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Special Issue

*Promoting Public Awareness on the Fight Against Transnational Crimes, the Role of Police and Judicial Cooperation and Respect for Fundamental Rights in the Prospect of the EU Enlargement (EUVALWEB 2<sup>nd</sup> Edition Final Conference)*

May 30, 2024

Institute of Criminological and Sociological Research  
Belgrade (Serbia)

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ANALYSIS OF NORTH MACEDONIA'S READINESS  
TO IMPLEMENT EUROPEAN LEGAL DECISIONS:  
A REVIEW THROUGH THE PRISM OF ECtHR PRACTICE

by Elena Trajkovska\*

SUMMARY: 1. Introduction. – 2. The Legal Framework of the Macedonian Judiciary and Migrations. – 3. Implementation of Judgments of the ECtHR in North Macedonia. – 3.1 Case Study: *El-Masri v. Republic of Macedonia*. – 3.2 Case Study: *A.A. and Others v. North Macedonia*. – 4. Conclusion.

## 1. Introduction

The European Court of Human Rights (ECtHR) as an international court of the Council of Europe interpreting the European Convention on Human Rights (ECHR), plays a decisive role in the protection the fundamental rights of migrants. In its efforts to balance these rights with public policy needs, its jurisprudence is so significant that it is considered to be one of the pillars of EU law on asylum and immigration<sup>1</sup>. In general, the fight against migrant smuggling is closely tied to the protection of human rights. The Macedonian legal framework for human rights protection guarantees the respect, safeguarding, and fulfillment of these rights. Respecting human rights entails refraining from violations, which, in the context of migration, include avoiding arbitrary detention, torture, or collective expulsion of migrants, as well as ensuring their health, legal status, and safety throughout all stages of the migration process – whether in countries of origin, transit, or destination<sup>2</sup>. It is necessary to note that the smuggling of migrants is a crime against the State and may be associated with a number of risks to certain human rights, especially when it comes to the most vulnerable categories of migrant<sup>3</sup>. Migrants who are smuggled can easily become victims of violence, abuse and exploitation, especially if they are confronted by violent smugglers and are unable or unwilling to seek protection from the institutions of their host country. In the context of smuggling, migrants can fall victim to crimes such as extortion, kidnapping, and gender-based violence. It is essential to emphasize that the Macedonian judiciary has been actively working in recent years to establish a robust legal framework, aligning with European standards to enhance the protection of migrants. This effort is particularly important given that international law requires States to criminalize smuggling while ensuring that migrants, as victims of smuggling, are not criminalized<sup>4</sup>. The national legislation in the area of migration and

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<sup>1</sup> P. DE BRUYCKER, H. LABAYLE: *The Influence of ECJ and ECtHR Case Law on Asylum and Immigration*, study for the European Parliament, 2012, p. 11.

<sup>2</sup> Office of the High Commissioner for Human Rights, *International standards governing migration policy*.

<sup>3</sup> North Macedonian Criminal Code, art. 418-b, para. 2, in Official Gazette of RNM No. 37/1996, of 29 July 1996.

<sup>4</sup> I. SHTERJOSKI, B. BOZINOVSKA: *Human Trafficking and Migrant Smuggling in the North Macedonia: Report*, in *Macedonian Association of Young Lawyers*, 2019, p. 6.

asylum has gone through a long process of harmonization with European law and it has been changed several times and harmonized with new regulations and directives<sup>5</sup>.

Despite institutional efforts to protect migrants, the question arises: how prepared is the Macedonian legal system to address real challenges while maintaining an efficient judiciary? The constitutional guarantee of judicial independence, ensuring that courts operate based on the Constitution, laws, and international agreements ratified in accordance with the Constitution<sup>6</sup>, is a goal that requires continuous effort to achieve successful judicial outcomes. The improvement of the judicial system and its functioning is a key assumption for the development of the Republic of North Macedonia, as a democratic legal State and a multicultural society, upholding the freedoms and rights of all its citizens equally and striving for European integration. The construction of a system of an independent and impartial judiciary and of institutions that gravitate towards the realization of its function of effective, quality and fair administration of justice is a central postulate of the principle of rule of law and the humane and sustainable development of Macedonian society as a community based on legitimized law with respect for the shared global values. Nevertheless, in the two subsequent reports on Chapter 23, from 2023 and 2024, the Commission gives worrying findings about the current situation in North Macedonia from several aspects that will be elaborated yet. According to the report, North Macedonia has a moderate level of preparation for the application of EU law and European standards in this area, but also there is no progress in strengthening judicial independence and improving the legal framework for the protection of fundamental rights, while the Judicial Council is required to advocate for the protection of the integrity and independence of judges and institutions, as well as to oppose in case of external influence. In addition, the report shows that the adoption of the new strategy for judicial reforms was delayed<sup>7</sup>. According to the latest research by Eurothink, public trust in the judiciary has fallen to its lowest level ever (6%)<sup>8</sup>, while the Commission in the annual report of 2023 emphasized that the recommendations regarding the judiciary have not been implemented and remain still valid<sup>9</sup>.

One of the main reasons why this paper addresses the areas covered in the European Commission's progress reports on North Macedonia – specifically focusing on Chapter 23 for 2023 and 2024, with particular emphasis on judicial authorities, the efficiency of the judiciary, and public trust in the judicial system – is its clear connection to migration. This connection highlights how the issues of migrant safety intersect with rule of law, fundamental human rights, and the readiness of the judiciary to protect the rights of migrants and asylum seekers.

