years of age shall be obliged to submit an application for issuing identity card.

(2) The identity card may also be issued to a person with refugee status or person under subsidiary protection with 15 years of age, at his/her own request, upon prior consent of the parents or the guardian

(3) The identity card for a person with refugee status shall be issued with a validity period of at least three years and it shall be extended unless reasons related to the national safety or public order otherwise require.

(4) The identity card for a person under subsidiary protection shall be issued with a validity period of at least one year and it shall be extended unless reasons related to the national safety or public order otherwise require.

(5) The identity card for a person with a refugee status and a person under subsidiary protection shall confirm the right of residence.

(6) Personal identification number for a foreigner shall be determined for a person with a refugee status and a person under subsidiary protection.

Travel Document
Article 56

(1) Travel document with a validity period of two years shall be issued at request of a person with a refugee status. The validity of the travel document may be extended. The application for issuing travel document for a person under 18 years of age shall be submitted by his/her parent or guardian.

(2) By issuing the travel document from paragraph (1) of this Article, the recognized refugee, by rule, does not acquire the right to receive help from the diplomatic and consular offices of the Republic of Macedonia abroad.

(3) Upon request, a travel document shall be issued for the person under subsidiary protection in accordance with the regulations for foreigners.

Rejection to Issue and Confiscation of a Travel Document
Article 57

(1) Travel document shall not be issued to a person with a refugee status:

- against whom criminal or misdemeanour proceeding has been initiated, upon request of the competent court;
- to whom an unsuspended imprisonment sentence has been issued, until the completion of the sentence, and

- if he/she has not paid the property and legal or financial duties towards the Republic of Macedonia upon request of a competent court.

(2) If the reasons from paragraph (1) of this Article existed before the day of the issue of the travel document, and they were discovered at the later stage, or the reasons occurred after the day of the issue, the travel document will be confiscated.

(3) The reasons for the confiscation shall be indicated in the decision rejecting the issue of the travel document, i.e. confiscating the travel document.

(4) Administrative dispute can be initiated to the competent court against the decision from paragraph (3) of this Article.

(5) The appeal against the decision on confiscating the travel document shall not postpone its execution.

(6) The regulations for foreigners shall be applied in case of rejection to issue or confiscation of travel document for a foreigner for persons under subsidiary protection.

Comment on article 57: According to the Article 27 of the 1951 Refugee Convention, a State shall issue identity papers to any refugee in their territory who does not possess a valid travel document. According to its article 28, the only reasons for not providing documents enabling travelling outside the territory are "compelling reasons of national security and public order". The reasons laid out in article 57(1) indent 1 – related to the **misdemeanour**, as well as the indent 3 are in the view of UNHCR not such that they can be considered as "compelling reasons of national security and public order". Consequently, UNHCR recommends that the article is accordingly edited.

Return of Documents
Article 58

(1) On the basis of the validity of the decision of denying asylum, cessation, cancellation or revocation of the right to asylum, the person shall be obliged to return the issued documents.

(2) The applicant who submitted an application for withdrawal pursuant to Article 37 of this Law, along with the application, shall also be obliged to return the documents issued by the Ministry of Interior.

Losing or Damaging a Document
Article 59

(1) The person to whom a document has been issued pursuant to this Law shall be obliged to report its loss or damaging to the Ministry of Interior within two days.

(2) The person from paragraph (1) of this Article will submit written statement to the Sector for Asylum stating the time, place and manner of losing or damaging the document.

CHAPTER V
LEGAL STATUS

General Obligations
Article 60

(1) Each applicant or a person who has been granted asylum in the Republic of Macedonia shall be obliged to conform to the Constitution of the Republic of Macedonia, laws

and other regulations and decisions of the State authorities, as well as in accordance with the obligations provided for in the international agreements ratified in accordance with the Constitution during his or her stay in the Republic of Macedonia.

(2) In order to facilitate the integration of the applicants or the persons who have been granted asylum in the Republic of Macedonia the Ministry of Labour and Social Policy will prepare appropriate integration programmes.

1. RIGHTS AND OBLIGATIONS OF THE APPLICANTS

Rights of the Applicants
Article 61

(1) Until the taking of the final decision in the asylum procedure the applicants shall have a right to:

- residence;
- identification document
- freedom of movement;
- free legal assistance;
- adequate accommodation and care at the Reception Centre or other place for accommodation determined by the Ministry of Labour and Social Policy if needed;
- family unity;basic health services pursuant to the regulations for health insurance;
- right to a social protection pursuant to the regulations for social protection;
- right to education pursuant to the regulations for primary and secondary education;
- work only within the premises of the Reception Centre or another place for accommodation determined by the Ministry of Labour and Social Policy, as well as right to free access to the labour market for the applicant whose asylum application has not been decided upon by the Sector for Asylum within a period of 9 months from the submission of the application;
- access to available programmes for early integration; and
- contact with the High Commissioner for Refugees, as well as nongovernmental humanitarian organisations for the purposes of providing legal assistance in the asylum procedure.

(2) The Ministry of Labour and Social Policy shall inform the applicants in writing on the rights provided for in paragraph (1) of this Article in a language which they may reasonably be presumed to understand or orally with the assistance of an interpreter.

(3) The Ministry of Labour and Social Policy shall take care for the provision of means of subsistence and health protection of the applicants while they are accommodated in the Reception Centre or some other place for accommodation determined by the Ministry.

(4) The conditions and standards for reception of the applicants shall be prescribed by the Minister or Labour and Social Policy.

