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INTERNATIONAL AND MACEDONIAN LEGAL TREATMENT OF THE EDUCATIONAL RIGHTS OF REFUGEES

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Abstract: *This article aims to provide an overview of the legal framework protecting the right to education of refugees in North Macedonia. The right to education is one of the fundamental human rights guaranteed by many international legal instruments. International treaties are particularly strong on the universality of the right to education. In the first part of the paper, the authors examined various international legal instruments regarding the educational rights of refugees and immigrants. In the second part, the emphasis was placed on the Macedonian legal framework and public policies by examining the incorporation of the norms of international law into the domestic legal order by comparison. As part of the so-called Balkan route, North Macedonia has witnessed mixed migration flows from the Middle East through the Balkans on their way to Central and Western Europe in 2015-2016. Although it has been a transit country for most of the time, there are some asylum seekers whose educational rights were disregarded due to the existing gap between the legislation and implementation. The authors' conclusion emphasizes the challenges that have to be tackled by different stakeholders in order to facilitate access to education for refugees entirely.*

Keywords: *Education; Human Rights; Refugees; Immigrants; North Macedonia*

INTRODUCTION

Children and adolescents who are refugees possess the right to education. Even in emergencies and displacement, their entitlement to a high-quality education remains intact and, if anything, becomes even more crucial. Access to comprehensive and equitable education facilitates their learning and creates an environment where they can thrive and fully develop their capabilities. Inclusion is the optimal approach for refugees, displaced individuals, and stateless persons, offering them the best opportunities for education and integration.

According to official reports (UNHCR 2019), the right of millions of refugee children and young people to a good education is being denied to them. Almost 3.7 million refugee children, including boys and girls, do not attend school (p. 11). Only 63 percent have access to primary education compared to 91 percent of children globally, and only 24 percent of refugee youth receive secondary education, compared to 84 percent globally (p. 11). At the tertiary level, just 3 percent of refugees have access compared to 37 percent globally (p. 37). Less than seven girls attend high education for every ten refugee boys. Due to the inescapable increase in forced migration worldwide, the statistics show large differences between refugees and their non-refugee peers. In Europe, there were only a few safe and legal routes for refugees and migrants to enter the European Union. Many of them who have traveled the Western Balkans route to

Hungary found themselves trapped outside the borders of the EU in Serbia and North Macedonia without any legal protection or status. Refugees faced considerable obstacles in accessing asylum in any country along their journey. Refugees and migrants alike are at constant risk of exploitation, arbitrary detention, and ill-treatment along their journey (Amnesty International 2015).

In 2014, more than 42,000 people entered Hungary irregularly from Serbia. More than half were refugees and migrants who had crossed the border into Hungary from Serbia, having traveled along the Western Balkans Route from Greece, the vast majority through North Macedonia. Their numbers were increasing: by 22 June 2015, 60,620 refugees and migrants had been apprehended, entering Hungary irregularly, and 60,089 crossing from Serbia into Hungary (Amnesty International 2015). The number of refugees and immigrants who entered Europe between 2014 and 2015 is much higher than the official numbers, amounting to an estimated figure of over 1 million people (IOM 2015).

The international community has recognized the importance of education as a universal and fundamental human right. Hence, multiple mechanisms for its protection within the international legal order have been developed, focusing on eliminating all forms of discrimination and its role concerning the adaptation and integration of refugees and asylum seekers. Education is crucial in fostering peaceful, just, and inclusive societies, free from fear and violence, as it can increase tolerance and contribute to active citizenship and engagement in society. Due to the specific nature of this right, a large body of international legal instruments imposes standards and obligations for the States to ensure that access to education is maintained during all phases of the displacement cycle. Enforcing the right to education by translating international obligations into domestic legal and policy frameworks imposes various challenges. The gradual opening of the internal legal systems and the protection of human rights, particularly, has become one of the most critical conditions for the new democracies to access the international legal order (De Schutter 2010).