We begin with several key points that are crucial for the effective protection of migrants. The first and most fundamental is rule of law, in the following paper, of North Macedonia. Considering that Chapter 23 highlights the protection of fundamental rights, including issues concerning migrants and asylum seekers, there is a pressing need for the judiciary to ensure fair legal processes for migrants. This includes providing access to

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<sup>5</sup> A. NIKODINOVSKA KRSTEVSKA, *Illegal Migration, the Republic of Macedonia and the European Union: Some observations on the Readmission Agreement*, in *Proceedings of the International Scientific Conference "Social Changes in the Global World"*, Štip, 2020, p. 608.

<sup>6</sup> Constitution of the Republic of Macedonia, art. 98, para. 2, in Official Gazette of RNM No. 52/1991, of 22 November 1991.

<sup>7</sup> Ministry of Justice, Republic of North Macedonia, *Development sector strategy for justice (2024–2028)*, 2024.

<sup>8</sup> EUROTINK-Center for European Strategies, *Euro-meter: Perceptions and Attitudes of the Citizens of the Republic of North Macedonia about the Work of the Police*, 2023, p. 30.

<sup>9</sup> Commission Staff Working Document, of 8 November 2023, *North Macedonia 2023 Report*, SWD(2023) 693 final, p. 18.

justice and protection from arbitrary detention or discrimination. Additionally, another important key point is the alignment of Macedonian law with international standards for the protection of human rights, with an emphasis on the need to uphold these standards, such as the European Convention on Human Rights – regarding the fair treatment of migrants – in the Commission’s reports for 2023<sup>10</sup> and 2024<sup>11</sup>. In this way, humane conditions in migrant detention centers and respect for the right to family reunification would be ensured. In addition, migrants, especially vulnerable groups such as women and children, must be protected from discrimination and abuse. The judiciary plays a key role in safeguarding the rights of migrants by prosecuting perpetrators of crimes such as migrant smuggling or any abuse committed against migrants within the territory of North Macedonia. The aim of this paper is to contribute positively to the scientific community, as it is undeniable that the judiciary must demonstrate independence, efficiency, and impartiality when addressing migration-related cases, such as disputes over asylum claims, human trafficking, or violations of migrants’ rights, while ensuring unhindered access to justice.

During the research conducted for this paper, it was observed that the annual framework for implementing the Strategy varies in certain instances. Specifically, the Commission’s report references the Development sectoral strategy for the first judiciary covering the period from 2023 to 2027<sup>12</sup>, whereas the official website of the Ministry of Justice of the Republic of North Macedonia lists the timeframe as 2024-2028<sup>13</sup> and the act as adopted in December 2023. This discrepancy indicates that, at the time of conducting the research, there was no finalized version of the justice strategy. Such a strategy is essential for implementing the European Commission’s recommendations aimed at furthering the rule of law, the judicial system, fundamental values, and fundamental rights. It also addresses the issues raised in the screening report for Cluster 1 regarding the judiciary, including recommendations related to the Judicial Council of North Macedonia, training for judges and public prosecutors, administrative justice, and other judiciary-related matters. Furthermore, the European Commission has noted that North Macedonia is behind schedule in implementing the Strategy in this regard. In addition to the Strategy, which contributes to the realization of the goals of one of the key priority areas of the National Development Strategy, the official website for the National Development Strategy highlights different time frames, namely, 2021-2041<sup>14</sup> and 2024-2044<sup>15</sup>, while in the strategic document adopted by the Ministry of Justice<sup>16</sup> reads with a time frame from 2023 to 2043, which again we encounter inconsistency with the time frame of the strategic document, and we can even go to the extent that we are still encountering institutional hesitation, all in order to effectively respond to the implementation of European legal decisions. Nevertheless, as for the European Commission’s report for 2024, it states, in the same way, that there is a moderate level of preparation for the application of European law, which is the difference from the 2023 report, in the 2024 report the emphasis is placed on the fact that Macedonia adopted a new Strategy for Judicial Reforms for the period from 2024 to 2028<sup>17</sup>.

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<sup>10</sup> *North Macedonia 2023 Report*, cit., pp. 49-53.

<sup>11</sup> *Ibid.*, pp. 45-48.

<sup>12</sup> *Ibid.*, p. 18.

<sup>13</sup> *Ibid.*

<sup>14</sup> Official website of the National Development Strategy, available at <https://www.nrs.mk/>.

<sup>15</sup> *North Macedonia 2023 Report*, cit.

<sup>16</sup> *Ibid.* p. 6.

<sup>17</sup> Commission Staff Working Document, of 30 October 2024, *North Macedonia 2024 Report*, SWD(2024) 693 final.



The 2024 European Commission report on North Macedonia, in the section on Chapter 23, emphasizes the need to address the challenges facing the Macedonian judiciary, noting that the report itself highlights European values as a primary concern: “*The EU’s founding values include the rule of law and respect for human rights*”. The statement continues with “[a]n effective (independent, high-quality and efficient) judicial system and an effective fight against corruption are of paramount importance, as is respect of fundamental rights in law and in practice”<sup>18</sup>.

At the end of 2023, the Government finally adopted the Judicial Reform Strategy, marking an important step in North Macedonia’s progress. This Strategy focuses on five priority areas, including reforms in the courts, public prosecution offices, and specific legal areas such as criminal and civil law. Although the Strategy is well-structured and includes realistic deadlines, the report notes that it was adopted after a significant delay and lacks a specifically earmarked budget. Additionally, another observation highlighted in the Commission’s report is that the Council for Monitoring the Implementation of the Strategy, established in early 2024 to oversee its execution, has not yet convened, raising concerns about the effectiveness of the development sector strategy in the field of justice.