Obligations of the Applicants
Article 62

(1) The applicant shall be obliged to:

- reside in the Reception Centre or other place for accommodation determined by the Ministry of Labour and Social Policy and not to leave the place of residence determined by the competent authority without informing it or without holding a permission to leave the place, if needed;

- to cooperate with the authorities for granting asylum, especially to provide personal data, to handover the identity and other documents which he/she may possess, to allow his or her photographing and fingerprinting, physical search and search of the luggage and the vehicle by which he/she has arrived to the Republic of Macedonia, as well as to provide data on his or her property and income;

- to subject himself/herself to medical examinations, treatments and immunisation upon request of the authorities competent for the works in the area of health care, in case of a threat to the public health, and

- to respect the house rules of the Reception Centre or the other place for accommodation determined by the Ministry of Labour and Social Policy and not to demonstrate violent behaviour.

(2) If the applicant commits serious violations of the provisions from paragraph (1) indent 4 of this Article, as well as if he or she demonstrates violent behaviour, the competent authority may decide on revocation of the right to accommodation in the Reception Centre, i.e. compensation for the damage that the applicant has caused. The competent authority shall decide separately and objectively upon each case stating the reasons for the decision. The applicant shall have the right to submit an appeal pursuant to the regulations for social protection. The appeal shall postpone the execution of the decision.

(3) During his accommodation in the Reception Centre and after photographing and fingerprinting has been conducted the applicant may submit a request to the Ministry of Labour and Social Policy to reside outside the Reception Centre on his or her own cost.

(4) The applicants who have been granted the right to reside outside the Reception Centre or another place of accommodation determined by the Ministry of Labour and Social Policy shall be obliged to report the new address within 3 days.

Limitation of Freedom of Movement
Article 63

General comment on article 63: Article 26 of the 1951 Refugee Convention provides for the right to freedom of movement and choice of residence for refugees and asylum-seekers, regardless of whether they entered the territory with or without authorization (Art. 31 of the 1951 Refugee Convention contains the principle of non-penalization for illegal entry or stay, provided that they present themselves to the authorities without delay and show good cause for their illegal entry or presence). Similarly, Article 12 (1) of the ICCPR provides for the right to liberty of movement and freedom to choose one's place of residence for those 'lawfully' within the territory of a State. In exercising their internationally recognized right to seek asylum, asylum-seekers are considered to be ''lawfully' in" the territory once they have been admitted to a status determination process, such access not being delayed unreasonably. UNHCR's interpretation of Article 26 of the 1951 Refugee Convention is supported by the United Nations Human Rights Committee which has held that an alien who entered the State illegally, but whose status has been regularized, must be considered to be ''lawfully within the territory''.

UNHCR recognizes that there are circumstances, however, in which the freedom of movement or choice of residence of applicants for international protection may need to be restricted, subject to relevant safeguards under international law. Article 12 (3) ICCPR for instance allows restrictions where this is necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others.

However, there are certain safeguards which need to be present when restricting the freedom of movement. Any limitation of freedom of movement first of all need to pass a proportionality test, which is required to 1) look at all circumstances of the case and 2) to weigh the seriousness of the act committed and the public interest against the interference with the person's rights. The ECtHR only accepts interferences with rights guaranteed under the ECHR if they are justified by a legitimate aim and if there is a proportionate relationship between this aim and the means employed to realize it.

The concrete steps to pursue are:
- What is the legitimate aim pursued with the measure?
- Is the measure adequate to achieve this legitimate aim, i.e. would it work to achieve the objective
- Is this measure necessary, i.e. would there be less intrusive means that could achieve the same objective?

UNHCR also wishes to point out that the more intense the limitation of freedom of movement is, the more restrictive the proportionality test need to be.

UNHCR notes that the Law should clearly define the term "limitation of movement", as provided in the draft, in order to be able to determine which procedure shall apply, i.e. which procedure and legal and procedural safeguards shall be established. The grounds for "limitation of freedom of movement" as outlined in the draft Law correspond to the grounds for detention, as provided in the EU Reception Directive (recast), but fail to include corresponding procedural guarantees.

The Constitution of RM, in Chapter II. Basic Freedoms and Rights of the Individual and Citizen, Article 12, para 1 provides that "The human right to liberty is irrevocable." The Constitution further provides that the liberty may be restricted upon a decision of a competent court and in procedure as prescribed with the Law. According to the same article, para 4, prior to the court decision the right to liberty may not be limited for longer than 24 hours

While the Constitution does not recognize restriction and/or limitation of freedom of movement as a category, when it comes to foreigners, it does provide that foreigners enjoy freedoms and rights under conditions regulated by law and international agreements

Limitation of freedom of movement is also governed by the provisions of the Law on Foreigners, Article 7, Para. 1, which provide that the MoI may undertake activities to control movement and stay of foreigners. However, the same Law in Article 3, Para 1, Indent 1, provides for an exception to the application of the Law on Foreigners for persons who have declared intention or seek protection in the State. Introduction of limitation of freedom of movement in the Law on International and Temporary Protection would contradict the provisions of the Law on Foreigners.

(1) In special cases, the freedom of movement of the applicant may be limited, if other less coercive alternative measures in line with the national legislation cannot be applied effectively.

Comment on Article 63 (1): With the current wording of the text, it is not only the right to freedom of movement that is affected, but also the right to liberty and security of the person, as reflected in article 12 of the Constitution, as well as for example in Article 9 of the International Covenant on Civil and Political Rights. Limitation of freedom of movement during the asylum procedure shall have an exceptional character.

UNHCR therefore suggests to the legislator amending para (1), to read as follows:

"Limitations of liberty and freedom of movement of asylum-seekers within the framework of the asylum procedure is an exceptional measure, only permitted when necessary and reasonable in the individual case and proportionate to a legitimate purpose, as listed below:", to be followed by the grounds for limitations, as stipulated in the draft.