Having in mind the presented body of international law concerning the educational rights of refugees and asylum seekers, the common core obligations of states as duty-bearers are to: provide free and compulsory primary education, make secondary education generally available and accessible with the progressive introduction of free education, make higher education equally accessible to all based on capacity, by every appropriate means, and in particular by the progressive introduction of free education, encourage or intensify "fundamental education" for educations who have not received or completed primary education; improve the quality of education, improve the material conditions for teaching staff, end discrimination and guarantee educational freedom of choice (UNESCO 2019). States are responsible for adjusting their education systems to address the specific challenges refugees and asylum seekers encounter concerning access, relevance, and quality of education. It is of utmost importance for them to ratify and effectively implement the legally binding instruments that uphold the right to education for all individuals.

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GENERAL INTERNATIONAL LEGAL INSTRUMENTS

The international legal framework referring to the right of education of refugees and migrants is consisted of conventions and treaties with binding obligations to states since adopted and ratified and different sources of soft law (resolutions, declarations, frameworks for actions, recommendations, etc.) that do not have legally-binding force. However, they embody great political and moral authority (UNESCO 2023).

International treaties are particularly strong on the universality of the right to education.

As an empowering right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities (General Comment No. 13, 1999).

In the context of education for immigrants and refugees, the following is an overview of the key international legal instruments that ensure the right to education for immigrants and refugees.

The Universal Declaration for Human Rights

When analyzing the right to education as a fundamental human right, it is essential to begin with the legal instrument that serves as the cornerstone in this domain, namely the Universal Declaration for Human Rights (UDHR). The UDHR holds historical significance globally as the origin of all human rights, including the right to education. On 10 December 1948, the UDHR was adopted and proclaimed by the UN General Assembly through Resolution 217 A (III). While some may argue that the UDHR is a declaration and does not possess the obligatory character of binding international law in a strict sense, its acceptance by nations worldwide has bestowed significant moral weight upon it as a normative source that has influenced the constitutions of numerous countries. Consequently, the binding force of the UDHR is acknowledged: "from its realization in other texts of undoubted normative nature (the international covenants of 1966) until its incorporation via jurisprudence into the legal acquis of national systems" (Fernández 2017). Article 26 of the UDHR affirms the right to education.

This Article's first paragraph mentions the minimal content that should be provided under the right to education. Here, it is stated that "everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages" (Article 26, line 1, UDHR). Therefore, the creators of the UDHR recognize the significance of ensuring free primary education. They emphasize its value by highlighting its importance and including it in one of the few articles that offer guidance for developing the entire body of international law concerning the protection of human rights.

The political orientation of education, referred to in the second paragraph of Article 26, mentions the full development of the personality and its socializing capacity. It also strengthens the ability to inculcate in children values of democratic coexistence and respect for human rights, which are mentioned in this Article: understanding, tolerance, and friendship, as well as to encourage the initiatives of the UN to achieve peace. However, Meix Cereceda (2014) points out that this proliferation of targets within the educational system "runs the risk of being exaggerated and even proving ineffective if they are expected to resolve all the problems of

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society" (p. 35), advocating a balance between all the aspects of the same. The third paragraph from Article 26 refers to the right of the parents to choose the kind of education for their children.

The International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights

Because of the nonbinding nature of the provisions stated in the UDHR, it was important for new legally binding documents to be introduced to promote and protect the rights guaranteed in the Declaration. The codification of international customary law from the Universal Declaration into binding treaties happened in 1966 when the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights were adopted and transformed an important set of human rights into binding conventional instruments. Both covenants have been ratified by over 125 states and, together with the Universal Declaration, are known as the International Bill of Human Rights.

Experts in the field of human rights related to education claim that the human right to education has the widest and most expansive definition in the ICESCR compared to all the other international legal documents. Furthermore, when we analyze Article 13, para. 1 from the ICESCR, we may find many similarities to Article 26 of the UDHR. In that context, the universal recognition of the right to education is already contained, with almost the same formulation, as in Article 26.2 of the UDHR that identified the political principles that should guide education.