One of the most serious obstacles to be addressed, as highlighted in the 2024 Report, is external or political influence on the work of the courts. In addition to all of this, the latest report highlighted that in terms of quality and efficiency, the judiciary faces a significant shortage of staff, highlighting that the current number of judges and prosecutors is far below what is needed to cope with the workload. The efficiency of the justice system is also hampered by insufficient funding, with the 2024 budget for the judiciary providing only 0.29% of GDP, far below the legally required 0.8%. According to the European Commission’s 2024 Progress Report, North Macedonia must make significant efforts to reform its judiciary and improve transparency, as substantial challenges remain in ensuring independence, accountability, efficiency, and public trust. The government must prioritize addressing political interference, staff shortages, and budgetary constraints, while also implementing the recommendations of the Venice Commission. If we are willing to see better results in the 2025 Report<sup>19</sup>, it can be concluded that only by adopting sustainable and comprehensive reforms focused on development can North Macedonia build a judiciary that supports EU values and meets the expectations of its citizens.

## 2. The Legal Framework of the Macedonian Judiciary and Migrations

The domestic legal framework should provide effective mechanisms to facilitate and encourage international judicial cooperation. This does not require a complete adjustment of the legislation, but what is important to point out is that Macedonia, as a candidate country for the European Union, a prerequisite that it must possess for international cooperation in criminal matters is the harmonization of the criminal legislation of the Republic of North Macedonia with what exists in the EU. In this context, the Republic of North Macedonia has signed most of the relevant United Nations (UN) and Council of Europe’s instruments applicable to its status. As part of the process of harmonizing its criminal legislation with EU standards and considering its status as a candidate country

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<sup>18</sup> *Ibid.*, p. 27.

<sup>19</sup> The European Commission publishes annual reports on the progress of countries aspiring to join the European Union including North Macedonia, and these reports are considered as part of the EU enlargement process.

for the European Union, the country has ratified several key conventions, including the UN Convention against Transnational Organized Crime (2000), the UN Convention against Corruption (2003), the European Convention on Extradition (1957), the European Convention on Human Rights (1953), the European Convention on Mutual Assistance in Criminal Matters (1959), and the Council of Europe Convention on Action against Trafficking in Human Beings (2005). In addition, there are a number of memoranda of understanding and cooperation agreements, which contribute to the goal of facilitating and clarifying international legal cooperation. Since 2003, the Republic of North Macedonia has been a member of Southeast European Prosecutors Advisory Group (SEEPAG)<sup>20</sup> established in order to facilitate judicial cooperation in significant investigations and cases of cross-border crime. Among the countries of the Western Balkans, the Republic of North Macedonia is one of the few<sup>21</sup> countries that, in 2008, signed an operational and strategic agreement with Eurojust<sup>22</sup>. Also, a cooperation agreement was signed with Europol in 2007<sup>23</sup>.

The Law on International Cooperation in Criminal Matters<sup>24</sup> and the Law on Criminal Procedure<sup>25</sup> should be emphasized as being based on the national legal framework concerning mutual legal assistance in criminal matters. Additionally, although North Macedonia holds candidate status<sup>26</sup>, it has made considerable efforts to align its legislation with international standards in criminal justice and international cooperation.

The Law on International Cooperation in Criminal Matters regulates the conditions and procedures for international cooperation in criminal matters in accordance with the laws and Constitution of the Republic of North Macedonia, including the legal acts governing criminal proceedings in international courts<sup>27</sup>. The basic principles of international cooperation, upon which it is realized, include the protection of sovereignty, safety or security, double incrimination, prohibition of double punishment, factual reciprocity, urgency and efficiency in action, direct communication and cooperation of judicial authorities, mutual trust, and mutual recognition and execution of court decisions<sup>28</sup>. International cooperation is provided in proceedings before the European Court of Human Rights, the European Court of Justice<sup>29</sup>, the International Criminal Court, and when it is determined by an international agreement, also in relation to other international organizations of which the Republic of North Macedonia is a member<sup>30</sup>.

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<sup>20</sup> The SEEPAG is an international mechanism for judicial cooperation, established by the countries of the SEE region with the aim of facilitating judicial cooperation on cross-border crimes. More info are available at <https://www.selec.org/>.

<sup>21</sup> Eurojust has concluded agreements with 12 third countries, including four countries in the Western Balkans (Albania, Montenegro, North Macedonia and Serbia) and Georgia, Iceland, Liechtenstein, Moldova, Norway, Switzerland, Ukraine and the USA.

<sup>22</sup> *Agreement on cooperation between Eurojust and the former Yugoslav Republic of Macedonia*, of 4 November 2008, Doc. No. 2008/0011.

<sup>23</sup> *Agreement on Operational and Strategic Co-operation between the former Yugoslav Republic of Macedonia and the European Police Office*, of 16 January 2007.

<sup>24</sup> *Law on international cooperation in criminal matters*, in Official Gazette of RNM No. 77/2021, of 6 April 2021.

<sup>25</sup> *Ibid.*

<sup>26</sup> Republic of North Macedonia has been a candidate country of the EU since 2005.

<sup>27</sup> *Law on international cooperation in criminal matters*, cit., art. 2.

<sup>28</sup> *Ibid.*, art. 3.