(2) The special cases under paragraph (1) of this Article include only:

Comment on Article 63 (2): UNHCR considers that restrictions of liberty and freedom of movement for initial identity or security checks must be for a minimal period and shall last only as long as reasonable efforts are being made to establish identity or carry out the security check. In addition, authorities shall not immediately interpret that lack of identity documentation, or the inability to produce them, as unwillingness to cooperate. The lack of documentation, in many cases, could be a consequence of the circumstances of the flight of the applicant.

UNHCR further wishes to point out that in case where it is impossible to establish the identity and nationality of an applicant or where this would require a lengthy procedure, it is essential that the individual is not held in prolonged detention. Special safeguards will need to be put in place to safeguard against arbitrary detention, including prolonged or indefinite, in such cases. In using the ground of verifying identity or nationality, special procedures may need to be introduced with respect to stateless persons who apply for international protection to avoid their possibly indefinite detention.

UNHCR suggests the provision to be reformulated in accordance with the Law on Foreigners, so that after the word "… citizenship" the following is added: **"in case the foreigner refuses to cooperate in the establishing of his identity, in line with the regulations for foreigners."**

- establishing and checking the identity and citizenship,
- establishing facts and circumstances on the basis of which the asylum application has been submitted, and which cannot be established without the limitation of the movement especially if there is an estimation of a risk of absconding;

Comment on Article 63 (2) indent 2: Restrictions of liberty and freedom of movement for establishing the fact and circumstances under which the application for international protection is based, could be justified only in order to record, within the context of an initial interview, the elements of the claim to international protection.

UNHCR suggests this provision be reformulated, as follows:

"-in order to record, within the context of a preliminary interview, the elements under which the application for international protection is based, which could not be obtained in the absence of restrictions of liberty and freedom of movement;"

UNHCR further wishes to point out that the strict maximum time limits are to be observed in line with Article 64(2), to ensure that detention on the basis of this ground is not used for purposes of administrative convenience for the whole duration of the asylum procedure. Additionally, clear criteria need to be developed in order to assess the risk of absconding to avoid any arbitrary application of this ground

- protecting public order or national security, or

Comment on Article 63 (2) indent 3: The wording "protection of the public order" is rather broad and in UNHCR's view may result in undetermined causes of limitation of freedom of movement and potentially impose arbitrary detention to asylum seekers.

It is recommended that the provisions and conditions applying for nationals for violation of public order to apply for asylum seekers as well, ensuring relevant procedure is conducted and legal safeguards and procedural guarantees are put in place to limit the use of detention, in accordance with the provisions of the domestic Law on Misdemeanour of Public Order and Peace.

Even though determining what constitutes a national security threat lies primarily within the domain of the government, the measures taken (such as detention) need to comply with the standards in the UNHCR Detention Guidelines, in particular that the detention is necessary, proportionate to the threat, non-discriminatory, and subject to judicial oversight. (A. and others v. the United Kingdom, (2009), ECtHR, App. No. 3455/05)

UNHCR suggests the wording of this provision to be reformulated, as follows:

"- protection of public order in accordance with the Law on Misdemeanour of Public Order and Peace and the national security,
- to protect the existence of the nation or its territorial integrity or political independence against force or threat of force";

- when the foreigner has been detained for the purposes of a procedure in accordance with the regulations for return of foreigners illegally residing in the country, in order to prepare the return procedure and to implement to process of removal, and the foreigner already had access to the asylum procedure, and there is reasonable ground to believe that he/she submitted application for international protection in order to postpone or impede the enforcement of the return decision.

(3) The risk of absconding shall be assessed on the basis of facts and circumstances for a specific case, especially taking into account previous attempts to voluntarily leave the Republic of Macedonia, refusal to check and establish person's identity, and presenting false data of person's identity and citizenship.

Measures for Limitation of Freedom of Movement
Article 64

(1) The freedom of movement from Article 63 of this Law may be limited by the following measures:

- prohibition on movement outside the Reception Centre for Asylum Seekers or other place for accommodation determined by the Ministry of Labour and Social Policy or
- accommodation in the Reception Centre for Foreigners.

Comment on Article 64 (1): UNHCR notes that both aforementioned measures constitute deprivation of liberty and detention, in the sense of international law. Detention refers to deprivation of liberty or confinement in a closed space, which an asylum-seeker is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centers or facilities.

Prohibition of movement outside the Reception Centre for Asylum-Seekers clearly falls within this scope, as does detention in the Reception Centre for Foreigners, due to the nature of the facility. Consequently, legal and procedural safeguards need to be in place in relation to the application of these measures, with regard to international, regional and national (Constitutional) standards of protection of the right to liberty. Article 12 of the Constitution of the Republic of Macedonia provides that no individual's liberty can be restricted, except by a court decision, and in the cases and procedures determined by law. Para 3 and 4 of art. 12 provide:

"- The person summoning, detained or deprived of liberty must immediately be acquainted with the reasons for his or her summoning, detention or deprivation of liberty, and his or her rights established by law, and he cannot be asked for a statement. The person has the right to an attorney in the police and court procedures.

- The person deprived of liberty must immediately, and latest within 24 hours from the moment of deprivation of liberty, be brought before a court, which shall decide on the legality of the deprivation of liberty without any delay."

UNHCR further notes that the notion "accommodation in the Reception Centre for Foreigners" does not correspond to the terminology of the Law on Foreigners, art. 108, which provides for "Temporary Detention in the Reception Centre for Foreigners".

Restriction of liberty and freedom of movement shall depend on an individual, case-by-case assessment of necessity and, based on the purpose pursued, liberty and freedom of movement may also be limited by less coercive measures.
UNHCR notes that ECtHR case law has outlined strict criteria for when detention can be justified. It needs to be **justified by public order** (Letellier v. France, § 51; I.A. v. France, § 104; Prencipe v. Monaco, § 79; Tiron v. Romania, §§ 41-42), **it cannot be arbitrary** (McKay v. theUnited Kingdom [GC], § 30; Creangă v. Romania, § 84; A. and Others v. The United Kingdom [GC], § 164) and **the principles of proportionality and other key principles need to be respected** (James, Wells and Lee v. the United Kingdom, §§ 191-95; and Saadi v. the United Kingdom [GC], §§ 68-74).