However, there is a significant distinction between these two articles, highlighting a notable difference in the responsibilities of states regarding primary, secondary, higher, and fundamental education. Specifically, Article 13, line 2 of the ICESCR emphasizes the commitment of states to prioritize the implementation of compulsory and free primary education, whereas this obligation is absent in the UDHR.

Specific Legal Provisions for Refugees

One of the specific instruments that were introduced on the international scene regulating the granting of asylum to people who are in danger and at risk worldwide, and at the same time containing provisions regarding the right for the education of the refugees is the Convention Relating to the Status of the Refugees adopted 1951 and its Protocol adopted 1967.

Article 22 of the Convention is titled Public Education. Paragraph 1 states: "The Contracting States shall accord to refugees the same treatment as is accorded to nationals concerning elementary education". It is important to emphasize that prior to this convention, the Conventions from 1933 (Article 12 Convention of 28 October 1933 relating to the International Status of Refugees) and 1938 (Article 14 Convention concerning the Status of Refugees coming from Germany, Geneva, 10 February 1938), provided that refugees shall enjoy a treatment in schools, courses, faculties and universities of each of the contracting parties as favorable as other foreigners in general and that they shall benefit in particular to the same extent as the latter by the total or partial remission of fees and the award of scholarships.

In the case of Article 22, the title Public Education is important because it applies to education provided by public authorities and to any education subsidized in whole or in part by public funds and to scholarships derived from there. The Article refers to refugees without qualifications such as "lawfully stay". It is, in fact, of importance, particularly to children of refugees. In this context, it is important to note that according to the official commentary of the ad hoc Committee on Statelessness and Related Problems, "the rights granted to a refugee are extended to members of his family". Furthermore, paragraph 2 of Article 22 refers to accepting foreign school diplomas, certificates, and degrees. However, it should be noted that it is related to enrollment in colleges and universities, not the practice of professions.

Bilateral agreements on the reciprocal recognition of degrees and diplomas are usually present. The European Convention on the Equivalence of Diplomas leading to Admission to Universities of 11 December 1953 exists on a multilateral basis. It states that each contracting state shall recognize the equivalence of the diplomas accorded in the territory of each other contracting party, which constitutes a required qualification for admission to similar institutions in the country in which the diploma has been awarded for the universities situated in its territory, admission to which is subject to state control.

There are other international instruments dealing with the educational rights of refugees. However, the experts working in this research field agree that this Convention is the most specific one in establishing the right to education of the refugees that gave the direction for further development. Namely, the refugees' right to education was later guaranteed by policy and legislation, which international organizations, agencies, and the UNHCR developed.

LEGAL FRAMEWORK AND PUBLIC POLICIES IN NORTH MACEDONIA

In order to examine the legal framework and public policies in North Macedonia, especially through the prism of incorporating the norms of international law into the domestic legal order, it is necessary to refer to the relationship between international and domestic law.

The country is a party to the Convention Relating to the Status of Refugees of 1951 and the Protocol Relating to the Status of Refugees of 1967. It is also a state party of the 1954 Convention relating to the Status of Stateless Persons and the 1997 European Convention on Nationality. The basis of the national legal framework for the treatment of refugees and asylum-seekers is the Law on Asylum and Temporary Protection, which was adopted in 2003 and amended on many occasions to fully meet high international standards, in line with the EU (Ilievski and Runcheva 2019).

Constitutional law provides the basis for determining such relationships and the legal status of international legal norms in the domestic legal system. Likewise, the Constitution of the Republic of North Macedonia contains provisions that regulate the transposition and implementation of international treaties in the domestic constitutional order.