<sup>29</sup> The European Court of Justice is considered the highest judicial authority in the EU, interpreting EU law and ensuring its consistent application across all Member States. As for candidate countries, those in the process of EU accession may align their laws with EU standards, although they do not have direct access to the European Court of Justice's ruling powers unless the matter involves EU law.

<sup>30</sup> *Ibid.*, art. 4. para. 2.

International migrations in global frameworks in the period after 2015 saw a continuous and intense increase, and significant changes are also observed in terms of the types of migrations and the routes of movement<sup>31</sup>. In fact, 2015 was marked by illegal migration and the largest migration movements in the European Union, which, although they were a global challenge, took place most intensively through the western Mediterranean route, which passed through North Macedonia and continued towards the countries of the European Union<sup>32</sup>. Today, the external migration of the Republic of North Macedonia has a multidimensional and heterogeneous character. It manifests in various forms, with variable scope and characteristics, as well as complex cause-and-effect relationships, alongside the growing influence of the migration policies of receiving countries. This presents a serious challenge for the consistent implementation of the established measures and activities necessary to achieve the strategic and specific goals of the migration policy<sup>33</sup>. The Republic of North Macedonia is considered to be a traditionally emigrating country in terms of legal migrations and a transit area in terms of illegal migrations, as well as a complex issue influenced by numerous internal and external factors. Therefore, the efficient management of external migration movements presupposes continuous activities and commitment of all relevant actors in the country. In this regard, it is essential to explore how North Macedonia disputes judgments and the mechanisms it uses, which will be discussed in the following section of the paper.

### 3. Implementation of Judgments of the ECtHR in North Macedonia

As a signatory country to the ECHR<sup>34</sup>, North Macedonia faces a complex process in relation to the execution of judgments of the European Court of Human Rights, which is a very complex process that includes numerous actors involved in the execution or monitoring of the execution of judgments, complicating the very implementation of certain measures and activities that should lead to efficient execution of judgments. The question arises: why is the execution of the judgments passed by the ECtHR important?

Namely, the European Convention on Human Rights, in addition to guaranteeing the protection of basic human rights, also contains a mechanism aimed at ensuring its effective implementation by States as contracting parties to this international agreement. At the same time, the role of the ECtHR is crucial, as it analyzes and determines in its judgments whether a State has violated the Convention in a specific, concrete case. The Convention itself explicitly provides for the binding nature of judgments for the States as well as the competence to supervise their execution, and we see this in art. 46 ECHR. In terms of this article<sup>35</sup>, judgments have binding force, which means that States must undertake to abide by the final and final judgments of the Court in any case to which they are parties. Art. 46 applies to any judgment in which the Court has found a violation of the Convention, which imposes a legal obligation on the State responsible to put an end to the violation and to provide reparation for its consequences<sup>36</sup>.

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<sup>31</sup> Assembly of the Republic of the North Macedonia, *Resolution of the Migration Policy of the Republic of North Macedonia 2021-2025*, December 2021, p. 9.

<sup>32</sup> International Organization for Migration, *Migration in the Republic of North Macedonia: Country Profile 2021, 2022*, p. 17.

<sup>33</sup> *Ibid.*, p. 75.

<sup>34</sup> *Ibid.*

<sup>35</sup> ECHR, art. 46, para. 1.

<sup>36</sup> ECtHR, Judgment of 31 October 1995, Application no. 14556/89, *Papamichalopoulos and Others v. Greece*, para. 34.

The Member States of the Council of Europe, in principle, have three obligations after the adoption of an unfavorable (negative) judgement which established a violation of the Convention:

- to pay compensation, if it was awarded;
- if it is necessary, to take further individual measures in favor of the applicant, *i.e.* to put an end to the violation established by the Court and to make reparation for its consequences in a way that the applicant will put, to the extent that this is possible, in the former state, that is, in the situation that existed before the violation (*restitutio in integrum*)<sup>37</sup>; and
- to take measures of a general nature in order to ensure non-repetition of similar injuries in the future<sup>38</sup>.

From the principle of subsidiarity<sup>39</sup>, it follows that the State responsible for the violation of the freedoms and rights established in accordance with the Convention has a high degree of flexibility in choosing the means by which it will fulfill its legal obligation from art. 46 of the Convention. This principle, which was initially developed as a doctrine in the practice of the European Court, and was recently explicitly incorporated into the Preamble of the Convention through Protocol No. 15<sup>40</sup>, emphasizes the primary responsibility of the domestic authorities to respect and guarantee the freedoms and rights protected by the Convention, to determine the most appropriate measures for that purpose, and to ensure compliance with the final judgments passed by the the Court through the cooperation and coordination of all branches and authorities.

Nevertheless, the choice of means and the way of their practical implementation is not unlimited, and it is subject to supervision<sup>41</sup> by the Committee of Ministers<sup>42</sup> of the Council of Europe.