UNHCR, would like to suggest to the Ministry the consideration of the following measures, in line with UNHCR Detention Guidelines:
- deposit or surrender of documentation,
- reporting conditions,
- directed residence,
- provision of a guarantor/surety and release on bail/bond,
- community supervision arrangements or
- alternative care/detention arrangements

(2) The measures for limitation of freedom of movement shall be imposed for a maximum period of three months, and by exception they can be extended for maximum another three months.

Comment on Article 64 (2): UNHCR welcomes that the legislator established a maximum time limit to restrictions on liberty and freedom of movement. However, UNHCR would recommend that upon the reaching of the maximum time limit, there is a clause adding that the asylum-seekers are automatically released, to avoid situations of uncertainty or prolonged detention.

UNHCR notes regarding the terminology "three months" at the end of the para, that the term used in the Constitution is "90 days" instead of the term "three months".

(3) The manner of limiting the freedom of movement of the applicant shall be prescribed by the Minister of Interior.

Comment on Article 64 (3): UNHCR notes that the measures from art. 64, para. 1, indents 1 and 2 – prohibition of movement outside the Reception Centre for Asylum-Seekers or other place for accommodation… as well as accommodation in the Reception Centre for Foreigners, both constitute deprivation of liberty. The Constitution of the Republic of Macedonia, in its article 12, para. 2 provides that "*no one can be deprived of liberty, except by a court decision and in cases and procedures determined by law*". The present provision is in breach of the article 12 of the Constitution, as well as international standards (notably, art. 9, para.3 of the International Covenant on Civil and Political Rights).

UNHCR therefore suggests this provision to be amended, so that the measures that constitute deprivation of liberty are followed by appropriate safeguards as per international law and Constitution of the Republic of Macedonia, ensuring that the court decides on the deprivation of liberty within 24 hours.

Authority Taking a Decision on Limitation of Freedom of Movement
Article 65

(1) The Ministry of Interior shall take a decision on limitation of freedom of movement of the applicant determining the validity period of the measure.

Comment on Article 65 (1): Please see comments under article 64 (3) – in line with the nature of the measures and the constitutional and international law guarantees, the authority that shall take the decision on deprivation of liberty is a judicial authority.

(2) The applicant shall have a right to file an appeal against the decision from paragraph (1) of this Article to the competent court within 5 days.

(3) The competent court shall reach a decision within 15 days.

Comment on art. 65 (3): The deadline for a court decision on deprivation of liberty has to be very short and should not exceed 48 hours, since it is a limitation of one of the basic human rights. Such

deadlines are prescribed in the Law on Criminal Procedure for decisions on detention, as well as the Law on Misdemeanours, in the cases involving foreigners.

In case an appeal is lodged after 5 days and the decision rendered after the maximum 15 days, an applicant may be subjected to restriction of movement for 20 days even in cases where the grounds for detention are insufficient. Note that the European Convention on Human Rights article 5(4) states that everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful. For example in the case Shcherbina v. Russia §§ 65-70, 32, a delay of 16 days in the judicial review of the applicant's detention order was found to be excessive, as the detention was taken by a non-judicial authority. Given that the decision on restricting freedom of movement will be taken by the Ministry of Interior, which is a non-judicial body.

In addition, following the review of deprivation of liberty, the regular periodic reviews of the necessity for the continuation of the measure before a court must be in place.

Please see the UNHCR Detention Guidelines, para. 47, indent iv – http://www.unhcr.org/publications/legal/505b10ee9/unhcr-detention-guidelines.html

The same principle has been provided in the Law on Misdemeanours, article 101, para. 5 (Detention of Foreigners in Reception Centres): "*The Court shall take a decision for discontinuation of detention immediately upon receipt of the information about the identity*".

(4) The appeal shall not postpone the implementation of the decision.

Rights of the Applicant during the Limitation of Freedom of Movement
Article 66

(1) The applicant who has been imposed a measure of limitation of freedom of movement shall be entitled to be immediately informed on the right to an appeal and exercise the right to free legal assistance in a language that the applicant can be reasonably presumed to understand.

Comment on Article 66 (1): UNHCR notes that the applicant must also be informed on the reasons for deprivation of liberty, as prescribed by the International Covenant on Civil and Political Rights, art. 9, para. 2 and the European Convention on Human Rights, art. 5, para. 2

Previous comments regarding the language are reiterated. Authorities shall ensure that all communication be conducted in a language that the applicants understand. UNHCR suggest to change the wording*: "…in a language reasonably presumed to understand"*, to **"in a language she/he understands and can communicate in"**

(2) The measure accommodation of vulnerable persons and unaccompanied minors in the Reception Centre for Foreigners shall be applied only on the basis of individual assessment, as well as previous consent by the legally established guardian that such accommodation conforms to their personal and special circumstances and needs to take into account the health condition of these persons.

Comment on Article 66 (2): UNHCR notes that the wording of this paragraph should also include reference to Article 34 and 35 of this draft Law, listing the various categories of vulnerable persons.

In addition, UNHCR's position is that children should not be detained for immigration related purposes, irrespective of their legal/migratory status or that of their parents, and detention is never in their best interests. Appropriate care arrangements and community-based programmes need to be in place to ensure adequate reception of children and their families. Detention of children has been recognized to be a violation of the Convention on the Rights of the Child. Consequently, UNHCR suggests to add a paragraph stating that when a decision on potential restriction of the

freedom of movement would affect a child, a thorough best interest determination, outlining alternative care arrangements and alternatives to detention for the children and their families, must be conducted.

