

**No:** U.no.159/2004 <sup>1</sup>

**Date:** 19.01.2005

On the basis of Article 110 of the Constitution of the Republic of Macedonia and Article 71 of the Book of Procedures of the Constitutional Court of the Republic of Macedonia (“Official Gazette of the Republic of Macedonia”, No.70/1992), at its session held on 19 January 2005, the Constitutional Court of the Republic of Macedonia passed the following

## **RESOLUTION**

1. NO PROCEDURE SHALL BE INITIATED to appraise the constitutionality of title “Reasons for exclusion” and Article 6 of the Law on Asylum and Interim Protection (“Official Gazette of the Republic of Macedonia”, No.49/2003).

2. Stamen Filipov from Skopje submitted an initiative to the Constitutional Court of the Republic of Macedonia to instigate a procedure for the appraisal of the constitutionality of the title and the provision in the Law as noted in item 1 of the present Resolution.

According to the statements in the initiative, the contested provision was in direct contradiction with Article 13 paragraph 1 and Article 14 paragraph 1 of the Constitution of the Republic of Macedonia, as well as with Article 6 paragraph 2 and Article 7 of the Convention for the protection of Human Rights and Fundamental Freedoms. Namely, a foreign citizen could not be excluded from the right to asylum only because there was well-founded suspicion that he/she has committed a criminal offence envisaged in subparagraphs 2 and 3 of the disputed Article 6 of the Law, while the well-founded suspicion could not replace the effective court judgment finding the perpetrator of the criminal offence guilty.

As regards subparagraph 3 of the disputed Article 6 of the Law, it is stated that the subparagraph is incomplete and imprecise and on the basis of it could not be determined which are the activities that are in contradiction with the UNO objectives and principles and where they are provided for. The contested subparagraph could not be applied in practice or could be applied improperly and left a possibility to be misused by officials applying the Law.

Because of the above noted, the submitter of the initiative considers that there is

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<sup>1</sup> Source: the web site of the Constitutional Court of the Republic of Macedonia (available at the following URL: <http://www.ustavensud.mk/domino/WEBSUD.nsf>).

inconformity with the Constitution as a whole, and in particular with Article 8 paragraph 1 subparagraphs 1, 3 and 11, Article 13 paragraph 1, Article 14 paragraph 1, Article 29 paragraphs 1 and 2, Article 51 and Article 54 paragraph 1 of the Constitution of the Republic of Macedonia and Article 6 paragraph 2, Article 7 and Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

3. At its session the Court determined that under Article 6 of the Law on Asylum and Interim Protection, a foreign citizen may not enjoy the right to asylum in the Republic of Macedonia in case there is well-founded suspicion that he/she:

- has committed a criminal offence against peace, humanity or a war atrocity, in accordance with international acts envisaging these criminal offences;
- has committed a serious criminal offence (non-political) outside the territory of the Republic of Macedonia before being accepted in it as a refugee;
- is guilty for activities contrary to the United Nations Organization objectives and principles.

4. Pursuant to Article 8 paragraph 1 subparagraphs 1, 3 and 11 of the Constitution of the Republic of Macedonia, the basic freedoms and rights of the individual and citizen recognised in international law and set down in the Constitution, the rule of law, and respect for the generally accepted norms of international law are the fundamental values of the constitutional order of the Republic of Macedonia.

Pursuant to Article 13 of the Constitution, a person indicted for a punishable offence shall be presumed innocent until his/her guilt is established by an effective court verdict.

In accordance with Article 14 paragraph 1 of the Constitution, no person may be punished for an offence that had not been declared an offence punishable by law, or by other regulation, prior to its being committed, and for which no punishment had been prescribed.

Under Article 29 of the Constitution, foreign subjects in the Republic of Macedonia enjoy freedoms and rights guaranteed by the Constitution, under conditions defined by law and international agreements. The Republic guarantees the right to asylum to foreign subjects and stateless persons, expelled because of democratic political convictions and activities.

Under Article 118 of the Constitution, international agreements ratified in accordance with the Constitution are part of the internal legal order and may not be changed by law.

The Convention for the Protection of Human Rights and Fundamental Freedoms

was ratified by Law published in the “Official Gazette of the Republic of Macedonia” no.11/1997.

Under Article 6 paragraph 2 of the Convention, everyone charged with a criminal offence shall be presumed innocent until proven guilty according to law.

Under Article 7 paragraph 1 of the Convention, no one shall be held guilty of any offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. Under paragraph 2 of the same provision, this article shall not prejudice the verdict or punishment of any person guilty for an act or omission which, at the time when it was committed, was criminal offence according to the general principles of law recognised by civilised nations.

Pursuant to Article 14 of the Convention, the enjoyment of the rights and freedoms set forth in this Convention should be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

The Convention on the Legal Position of Refugees was adopted in 1951 and entered into force on 22 April 1954. Protocol No.1 to the Convention entered into force on 4 October 1967.

Pursuant to Article 3 of the Constitutional Law on the Enforcement of the Constitution of the Republic of Macedonia (“Official Gazette of the Republic of Macedonia”, no.52/1991), the Republic of Macedonia, being a sovereign and independent state, realises its international position and relations with other states and international bodies, organisations and communities under the generally accepted principles of international law. The Republic of Macedonia, being the equal legal heir of SFRY with the other republics takes over the SFRY membership in international bodies, organisations and communities.