The interaction between the ECHR and the Committee of Ministers, through the application of art. 46 ECHR, has been continually evaluated over the years. In recent years, the ECtHR has increasingly assisted in the process of executing judgments in several ways, such as by providing guidance in its rulings regarding specific enforcement measures that the State should undertake. In general, for each case, that is, a group of similar cases, the Committee of Ministers considers the measures to overcome the violation of the Convention proposed by the State during the special, thematic human rights meetings of the Committee, the so-called DH meetings<sup>43</sup> which are held four times a year. Although as a rule the ECtHR is not involved in the supervision of execution, the Convention foresees the possibility of its inclusion in this process in two situations:

- if the Committee of Ministers considers that the supervision of the execution is hindered by a problem related to the interpretation of the judgment, it may refer the matter to the Court, which would decide on the question of interpretation by a decision made by a majority vote of the representatives in the Committee (art. 46, para. 3); and
- if the Committee of Ministers considers that a State refuses to comply with a final judgment in a case to which it is a party, it may, after sending formal notice to that

<sup>37</sup> ECtHR, Judgment of 1 April 1998, Application no. 21893/93, *Akdivar and Others v. Turkey*, para. 47.

<sup>38</sup> ECtHR, Judgment of 22 June 2004, Application no. 31443/96, *Broniowski v. Poland*, para 193.

<sup>39</sup> Council of Europe, *Protocol No. 16 for amending the Convention for the Protection of Human Rights and Fundamental Freedoms*, 2013, CETS no. 214. Entered into force on August 1, 2021.

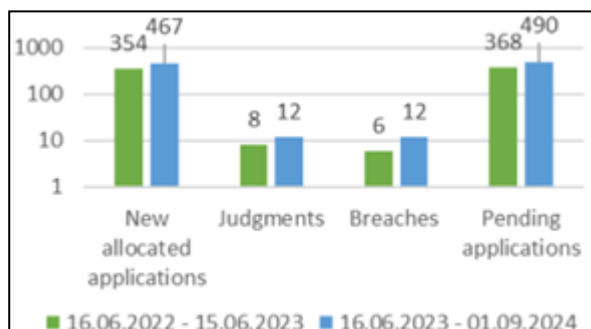
<sup>40</sup> Council of Europe, *Protocol No. 15 for amending the Convention for the Protection of Human Rights and Fundamental Freedoms*, 2013, CETS no. 213. Entered into force on August 1, 2021.

<sup>41</sup> ECtHR, Judgment of 29 March 2006, Application no. 36813/97, *Scordino v. Italy (I)*, paras. 232-234.

<sup>42</sup> ECtHR, *Guide on Article 46 of the European Convention on Human Rights*, 2022, p. 6.

<sup>43</sup> ECtHR, *Supervision of Execution of Judgments of the European Court of Human Rights*, <https://www.coe.int/en/web/cm/execution-judgments>, accessed on 05/05/2024.

State and by a decision taken by a two-thirds majority of the representatives on the Committee, referred to the Court the question of whether the respective State fulfilled its obligations from paragraph 1 (art. 46, para. 4). Consequently, if the Court finds a violation, it should return the matter to the Committee of Ministers for consideration of the measures that should be taken (art. 46, para. 5)<sup>44</sup>.



Picture no. 1<sup>45</sup>

On the side of the State, there is a distinct organizational structure tasked with preparing an effective defense and directly representing the State, including such an imposed question regarding the competences of whom is in charge to prepare a defense, to represent and directly represent the State in proceedings before the Court in cases where the State is a party, as well as the competences to conclude agreements for the friendly settlement of cases before the Court and to declare unilaterally on behalf of the Government declaration. In this context, it is the Bureau for Representation of the State before the European Court of Human Rights, which functions as an authority within the Ministry of Justice and is headed by the Director of the Bureau – a government agent who plays a direct role in the execution of judgments. The functions performed by the Government Agent, as well as the representative of the State before the ECtHR in cases initiated by applications against the State, are crucial. The appropriate legal framework governing the status of the Government Agent before the ECtHR is, to a certain extent, also authoritative when it comes to the execution of ECtHR judgments. This framework is embodied in the Law on Representation before the European Court of Human Rights<sup>46</sup>. Among the other actions that should be taken by the Office for Representation of the State before the European Court of Human Rights in the sphere of enforcement include: drafting recommendations for possible actions of the domestic courts and State authorities for the purpose of executing the decisions of the Court in the event of a confirmed violation of the Convention, the monitoring of the fulfillment of the obligations of the domestic courts and State authorities arising from the decisions of the Court in case of established violations of the Convention<sup>47</sup>, the submission of information to the Committee of Ministers at the Council of Europe, in coordination with the Ministry of Foreign Affairs, about the undertaken measures by the State for the execution of the judgments passed by the Court, participation in the work of the meetings of the Committee of Ministers when the measures taken for the execution of the judgments of

<sup>44</sup> V. DELOVSK, *Execution of Judgments of the European Court of Human Rights – The Mechanism at the Council of Europe and the National Institutional Context*, OSCE Mission to Skopje, 2022, p. 12.

<sup>45</sup> Source: ECtHR.

<sup>46</sup> Law on Representation of the Republic of Macedonia before the European Court of Human Rights, Official Gazette of the Republic of North Macedonia no. 67/2009, 88/2014, and 83/2018, Assembly of the Republic of North Macedonia.

<sup>47</sup> *Ibid.*

the Court by the State are considered, as well as the cooperation with the Academy for the training of judges and public prosecutors, in the continuous education of judges, public prosecutors, lawyers and other legal professions, for the purpose of executing judgments and applying the practice of the Court as a source of law<sup>48</sup>.

From the moment of ratification of the ECHR<sup>49</sup> the right to submit individual complaints (applications) against the State was established in accordance with art. 34 ECHR, through which allegations of violations of freedoms and rights protected by the Convention are highlighted. In cases involving North Macedonia, the European Court of Human Rights has issued a total of 232 judgments against the State in the last 10 years, from 2014 to the first quarter of 2024.