See UN High Commissioner for Refugees (UNHCR), *UNHCR's position regarding the detention of refugee and migrant children in the migration context*, January 2017, available at: http://www.refworld.org/docid/5885c2434.html

The legislator may also wish to consult the UNHCR *Annotated Comments to Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*, April 2015, available at: http://www.refworld.org/docid/5541d4f24.html

(3) In the Reception Centre for Foreigners, the accommodation for unaccompanied minors and vulnerable persons is prescribed by a separate regulation.

2. RIGHTS AND OBLIGATIONS OF A PERSON WITH A REFUGEE STATUS

Personal Status and the Right to Residence
Article 67

(1) The personal status of the person with a refugee status shall be established in accordance with the laws in the Republic of Macedonia.

(2) The person with a refugee status shall have the right to reside on the territory of the Republic of Macedonia.

Rights and Obligations
Article 68

(1) If not otherwise established by this Law or another law, the persons with a refugee status shall have the same rights and responsibilities as the citizens of the Republic of Macedonia, with the following exceptions:

-they do not have the right to vote;

-they are not subjected to military service, and

-they cannot perform a business activity, be employed or establish citizens' associations or political parties when, as a condition, it is prescribed by law that the person is to be a national of the Republic of Macedonia.

(2) The persons with a refugee status may acquire the right of possession of movable and immovable property, to be employed or to perform a business activity under the conditions defined by the law regulating this right for the foreigners in the Republic of Macedonia.

Accommodation
Article 69

(1) The Ministry of Labour and Social Policy shall provide accommodation to the person with a refugee status by providing appropriate apartment for use or financial assistance necessary for providing accommodation facilities until the provision of funds for his or her own existence for a period no longer than two years from being granted refugee status, and if the person actively participates in the integration process this period may be extended in accordance with the integration programme.

(2) If the person with refugee status rejects the accommodation facilities provided by the Ministry of Labour and Social Policy and if the person has not been actively involved in the integration programmes after a period of two years he/she shall lose the right to

accommodation and may reside at another place of his or her own choice and at his or her own expense, and in case the person has not been actively involved in the integration programmes in a period of two years.

(3) The Minister of Labour and Social Policy shall prescribe the criteria and manner of using adequate apartment for accommodation or of financial assistance necessary for providing premises for the accommodation of persons with refugee status in accordance with their needs.

Principle of Local Participation
Article 70

The principle of local participation shall mean an obligation of the local self-government units to accept responsibility for accommodation of the person with a refugee status and persons under subsidiary protection depending of the economic development and the number of citizens of the local self-government units by the decision of the Government of the Republic of Macedonia (hereinafter referred to as: the Government).

Social Protection Rights
Article 71

On the day of granting the refugee status, the person with refugee status shall become equal to the citizens of the Republic of Macedonia in terms of exercise of the social protection rights stipulated by the Law on Social Protection.

Healthcare
Article 72

In accordance with the Law on Health Insurance, by the time of acquiring the insured person status, the person with a refugee status shall have the right of health care under the same conditions as the citizens of the Republic of Macedonia.

Employment Rights and Social Insurance
Article 73

(1) The persons with a refugee status shall exercise their right to employment pursuant to this Law and the regulations for employment and work of foreigners.

(2) In terms of the employment rights, healthcare, pension and social insurances the persons with a refugee status shall be equal to the citizens of the Republic of Macedonia.

Financing Sources and Competent Authority in Charge of the Exercise of Rights
Article 74

(1) The funds for accommodation, social protection and healthcare from Articles35, 69, 71, 72, and 73 of this Law shall be provided from the Budget of the Republic of Macedonia.

(2) The Ministry of Labour and Social Policy shall be responsible for the accommodation and exercise of the rights to social protection and healthcare from Articles 35, 69, 72, and 73 of this Law.

Transfer of Property, Invested Capital and Profit
Article 75

In accordance with the legal regulations of the Republic of Macedonia the person with a refugee status shall have the right to transfer the property brought into the territory of the Republic of Macedonia and to freely take out the invested capital and profit in another country where he/she has been admitted in order to reside there.

3. RIGHTS AND OBLIGATIONS OF PERSONS UNDER SUBSIDIARY PROTECTION

Personal Status and Right of Residence
Article 76

(1) The personal status of the person under subsidiary protection shall be established in accordance with the laws of the Republic of Macedonia.

(2) The person under subsidiary protection shall have a right of residence on the territory of the Republic of Macedonia.

Rights and Obligations
Article 77

(1) From the day of delivery of the decision granting subsidiary protection the person under subsidiary protection shall be equal to the citizens of the Republic of Macedonia in terms of exercise of the rights to social protections stipulated in the Law on Social Protection, and the right of health services shall be exercised pursuant to Article 72 of this Law.

(2) The persons under subsidiary protection shall have the same rights and obligations as the foreigners with permitted temporary stay on the territory of the Republic of Macedonia if not otherwise determined by this Law or another law.

Accommodation
Article 78

Accommodation shall be provided to the person under subsidiary protection pursuant to Article 69 of this Law.

CHAPTER VI
VOLUNTARY LEAVING AND VOLUNTARY REPATRIATION

Voluntary Leaving
Article 79

(1) Following the decision by which a person’s right to asylum in the Republic of Macedonia has been rejected, cancelled, revoked or has ceased, the Ministry of Interior, Sector for Asylum will inform the person in writing of the term within which the person shall be obliged to voluntarily leave the territory of the Republic of Macedonia which cannot be shorter than 15 days, or to regulate his or her stay pursuant to the Law on Foreigners.