Article 8 implies that international human rights law has been a guiding principle in regulating the catalog of fundamental rights and freedoms (Sinani and Mehmeti 2014). Moreover, respect for the generally accepted norms of international law is a fundamental value of the constitutional order. It has a superior legal effect over the content of the internal order. Article 118 stipulates that international treaties ratified under the constitution are part of the

internal legal order and cannot be changed by an act of parliament; thus, international treaties norms have legal primacy over all legislative corpus of the internal law of the state except for the constitution, including the existing legal acts and the future ones. Concerning the right to education, particularly for refugees and asylum seekers, the Republic of North Macedonia has ratified the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, as well as the Convention on the Rights of the Child, which are directly applicable in the domestic legal order. Moreover, the provisions and standards stipulated within the international legal instruments are transposed and incorporated into the legal acts of the internal legal order. North Macedonia has acceded to the key international conventions protecting refugees and asylum seekers.

Article 44 of the Constitution of the Republic of North Macedonia guarantees the right to education, and it is accessible to everyone under equal conditions. According to the Law on Primary Education, every child has the right to education, and according to the Law on Secondary Education, foreign citizens and stateless persons can obtain education in compliance with the conditions stipulated under this law. According to the Law on Asylum and Temporary Protection, asylum seekers and persons under temporary protection have the right to education and the possibility of inclusion in the educational system. At the same time, the Law on Foreigners states that each person who holds a residence permit for the Republic of North Macedonia has the same rights as domestic citizens, including the right to education (See: Orovcanec and Martinoska 2018). The legal framework will be analyzed in more detail.

Based on the Convention on the Rights of the Child, the Law on Protection of Children protects the child's best interests. It provides minimum standards for every child under the same conditions, as it excludes any form of discrimination concerning guaranteeing the right to education on the grounds of race, the color of skin, sex, language, religion, political or other opinion, national, ethnic or social origin, culture or other affiliation, property position, disability, birth, or another status of the child, or his or her parent, or legal guardian. Furthermore, this law imposes on the state and institutions of the system the commitment to take all necessary measures in order to ensure the rights of the child and to prevent all forms of discrimination and abuse, regardless of the place these actions have taken place, their difficulty, intensity, and duration. General principles for access to education are included in the Law on Primary Education, which recognizes elementary education as compulsory and free for everyone and explicitly states that every child has the right to elementary education. It predicts the prohibition of discrimination in exercising the rights from elementary education on several grounds: sex, race, color of skin, national, political, religious, property, and social affiliation. Objectives prescribed with the Convention aim towards the promotion of the respect of human rights and fundamental freedoms, the cultural identity of the child, the differences, preparation for responsible life in a free society in the spirit of understanding, peace, tolerance, and equality, are contained in the Law on Primary Education as it promotes tolerance and inclusion of every child through activities that contribute to the development and promotion of multiculturalism and interethnic integration. Concerning the non-discrimination clause, the Law on Primary Education does not mention the birth or other status of the child or his/her parent or legal guardian as a legal basis. However, it is noted that the provision considers children with foreign citizenship and stateless children residing in the country to have the right to elementary education on equal

terms with citizen children. However, there is no explicit reference to refugee children, asylum seekers, children with recognized refugee status, children under subsidiary protection, and children under temporary protection as a distinct group with specific needs and characteristics.

The same approach persists concerning the Law on Secondary Education, which recognizes that foreign citizens and stateless persons can obtain secondary education in a manner and under conditions determined by law. Schools should organize activities that contribute to developing and promoting multiculturalism, interethnic integration, and tolerance but do not specify a distinctive status to refugee and asylum seekers children as separate categories. Such distinction is very important to address and respond to the specific needs in light of the international standards and legal duties that need to be translated and enforced from a policy perspective.

The Law on Primary and the Law on Secondary Education also determine that foreign citizens and stateless persons have the right to request nostrification or recognition of equivalency of a certificate obtained abroad. However, refugees have not been included as a separate category. Among the other documents, the nostrification procedure requires submission of a birth certificate and proof of citizenship and payment of a fee; thus, it is disputable whether this provision can be implemented for stateless persons. Regarding higher education, the subject matter law provides that by applying the principle of reciprocity, foreign citizens are entitled to education at higher education institutions in the country under equal conditions with domestic citizens. In comparison, persons without citizenship have the right to higher education under equal conditions as national citizens. Furthermore, when lacking the principle of reciprocity, foreign citizens may educate at higher education institutions under conditions determined more closely by the concrete higher education institution. National citizens, foreigners, and stateless persons may seek recognition and equivalence of their degrees.