Picture no. 2<sup>50</sup>

In terms of monitoring and execution of ECtHR decisions in cases against the Republic of North Macedonia, the competent body is the Interdepartmental Commission for the Execution of ECtHR Decisions, which is managed by the Minister of Justice. The commission is composed of officials from the Ministry of Internal Affairs, the Ministry of Foreign Affairs, the Ministry of Finance, the President of the Judicial Council of the Republic of North Macedonia, the President of the Supreme Court of the Republic of North Macedonia, the President of the High Administrative Court, the presidents of the four courts of appeal, the President of the Constitutional Court, the President of the

<sup>48</sup> *Ibid.*, art. 4.

<sup>49</sup> On April 10, 1997, North Macedonia officially ratified the European Convention on Human Rights.

<sup>50</sup> Picture taken from the official site of the Council of Europe, available at <https://www.coe.int/en/web/execution/north-macedonia>.

Council of Public Prosecutors, the Public Prosecutor of the Republic of North Macedonia, and the Government Agent<sup>51</sup>.

The path to the successful implementation of a judgment is often long and challenging, as it involves the State representation before the European Court of Human Rights, which, as a State body, receives official notification from the Court's Secretariat regarding the finality of the judgment. This process continues through the Interdepartmental Commission for the Execution of Decisions of the European Court of Human Rights, the courts, public prosecutors' offices, relevant ministries, State administration bodies and the Academy of Judges and Public Prosecutors of North Macedonia. The State must take measures to prevent further damage to its international reputation by avoiding the issuance of new unfavorable judgments that expose it to public condemnation for violating the fundamental human rights guaranteed by the Convention.

### 3.1 Case Study: *El-Masri v. Republic of Macedonia*

On October 24, 2012, the Grand Chamber of the European Court of Human Rights passed the judgment in the case of *El-Masri v. Republic of Macedonia*<sup>52</sup>. The following case was initiated by application no. 39630/09, submitted to the European Court of Human Rights in Strasbourg pursuant to art. 34 of the Convention on July 20, 2009, by the German citizen Khaled El-Masri. The applicant alleged that he was the victim of a secret extraordinary rendition operation by the United States Central Intelligence Agency, involving Macedonian officials, which took place on the territory of the Republic of Macedonia. According to El-Masri, the officials “*detained him, held him incommunicado, interrogated him and mistreated him, and handed him over at the Skopje airport to CIA agents who transferred him by special CIA aircraft to a secret CIA-run detention facility in Afghanistan, where he was mistreated for more than four months*”, before being returned to Germany. Furthermore, the respondent State, in this case Macedonia, failed to take the necessary measures to conduct an investigation to verify the applicant's allegations. Thus, the Republic of Macedonia has violated arts. 3, 5, 8 and 13 ECHR, making it responsible for torture, inhuman and degrading treatment of the applicant, for a violation of the right to liberty and security, the right to private and family life and the right to an effective remedy. The judgment is significant from the perspective of international law, because it is the first case before the European Court of Human Rights condemning the practice of extraordinary rendition and for the first time an international court such as the European Court of Human Rights has characterized such an act as torture and inhuman treatment, emphasizing the significance of the prohibition of torture on the international stage.

The verdict is a case that for the first time an international court characterized as torture the treatment of such surrender, once again confirming the absolute character and significance of the prohibition of torture in the international community. According to the author, considering that the ECHR is directly inspired by the Universal Declaration of Human Rights, and the rights contained in the Declaration are incorporated in many other international documents and agreements, the judgment can also serve as a “*guideline for how these norms should be applied in the future in view of part-time teaching*”

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<sup>51</sup> Office for Representation of RNM before ECtHR, *Annual Report on the Work of the Interdepartmental Commission for the Execution of ECtHR Decisions for 2019*, Ministry of Justice, Republic of North Macedonia, 2020, p. 7.

<sup>52</sup> ECtHR, Judgment of 13 December 2012, Application no. 39630/09, *El-Masri v. The Former Yugoslav Republic of Macedonia*.

programs”<sup>53</sup>. The judgment points to the possible abuse of the concept of “*state secret*” especially when it comes to systemic policies of secret detentions, interrogation and rendition programs, intelligence, and other practices about which there is little information, and about which there is general impunity, which is certainly against the idea of the rule of law and respect for human rights. In that direction, Macedonia later adopted an action plan<sup>54</sup> whereby the Macedonian authorities took additional steps aimed at ensuring compliance with the judgment of the European Court, through a meeting of the interdepartmental commission for the execution of judgments and decisions of the European Court of Human Rights on the measures necessary to execute the judgment *El-Masri*. What is an interesting feature to note in this case is that Macedonia not only paid compensation of 60 thousand euros, but also publicly apologized<sup>55</sup>, all in order not to face the first Resolution with condemnation from the Council of Europe.