(2) If the person does not act in accordance with paragraph (1) of this Article, he/she will be treated in accordance with the regulations for foreigners.

Voluntary Repatriation
Article 80

Upon request of the person to whom international protection in the Republic of Macedonia has been granted, as well as following cessation of asylum in the Republic of Macedonia, the Ministry of Labour and Social Policy in cooperation with the Ministry of Interior and the High Commissioner for Refugees will enable organised voluntary repatriation of the persons in their country of origin.

CHAPTER VII
APPLICATION OF PROVISIONS FOR REMOVAL

Application of Provisions for Removal from the Law on Foreigners
Article 81

In case the rejected person, as well as the person whose right to asylum has ceased, was cancelled or revoked pursuant to this Law, does not leave the territory of the Republic of Macedonia in the set timeframe provided by the Sector for Asylum, his or her removal from the Republic of Macedonia shall be performed in accordance with this Law and pursuant to the provisions on foreigners.

CHAPTER VIII
RIGHT TO TEMPORARY PROTECTION

Conditions for Obtaining Temporary Protection
Article 82

(1) In case of mass influx of persons coming directly from a country where their lives, safety or freedom are jeopardised by war, civil war, occupation, internal conflict accompanied by violence or mass violations of human rights, the Government may provide them temporary protection.

(2) The Government shall consider the possibility of providing temporary protection when the Council of the European Union establishes that there is mass influx of persons.

(3) The Government shall re-examine the existence of the circumstances from paragraph (1) of this Article and shall decide on the extension or termination of the temporary protection.

(4) The temporary protection in the Republic of Macedonia shall have a duration of one year, and it cannot be extended beyond three years.

Comment to article 82: UNHCR refers to its comments to Article 2(3) on the scope of temporary protection. In particular, and invites the Government to consider expanding Article 82(1) to include the potential additional categories in need of temporary protection.

Article 83

A foreigner shall be excluded from temporary protection provided that the reasons for exclusion from Article 8 and Article 10 of this Law have been met.

Comment to article 83: As temporary protection is a temporary status which may come into play in situations where an individual assessment of each claim is not possible, it is unlikely that it will be possible to fully assess the exclusion grounds for each person who may fall under the scope of the temporary protection. For that reason, it is suggested to delete this article.

Application of the Provisions of This Law
Article 84

The provisions from, 14 (Non-Refoulement Principle), 16 (Family Reunification), 22 (Legal Assistance), 27 (Unlawful Entry and Residence in the Republic of Macedonia), 34 (Unaccompanied Minors), 35 (Vulnerable Persons), 60 (General Obligations) of this Law shall also refer to persons under temporary protection.

Information on Rights and Obligations
Article 85

The Sector for Asylum shall inform the person under temporary protection in writing as soon as possible on the rights and obligations in a language reasonably presumed to be understood.

Comment to article 85: See previous comments on the language in which an individual is informed about his rights and obligations.

UNHCR suggests the article to be reformulated to read:

"The Sector for Asylum shall inform the person under temporary protection in writing as soon as possible on the rights and obligations in a language he/she can communicate in".

Rights of the Persons under Temporary Protection
Article 86

(1) The persons under temporary protection shall have the right to:

- residence and care in the Republic of Macedonia during the temporary protection in accordance with the economic possibilities of the Republic of Macedonia;
- employment, healthcare and pension and disability insurance under the same conditions provided for in the appropriate regulations for the foreigners with granted temporary stay in the Republic of Macedonia;
- humanitarian assistance and basic health services for the unemployed persons under subsidiary protection, and
- primary and secondary education, whereas in terms of higher levels of education the persons under temporary protection shall be equal to the foreigners who have been permitted temporary stay in the Republic of Macedonia.

(2) The stay from paragraph (1) indent 1 of this Article shall not be considered as legal stay in terms of the Law on Foreigners and Law on Citizenship of the Republic of Macedonia.

(3) The Ministry of Labour and Social Policy shall be responsible for the exercise of the rights from paragraph (1).

(4) After ending of the temporary protection, the regulations for foreigners shall apply to the person.

Identification Document of a Person under Temporary Protection
Article 87

(1) The Ministry of Interior shall keep registry of the persons under temporary protection and shall issue identification documents to them.

(2) Identification documents from paragraph 1 of this Article shall be valid until ending of temporary protection in the Republic of Macedonia.

(3) The provisions from Article 53 paragraphs 3, 4, and 5 of this Law shall also refer to the identification document for persons under temporary protection.

Submission of Asylum Application
Article 88

(1) A person under temporary protection shall have the right to apply for asylum at all times.

(2) A person under temporary protection who will be denied the right to asylum shall enjoy temporary protection until the expiry of the validity period of the temporary protection.

(3) For the person under temporary protection who submitted an asylum application for which a decision has not been taken within the validity period of the temporary protection, the asylum procedure continues after the expiry of that validity period.

Voluntary Repatriation and Forced Removal
Article 89

(1) Following ending of temporary protection in the Republic of Macedonia, upon the request of the person under temporary protection, the Ministry of Interior shall take all the necessary measures for organised voluntary return of persons in their country of origin, while ensuring full respect for human dignity.

(2) In case of circumstances pointing out that the person does not intend to leave the territory of the Republic of Macedonia voluntarily, the person shall be removed by force from the territory of the Republic of Macedonia, pursuant to the regulations on foreigners.

Comment on article 89: The legislator may wish to include a notion of how to act in cases of forced removal where there are compelling humanitarian reasons which makes return impossible or reasonable. (See for example the EC Temporary Protection Directive 2001/55/EC).