In the context of the refugee crisis that started in 2015, Standard Operating Procedures for Dealing with Unaccompanied and Separated Children were adopted in November 2015 to protect unaccompanied children in reception and transit centers by taking steps to identify, refer and protect their rights, as a particularly vulnerable category. Therefore, the minor shall receive legal aid, social support, medical and psychological care, and the right to education in the Republic of North Macedonia's educational institutions during the reception centers stay.

Finally, the Law on Asylum and Temporary Protection, serving as a *lex specialis*, ensures that asylum seekers, among other rights, have the right to education in line with the domestic framework for primary and secondary education. As per this law, foreign citizens and stateless individuals residing in the country are entitled to elementary education under equal conditions as children with domestic citizenship. To uphold this right, educational institutions should organize teaching classes in the native language of these individuals in various facilities. Regarding the granting of such legal status, it is stipulated that a successful asylum request can only be approved if the person is recognized as a refugee or granted subsidiary protection. Furthermore, before the final decision is made in the procedure for recognition of their legal status, the asylum applicants have access to "free legal aid, accommodation, residence, right to basic health care in accordance with the regulation on health insurance, right to social

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protection according to the Law on Social Protection, right to education according to national legislation for primary and secondary education, etc.".

The distinction between foreigners and (sub)categories - refugees and asylum seekers is in a certain manner recognized under the Law on Personal Identification Number, which prescribes that the term "foreigner" has the same meaning as the term "foreigner" determined by the Law on Foreigners. The terms "person with recognized refugee status" and "person with the status of a person under subsidiary protection" have the meaning determined by the Law on Asylum and Temporary Protection.

In order to implement the legal framework and develop public policies in line with the prescribed standards, the Strategy on Integration of Refugees and Foreigners 2008-2015 recognizes the key role of education in the process of social integration. It proposes developing a dialogue with the local self-government to identify, analyze and propose appropriate solutions and models for the education of refugees. The Strategy predicts adaptation of the teaching program to include optional subjects for learning the native language and the culture of the country of origin while teaching in the public secondary school to be performed in one of the international languages. It does not contain a similar subvention approach concerning higher education. Additionally, the Strategy identifies the significance of learning the language of the country of residence (Macedonian language for more active citizenship and civic engagement). National Action Plan follows the strategic approach and activities for promoting education and science: taking measures for providing books and resources for regular school attendance, targeted programs for support of extracurricular and shortened educational programs, researching the justification of the promotion of pre-primary education, compulsory learning of Macedonian language for children and adults, including the target group in the Program for Lifetime Learning, promotion of university education, organizing informative campaigns for communication with the target groups in order to facilitate the access to their rights and obligations, but the activities are listed without any further processing.

Although this Strategy identified several key issues that need to be addressed to facilitate the process of quality education in the context of refugee integration, Strategy 2017-2027 admitted that those measures had not been implemented in recent years and refocused on the smooth provision of education for refugees as an essential component of a sustainable refugee integration process. This Strategy is based on UNHCR Education Strategy 2012-2016. It proposes establishing an integration center and course based on the European model for integrating migrants, as the European Commission recommends. Hence, the approach adopted by this Strategy introduces integration in an early phase, starting with an initial skills assessment to develop a specific integration plan. Special focus is put on learning the Macedonian language and attending professional training to significantly increase the employment capacities of asylum seekers, together with cultural orientation. Children should have access to preparatory educational programs consisting of educational topics related to learning the Macedonian language and acquiring knowledge for the school subjects. Education should be accessible not only within the reception centers but also beyond. The main actions points are an evaluation of the policy framework to identify potential gaps, examining the feasibility of establishing common preschool facilities for the target group/local population (local government), and proposing models for active promotion of preschool education in support of the early stages of

integration (existing), creation of a certified program for teaching the Macedonian language for children and adults and identifying mechanisms for providing language education, determining the best models for educational support and mentoring to help both children and adults to achieve their full economic and social potential, and promotion of higher education and university enrollment.