### 3.2 Case Study: *A.A. and Others v. North Macedonia*

The Syrian family from Aleppo filed application no. 55798/16 with the European Court of Human Rights<sup>56</sup>. They left Syria in 2015 and arrived in Idomeni on 24 February 2016. The applicants alleged that while taking a short walk on Macedonian territory, they came to a point where North Macedonian military personnel, including Czech and Serbian soldiers, surrounded hundreds of refugees. The applicants alleged that they spent the night in the open and were followed by threats of violence from Macedonian soldiers if the same group did not return to Greece. The applicants alleged that they were forced to walk for three to four hours and returned to Idomeni. Afghan, Iraqi and Syrian nationals filed applications nos. 55808/16, 55817/16 and 55823/16. The applicants explained the personal reasons that had led them to leave their countries of origin. The applicant, relying on a wheelchair, rode on wheels where possible and relied on others to carry him over muddy or rocky terrain and across a river. It was further stated that the event was covered by activists and journalists. The soldiers allegedly ordered the applicants to board army trucks and drove them back to the Greek border. Some of the applicants alleged that Macedonian soldiers were standing guard at the border fence. The applicants alleged that their summary deportation by the North Macedonian authorities amounted to collective expulsion, in violation of their rights under art. 4 of Protocol No. 4 to the ECHR, which prohibits the collective expulsion of aliens. The applicants also complained that they had no effective remedy with suspensive effect to challenge their summary expulsion to Greece. They relied on art. 13 ECHR for the right to an effective remedy, read in conjunction with art. 4 of Protocol No. 4. The European Court of Human Rights examined the five applications together and delivered a single judgment due to the similar nature of the complaints lodged by the applicants<sup>57</sup>.

The main argument of North Macedonia, as respondent, was that the applicants’ situation was attributable to their own conduct, in particular their failure to comply with

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<sup>53</sup> L. STOJKOVSKI: *Commentary on the El-Masri Judgment against the Republic of Macedonia*, in *Strasbourg Observers*, 2020.

<sup>54</sup> Committee of Ministers of the Council of Europe, *Updated Action Plan: El-Masri v. the Republic of Macedonia*, Application no. 39630/09, *Grand Chamber Judgment of 13 December 2012*, DH-DD(2015)1219.

<sup>55</sup> P. STOJANČOVA: *Macedonia Apologized to El-Masri at the Finish Line*, in *Radio Free Europe*, 2018.

<sup>56</sup> ECtHR, Judgment of 5 April 2022, Applications nos. 55798/16 *et al.*, *A.A. and Others v. North Macedonia*.

<sup>57</sup> A. Dangova Hug, A. Godzo, N. Trpkovska: *A.A. and others v. North Macedonia. A Critical Analysis: “True” facts versus law*. MYLA, 2024, p. 5.



official entry procedures. The applicants had not been treated as applicants for international protection primarily because of their violent and aggressive attempt to enter the territory of the respondent State rather than attempting to enter legally. The ECtHR delivered a unanimous judgment finding that there had been no violation of art. 4 of Protocol No. 4 to the ECHR and art. 13 ECHR taken in conjunction with art. 4 of Protocol No. 4<sup>58</sup>.

#### 4. Conclusion

Improving the judicial system and its functioning is a cornerstone for North Macedonia's development as a democratic State and a reflection of a functional multicultural society committed to equality in freedoms and human rights. The existence of an independent and impartial judiciary, together with institutions committed to the effective, high-quality and fair administration of justice, is essential for respect for rule of law. The effective and smooth implementation of the judgments of the ECtHR in North Macedonia contributes to reflecting the ongoing efforts of the State to harmonize its legal system with European standards and to uphold the principles of the realization of human rights and rule of law, approaching European values and its integration. North Macedonia, as a candidate country for accession to the European Union, still faces numerous challenges in ensuring the effective implementation of existing international obligations. In this paper we can see the relationship between the judiciary, migration policies and human rights which was so-called "tested" in two significant cases for the Macedonian judiciary: *El-Masri v. the Republic of Macedonia* and *A.A. and others v. North Macedonia*. These cases, in fact, highlight the complex balance between State sovereignty and international human rights obligations, while emphasizing the need for reforms in Macedonian institutions. The European Convention on Human Rights plays a vital role in guiding and advancing the legal development of all Council of Europe Member States, including North Macedonia. The governments of these Member States strive to promote peace and greater unity based on human rights and fundamental freedoms. The implementation of judgments delivered by the European Court of Human Rights is essential, not only for fulfilling the obligations arising from the Convention but also for strengthening public confidence in the judiciary.

The case of *El-Masri v. the Republic of Macedonia* is an example of the grave consequences that a State can face if fundamental human rights are not respected. The arrest and subsequent rendition of the applicant, Khalid El-Masri, to the CIA as part of an extraordinary rendition programme revealed significant shortcomings in Macedonia's security operations and its complicity in human rights violations. The Court found a violation of arts. 3, 5, 8 and 13 ECHR, and the judgment served as an impetus for important reforms, including strengthened oversight of security operations and improved independence of the judiciary. The El-Masri case remains a landmark decision, underscoring the importance of vigilance in protecting human rights, even when confronted with national security concerns. In contrast to the *El-Masri* case, the *A.A. and Others v. North Macedonia* case presents a scenario where the Court concluded that no violation of art. 13 and art. 4 of Protocol 4 had occurred, a group of refugees from Syria, illegally crossed the Macedonian-Greek border, claiming that they wanted to take a short walk on the territory of Macedonia. As previously mentioned in the paper, considering that North Macedonia is traditionally regarded as a transit country for migrants on their way to Western European countries and their desired destinations, the situation raises

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<sup>58</sup> *Ibid.*

questions about the assumption that migrants merely intended to pass through Macedonian territory. However, the judgment highlighted the importance of conducting individual assessments in asylum cases and ensuring that expulsions are neither arbitrary nor indiscriminate.