With its Resolution A/RES/47/225 of 28 April 1993, the UN General Assembly decided to admit the Republic of Macedonia as a member of the United Nations Organisation.

The decision on the accession of the Republic of Macedonia to the international legal documents on fundamental human rights and freedoms adopted by the UNO, among which the Convention on the Legal Position of Refugees, was published in the “Official Gazette of the Republic of Macedonia”, no.57/1993 of 23 September 1993.

Under Article 1f of the Convention, the provisions of this Convention shall not be applied to persons for whom there are serious reasons to believe:

- to have committed crime against peace, war crime against humanity, in the sense of international instruments developed to provide for provisions for those crimes;
- to have committed a serious crime against the international law outside the accepting country before being accepted into it as refugees;
- to be guilty of actions that are in contradiction with the United Nations objectives and principles.

5. Freedoms and rights of the individual and citizen are regulated in the Constitution of the Republic of Macedonia in a separate part titled as “Fundamental Freedoms and Rights of the Individual and Citizen”.

From the aspect of the statements in the initiative, particularly important is Article 29 paragraphs 1 and 2 of the Constitution, which is also the last article of the part on civil and political freedoms and rights of the individual and citizen. This provision regulates the position of foreign subjects in the Republic of Macedonia in the sense that they enjoy freedoms and rights guaranteed by the Constitution, under terms defined by law and international agreements (paragraph 1), as well as that the Republic guarantees the right to asylum to foreign subjects and stateless persons, expelled for democratic political beliefs and activities (paragraph 2).

From the provision cited it derives that the Republic of Macedonia positions the right to asylum as a subjective constitutional right and that right is enjoyed under conditions defined by the Constitution, law and international agreements.

Thereby, this constitutional provision contains the legitimate right of the state to examine the bases for granting, as well as for excluding the right to asylum within the frameworks given in the Constitution, law and international act, which at the same time is fulfillment of the obligations of the state that have been undertaken internationally on the basis of this Article in the Constitution, as an expression of the respect for the norms of international law that are not contradictory to its constitutional order.

Hence, the challenged provision of the Law, through the full acceptance of Article 1f of the Convention on the Legal Position of Refugees, additionally reinforces the fulfillment of the commitment of the Republic of Macedonia undertaken internationally. Accordingly, the international standard for such grounds for exclusion of the right to asylum is implicit content of Article 29 of the Constitution, as a result of which the Court judges that the conformity of the disputed legal provision with this Article of the Constitution may not be brought into question.

In this context, the bases for the exclusion of the right to asylum may not be treated from the aspect of the constitutionally guaranteed principles of presumption of innocence and the determination of criminal offences and guilt under Article 13 paragraph 1 and Article 14 paragraph 1 of the Constitution. The stipulation of serious doubts for committed serious criminal offences as bases for the exclusion of the right to asylum in the disputed provision of the Law is not justified only with the meeting of international commitments, but also with that that the state, which unilaterally decides on the right to asylum as a form of establishing relations with foreign subjects, in that context necessarily has less strict limitations for determining the conditions for realisation of such right than those valid in the realisation of the rights of citizens in the domestic legal order.

In that sense, the envisagement of serious suspicions for the activities of the asylum seekers, as a ground for exclusion of the right to asylum in the contested provision, may not be regarded as a violation of Article 13 paragraph 1 and Article 14 paragraph 1 of the Constitution, since an unquestionable right and obligation of the state is when deciding on such matters to protect the security of the state, of its citizens, and of the international legal order.

Also, according to the Court, calling upon the inconformity of the disputed legal provision with the provisions in the Convention for the Protection of Human Rights and Fundamental Freedoms in this specific case is irrelevant, not only because the Constitutional Court is not competent to appraise the conformity of laws with international agreements, but also for reasons that the provisions in the Convention in this part may not be used even as an additional argumentation in the context of the right to asylum which they do not deal with at all.

When it comes to the statements in the initiative regarding the possibility of incorrect application or misuse when applying subparagraph 3 of the provision challenged, the Court has assessed that they are irrelevant given that the application or the possible misuse of any legal provision is not within the competence of the Constitutional Court of the Republic of Macedonia pursuant to Article 110 of the Constitution.

From the analysis of the provisions cited, the Court has judges that there may not be brought into question the issue of conformity of the disputed title and provision of the Law with Article 8 paragraph 1 subparagraphs 1, 3 and 11, Article 13 paragraph 1, Article 14 paragraph 1, Article 29 paragraphs 1 and 2, Article 51 and Article 54 paragraph 1 of the Constitution of the Republic of Macedonia.

6. On the basis of what has been stated, the Court has decided as in item 1 of this Resolution.

7. The Court has passed this Resolution in the following composition: the President of the Court Mrs Liljana Ingilizova – Ristova, and the judges: Dr Trendafil Ivanovski, Mr Mahmut Jusufi, Mrs Mirjana Lazarova Trajkovska, Mrs Vera Markova, Dr Bajram Polozani, Mr Igor Spirovski, and Dr Zoran Sulejmanov.

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19 January 2005

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l.a/

**PRESIDENT**

of the Constitutional Court of  
the Republic of Macedonia

Liljana Ingilizova – Ristova