The National Action Plan envisages concrete activities in order to achieve the objectives prescribed by the Strategy, such as: to prepare curriculums for learning Macedonian; to define the levels of knowledge and the mechanisms for examination for specific needs; to prepare a methodology and a program for learning Macedonian for children aged 3 to 5 within the frames of the programs for early childhood development; to provide support for the municipalities in the process of development of new pre-primary capacities; to prepare curriculums for preparatory school programs for primary and secondary education; to prepare mechanisms for examination in order to determine previous knowledge for enrollment; to implement all changes that require amendments to the legal or administrative rules and to enable regular enrollment of refugees in the schools; to identify pilot-schools and to implement a mentorship project in the schools; to prepare mechanisms for recognition of diplomas in order to facilitate university enrollment; to prepare a policy document to recommend various methods of use of the computer-based tools for improvement of the quality of education - courses for remote learning, e-books, e-learning, e-mentorship, etc.

STATE OF PLAY: *DE FACTO* SITUATION

In 2016, the Ministry of Labor and Social Policy prepared and promoted Standard Operating Procedures (SOP) for conducting educational activities for children and youth. The purpose of this procedure was to enable the acquisition of education and the improvement of conditions in which educational activities for children are implemented and will be implemented by organizations that have signed a memorandum of cooperation with the Ministry of Labor and social policy. In the transit centers Tabanovce and Vinojug, when the "Balkan migrant route" was closed and a larger group of immigrants and refugees were taken care of, educational workshops were held for children and adults (Stojanovski 2018).

In collaboration with the Ministry of Labor and Social Policy and the Ministry of Education and Science, UNICEF modified the national preschool education curriculum. The subjects such as mathematics, natural sciences, civil society, and ICT were adapted due to the new circumstances because the government did not have a program to educate refugee and migrant children. The program was enriched with creative workshops and sports activities. A group of NGOs signed a Memorandum of Understanding with the Ministry of Labor and Social Policy to implement the program. The persons implementing the program received prior training on how to implement it, and they were provided with mentorship from school teachers from Kumanovo and Gevgelija.

In addition, UNICEF provided teaching and didactic materials and school backpacks for the children in the transit centers and the Center for Asylum Seekers in Vizbegovo. Lectures in transit and reception centers for asylum seekers in Vizbegovo were held every working day. Unfortunately, with the deportation of migrants group to another facility, the educational

program in this center was gradually closed due to the lack of children. In the Vinojug Transit Center during 2017, the informal education program was carried out with a minimum number of children (Stojanovski 2018).

CONCLUSION

The legal framework in North Macedonia guarantees the right to equal education in primary and secondary degrees in line with the international instruments to which it has acceded. However, recognizing the specific needs of refugees and asylum seekers due to their vulnerable status requires an additional step. The Strategy for the Integration of Refugees and Foreigners aims to establish a suitable policy framework and concrete policy solutions to address the identified gaps. The main emphasis is on learning the host language and culture, implementing tailor-made programs considering the level of previously acquired knowledge, facilitating the transition into an appropriate grade in the domestic educational system, and enhancing access to equal education beyond the resource centers. Non-state actors, such as civil society organizations, are recognized as significant contributors to this process.

However, the gap between legislation and implementation persists, and education is primarily organized within the reception-transit centers. The creation and implementation of sustainable public policies are still in the initial stage, considering the deficiency of curricula for learning the Macedonian language for children or adult foreigners and refugees, along with the need for examination mechanisms and adjusted mentorship activities. Furthermore, there is a lack of appropriate training for teachers and a shortage of trained staff, in general, to prepare refugee children for inclusion in the educational process. There is also a deficiency in mechanisms for promoting higher education through scholarships or student loans. Therefore, legislative, operational, and programmatic amendments are needed to fully facilitate access to education for all individuals under international protection.

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