North Macedonia continues to face challenges in strengthening its judiciary and aligning its legal framework with European and international standards, as reflected in the European Commission's 2023 and 2024 reports. Despite these efforts, public trust in the judiciary remains disappointingly low. To achieve meaningful progress, it is essential to address systemic weaknesses, including corruption, political influence, and limited resources, which have been consistently highlighted in the European Commission's reports over the past years. Institutional reforms must be prioritized to strengthen the independence of the judiciary, improve access to justice for vulnerable groups, including migrants and asylum seekers. In addition, fostering greater transparency and accountability in the implementation of the judgments of the Strasbourg Court is crucial for building trust in institutions, as well as the country's commitment to improving and effectively protecting human rights for all. North Macedonia's reforms and the efforts of its institutions to align with European criteria represent some of the most significant transformations it is undergoing as a candidate country. These efforts are marked by challenges but also demonstrate a clear path toward greater alignment with international human rights norms. Prioritizing the implementation of ECtHR judgments, fulfilling international obligations, and building a fair, effective, and efficient legal system are essential steps toward embracing European values and upholding the rule of law.

The European Union has been working for years to develop a comprehensive framework for the integration of migrants and asylum seekers, with a particular emphasis on their social, economic, and cultural inclusion in society. North Macedonia, as a pro-European country aspiring to join the Union, must demonstrate its dedication and commitment to integrating migrants and asylum seekers by providing opportunities for employment, education, healthcare, and housing, as well as addressing discrimination and xenophobia. Using effective mechanisms to implement the established integration policies is essential because it is in this way that migrants can contribute positively to Macedonian society in general, rather than remaining marginalized. This leads us to the conclusion that the dedicated implementation of the decisions of the European Court of Human Rights, as an institution of the Council of Europe, by North Macedonia and its comprehensive approach to managing illegal migration place the country in a favorable position that will result in accelerated Euro-integration processes in the European Union. Judicial reforms and improvements in migration policy are crucial for North Macedonia, as they demonstrate the country's readiness to meet the Copenhagen criteria for European Union accession. Continued cooperation with European institutions, legal harmonization, enhanced institutional support, humanitarian aid, and the implementation of sustainable policies for the protection of migrants will contribute to creating a fairer and safer society for all. These efforts will ensure European security and promote the adoption of European values within the Macedonian society, including solidarity, respect for human rights, and the protection of the dignity and rights of migrants.

## **ABSTRACT**

North Macedonia has gained the status of a candidate country to the EU membership in 2005, and has been working towards meeting the Copenhagen criteria (1993) for membership, focusing on political, economic, and legal reforms, including harmonizing its laws with EU standards. In this process, North Macedonia is assisted by the European

Commission, whereby the Commission evaluates on a yearly level the country's progress in all field of enlargement. In relation to that, the European Commission in its most recent Progress reports for North Macedonia for the years 2023 and 2024, concerning Chapter 23 on Judiciary and Fundamental rights, observed that the country's legal framework on the protection of fundamental rights is only partially aligned with the EU *acquis* and European standards on fundamental rights. On these grounds, the paper will focus on the alignment of Macedonian law and legal system with EU law in the part of implementation of the ECHR and the Judgments of the ECtHR, having in mind the Union's relation to the Convention and to its fundamental principles. In this paper to gain a more complete picture in the light of immigration, we will investigate the application of European law by national courts in two cases brought against North Macedonia, *El-Masri* and *A.A. and Others*, comparing the outcomes of these two cases and the impact they have on the Macedonian judiciary from an immigration point of view.

### KEYWORDS

*Case Study, Chapter 23, ECHR, European Law, North Macedonia.*

### ANALISI DELLA PREPARAZIONE DELLA MACEDONIA DEL NORD NELL'IMPLEMENTARE LE DECISIONI GIUDIZIARIE EUROPEE: UNA DISAMINA MEDIATA DAL PRIMA DELLA PRASSI DELLA CORTE EDU

### ABSTRACT

*La Macedonia del Nord ha ottenuto lo status di paese candidato all'adesione all'UE nel 2005 ed ha lavorato per soddisfare i criteri di Copenaghen (1993) per la propria adesione, concentrandosi sulle riforme politiche, economiche e legali, compresa l'armonizzazione delle proprie leggi con gli standard dell'UE. In questo processo, la Macedonia del Nord è assistita dalla Commissione europea, che valuta a livello annuale i progressi compiuti dal paese in tutti i settori dell'allargamento. A questo proposito, la Commissione europea, nelle sue più recenti relazioni sui progressi compiuti dalla Macedonia del Nord per gli anni 2023 e 2024, riguardanti il Capitolo 23 sul sistema giudiziario e i diritti fondamentali, ha osservato che il quadro giuridico del paese in materia di protezione dei diritti fondamentali è solo parzialmente allineato all'acquis dell'UE e alle norme europee in materia di diritti fondamentali. Su queste basi, il documento si concentrerà sull'allineamento del diritto e del sistema giuridico macedone con il diritto dell'UE nella parte di attuazione della CEDU e delle sentenze della Corte EDU, tenendo presente il rapporto dell'Unione con la Convenzione e con i suoi principi fondamentali. In questo articolo, per ottenere un quadro più completo in ottica di immigrazione, verrà esaminata l'applicazione del diritto europeo da parte dei tribunali nazionali in due casi intentati contro la Macedonia del Nord, El-Masri e altri, confrontando gli esiti di questi due casi e l'impatto che hanno sul sistema giudiziario macedone dal punto di vista dell'immigrazione.*

### KEYWORDS

*Capitolo 23, Caso di Studio, CEDU, Diritto Europeo, Macedonia del Nord.*