Art 22 (2):
In cases of enforced return, Member States shall consider any compelling humanitarian reasons which may make return impossible or unreasonable in specific cases

Art 23:
1. The Member States shall take the necessary measures concerning the conditions of residence of persons who have enjoyed temporary protection and who cannot, in view of their state of health, reasonably be expected to travel; where for example they would suffer serious negative effects if their treatment was interrupted. They shall not be expelled so long as that situation continues.
2. The Member States may allow families whose children are minors and attend school in a Member State to benefit from residence conditions allowing the children concerned to complete the current school period

CHAPTER IX
PROCESSING AND PROTECTION OF PERSONAL DATA

Integrated Data Base of Foreigners, Including Data on Asylum, Migration and Visas
Article 90

(1) The Sector for Asylum shall process and use data from the Integrated Data Base of Foreigners, including data on asylum, migrations and visas pursuant to the regulations for protection of personal names and regulations for foreigners, as well as processing other personal data for applicants, persons with refugee status, persons under subsidiary protection, for members of the nuclear family that accompany the applicant, the person with the refugee status, or the person under subsidiary protection and data for their stay and rights that they enjoy in the Republic of Macedonia.

(2) The following personal data for applicants, a person with a refugee status, and a person under subsidiary protection will be processed by the Sector for Asylum: personal name, maiden name, pseudonym, parents' names, gender, date of birth; place of birth, personal identification number; fingerprints and photograph.

(3) The Sector for Asylum shall process the following personal data on the members of the nuclear family that accompany the applicant, the person with the refugee status or the person under subsidiary protection: personal name, date of birth, place of birth and kinship.

(4) The personal data processed by the Sector for Asylum shall be kept in a period of ten years since the day of beginning of processing.

Use of Data from Other Authorities
Article 91

The Sector for Asylum may use data from other authorities that, pursuant to their competence, keep registry of applicants and persons with a refugee status and persons with a subsidiary protection status.

Exchange of Data
Article 92

(1) The data from the Integrated Data Base of Foreigners, including data on asylum, migrations and visas, cannot be exchanged with the country of origin of the person that those data refer to or with the country of origin of the members of that person's family.

(2) For the purposes of execution of a decision for removal from the territory of the Republic of Macedonia for a person whose asylum application has been effectively rejected or whose asylum in the Republic of Macedonia has ceased with an effective court decision pursuant to article 50 of this Law, the Ministry of Interior may exchange the following data with other countries:

- Name and surname, date and place of birth, gender, citizenship, last registered residence and address, data of number of family members and documents issued from the country of origin and
- Fingerprints and photograph.

CHAPTER X
MISDEMEANOUR PROVISIONS

Article 93

A fine in the amount between 20 and 40 Euro in Denar equivalent shall be imposed for a misdemeanour to a natural person that:

- has loaned the documents from Article 53 paragraph 1 of this Law to somebody or has used another person's identification documents for personal use (Article 53 paragraph 5);

- has turned 18 years of age and has not applied for personal identity card (Article 55 paragraph 1); and

- has not returned the issued travel document and personal identity card to the Ministry of Interior upon the cessation of asylum (Article 58).

Article 94

A fine in the amount between 100 and 200 Euro in Denar equivalent shall be imposed for a misdemeanour to a natural person that:

- does not keep the confidentiality of the data he or she obtained during the procedure (Article 31 paragraph 3 and Article 32 paragraph 4);

- does not carry along his or her identification document and refuses to present it upon request of an official who was authorised to perform identification of a person (Article 53 paragraph 4);

- has not reported the disappearance or damage of the document issued pursuant to this Law to the Ministry of Interior within two days (Article 59 paragraph 1);

- has acted in contravention with Article 62 of this Law.

Article 95

For the misdemeanours stipulated in this Law, a misdemeanour procedure shall be initiated and a misdemeanour penalty shall be passed by a competent court.

CHAPTER XI
TRANSITIONAL AND FINAL PROVISIONS

Article 96

Within six months since the day of entering into force of this Law, the Minister of Interior shall adopt a bylaw on the form of confirmation of the expressed intention for applying for asylum, the form of the asylum application, the form of the interview during the registration, the form of the transcript for a conducted interview in relation with the asylum application, the form of the report for receipt of oral asylum application, the form of the asylum application on the grounds of family reunification, the manner of fingerprinting and taking photographs of the applicants, the form and procedure of issuing and exchange of applicants and persons who have been granted asylum or temporary protection in the Republic of Macedonia and on the manner of keeping registry.

Article 97

(1) The bylaws envisaged by this Law shall be adopted within six months since this Law has entered into force.

(2) Until the adoption of the bylaws from paragraph 1 of this Article, the existing bylaws from the “Law on Asylum and Temporary protection” (“Official Gazette of the Republic of Macedonia” no.49/03, 66/07, 142/08, 146/09, 166/12, 101/15, 152/15, 55/16 and 71/16) shall be applied, provided that they are not contrary to the provisions of this Law.

Article 98

The procedures initiated by the day of entry into force of this Law shall be completed in accordance with the provisions of the Law on Asylum and Temporary Protection ("Official Gazette of the Republic of Macedonia" no.49/03, 66/07, 142/08, 146/09, 166/12, 101/15, 152/15, 55/16 and 71/16).

Article 99

The documents issued pursuant to the regulations which were valid up to the day of entry into force of this Law, will continue to be valid until the expiry of the deadline prescribed in them.

Article 100

On the day of entry into force of this Law, the Law on Asylum and Temporary Protection ("Official Gazette of the Republic of Macedonia" no. 49/03, 66/07, 142/08, 146/09, 166/12, 101/15, 152/15, 55/16 and 71/16) ceases to be valid.

Article 101

This Law shall enter into force on the eighth day since its publication in the "Official Gazette of the Republic of Macedonia", and the provision of Article 83 paragraph 2 will be applied after the accession of the Republic of Macedonia to the European Union.

E X P O S I T I O N

I. EXPLANATION OF THE CONTENTS OF THE PROVISIONS OF THE DRAFT LAW

Content-wise, the Draft Law is split into 11 Chapters, including: I. General Provisions; II. Procedure for Granting Asylum; III. Cessation, Cancellation and Revocation of the Right to Asylum; IV. Documents; V. Legal Status; Voluntary Leaving and Voluntary Repatriation; VII. Application of Provisions for Removal; VIII. Right to Temporary Protection; IX. Processing and Protection of Personal Data; X. Misdemeanor Provisions and XI. Transitional and Final Provisions.

Within the scope of the General Provisions Chapter, alongside the subject matter and the glossary, there is also a wide spectrum of institutes of significance for asylum, including: applicant; person with refugee status; reasons for exclusion from refugee status; person under subsidiary protection, which is an additional form in case the applicant does not fulfill the conditions for refugee status; reasons for exclusion; principle of *non-refoulement*; family reunification; first country of asylum; safe third country; authorities for granting asylum; the role of the United Nations' High Commissioner for Refugees in the asylum procedure and legal assistance, etc.

Namely, the Right to Asylum is international protection which the Republic of Macedonia provides under conditions and procedures prescribed by this Law, to the following categories of persons:

- person with refugee status (refugee pursuant to the Geneva Convention from 1951 and the Protocol from 1967 (hereinafter: "Geneva Convention"));
- person under subsidiary protection. An applicant is a foreigner who seeks international protection from the Republic of Macedonia, who has expressed intention or has submitted an application for asylum, for which a final decision has not been made in the procedure for granting asylum.

The Chapter regulating the procedure for granting asylum prescribes the intention for submitting an asylum application; the manner of submission of an asylum application; the assessment of facts and circumstances; the right to an interpreter; procedure's openness to public; minors; regular procedure; accelerated procedure and decisions taken, as well as the right to appeal. The Ministry of Interior (Sector for Asylum) conducts the first instance procedure for granting asylum. After their decision, the applicant has a right to appeal to the Administrative Court.

With cancellation and revocation of refugee status and person under subsidiary protection, the bases on which the decision for cancellation of status can be made are accurately determined.

The rights and obligations of the applicants, persons with refugee status and persons under subsidiary protection are regulated in a separate chapter. The Ministry of Labor and Social Policy is one of the key institutions with specific authority in the materialization of the rights of the aforementioned persons, as well as their integration.

Voluntary leaving and voluntary repatriation are regulated in a separate chapter. Namely, in case a decision for rejection, cancellation, revocation or cessation of the right to asylum is taken, unless the person regulates their stay, they are obligated to voluntarily leave the territory of the Republic of Macedonia. Upon request of the person granted international protection in the Republic of Macedonia, as well as upon cessation of the right to asylum in the Republic of Macedonia, the Ministry of Labor and Social Policy in cooperation with the Ministry of Interior and the High Commissioner for Refugees, shall enable organized voluntary repatriation of the persons to their country of origin.

The conditions for granting temporary protection are regulated in a separate chapter; rights; identification documents, as well as voluntary repatriation and forced removal. Namely,

in case of mass influx of persons imminently arriving from a State where their lives, security or freedom have been endangered by war, civil war, occupation, internal conflict concomitant of violence or mass violations of human rights, the Government may grant temporary protection. The provision which prescribes that the Government shall consider the possibility of granting temporary protection also in case the Council of the European Union shall estimate that there is a mass influx of persons has a delayed application and shall be applied after the accession of the Republic of Macedonia to the European Union.

The Draft Law regulates the processing of personal data within the framework of the integrated database of foreigners, including data about asylum, migration and visas, as well as exchange of data.

The Draft Law contains a chapter on misdemeanor provisions, as well as transitional and final provisions.

By adopting the Law on International and Temporary Protection, the validity of the Law on Asylum and Temporary Protection shall cease.

II. THE INTERTWINEMENT OF THE SOLUTIONS CONTAINED WITHIN THE PROPOSED PROVISIONS

The solutions contained within the Draft Law are mutually intertwined with the purpose of their practical implementation.

III. IMPLICATIONS OF THE PROPOSED SOLUTIONS

The adoption of the proposed Law shall enable the alignment of the Law on International and Temporary Protection with the European acquis, i.e. regulative in the area of asylum, i.e. international protection.

The Draft Law achieves a significant level of alignment with the European legislation in the area of asylum, i.e. international protection.

IV. THESES OF BYLAWS ARISING FROM THE LAW

The adoption of the proposed Law implies the adoption of bylaws, the content of which is envisaged by the provisions of the proposed Law.

- The Minister of Interior shall adopt a bylaw about the form for certifying the expressed intention for submission of an asylum application, the form for the initial interview for registration, the form for minutes of a conducted interview regarding a submitted asylum application, the form for minutes of reception of oral asylum application, the manner of obtaining fingerprints and photographing of applicants and persons who have been granted the right to asylum or temporary protection in the Republic of Macedonia, and the manner of keeping registry.
- The manner of limiting freedom of movement of an applicant is prescribed by the Minister of Interior;
- The Minister of Interior, in cooperation with the Minister of Foreign Affairs, prescribe the list of safe countries of origin;
- The manner and procedure of accommodation of unaccompanied minors is prescribed with a bylaw, adopted by the Minister of Labor and Social Policy;
- The manner and procedure of accommodation of vulnerable persons is prescribed with a bylaw, prescribed by the Minister of Labor and Social Policy;
- The reception conditions and standards for applicants are prescribed by the Minister of Labor and Social Policy;
- The Minister of Labor and Social Policy prescribes the criteria and manner of use of an apartment or financial assistance necessary for providing necessary accommodation for persons with refugee status, in accordance with their needs.