



HELP ON THE ROUTE

ANNUAL REPORT FOR 2018

THE RIGHTS OF REFUGEES,
MIGRANTS AND ASYLUM SEEKERS
IN THE REPUBLIC OF MACEDONIA

The project "Help on the route - Fostering protection of human rights of migrants passing through Macedonia and Serbia" is financed by the European Union

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“HELP ON THE ROUTE”

Annual report for 2018 - The rights of refugees, migrants and asylum seekers in the Republic of Macedonia

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Uranija Pirovska

Author:

Sibel Amet

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About the project and the findings from this report

This report has been prepared as part of the project “Help on the route – fostering protection of human rights of refugees and migrants passing through Macedonia and Serbia”, which is supported by the European Union and implemented by the “Ana and Vlade Divac” Foundation from Serbia, in partnership with the Helsinki Committee for Human Rights of the Republic of Macedonia, Novi Sad Humanitarian Center and the Arbeiter-Samariter-Bund (ASB) – Serbia. One of the project’s components is the connecting of 24 civil society organizations from Macedonia and Serbia into a network for registering the violations of refugees and migrants’ rights¹ and providing them with better protection, and apart from the four partner organization or implementers, five other civil society organizations from Macedonia and 15 civil society organizations from Serbia also participate in the project. Each of these organizations acts within its mandate and provides various services for protecting the rights of refugees and migrants. The following are among them: the Macedonian Red Cross, “Legis”, “Open Gate” (La Strada), the Regional Center for Sustainable Development (RCSD) Gevgelija and the “Civic Development” NGO (Vaksince). The data and findings presented in this report are a result of the organizations’ reporting.

This report covers various aspects of the refugee crisis situation in the Republic of Macedonia in 2018. Some of the topics addressed in this report include the operation the transit camps, the conditions and the treatment that refugees and migrants receive there, the course of illegal migration and isolated incidents, as well as the adoption and implementation of national policies and legal decisions related to migrants and refugees. At the same time, it is inevitable to consider the social and political developments in the country, which have left their mark on the dynamics of the refugee crisis in the Republic of Macedonia.

For the purpose of a comprehensive and detailed report, a research on the respect of the rights and freedoms of refugees and migrants, as well as the trends of the refugee crisis of the past year was conducted during October 2018. The research was conducted by Sibel Amet, a policy researcher in the project. The research consisted of two focus groups and five in-depth interviews which included the most engaged social benefactors in the crisis (representatives of civil society organizations that deal with the crisis, journalists investigating and reporting about the refugee crisis, representatives of relevant institutions regarding the refugee crisis and migration flows). The findings and the conclusions of the research are included in this report.

Upon monitoring and establishing the situation along with the existing violations of the rights of refugees and migrants passing through the Republic of Macedonia, the Helsinki Committee adhered to the domestic legislation and the international standards. Hence, the identified conditions are seen through the framework of the Constitution of the Republic of Macedonia, the Law on International and Temporary Protection² and the Law on Foreigners³ as basic guidelines, as well as the Law on Police.⁴ Taking into account the rights guaranteed by the 1951 Convention on the Rights of Refugees, the existing violations were established on the basis of the European Convention on Human Rights (ECHR), as well as the practice of the European Court of Human Rights (ECtHR).

1 This report contains both terms — refugees and migrants — due to their inconsistent use in the expert public and the essential inability to only use the term “refugees”, since they left their home country in order to seek protection which was not provided there, and “migrants” due to their unregulated legal status on the territory of the Republic of Macedonia, i.e. the lack of a recognized refugee status in both the formal and the legal sense.

2 Official Gazette of the Republic of Macedonia No. 64 of 11.04.2018.

3 Official Gazette of the Republic of Macedonia, No. 97 of 28.05.2018.

4 Official Gazette of the Republic of Macedonia, No. 114/2006, 6/2009, 145/12, 41/14, 33/15, 31/16, 106/16, 120/16 and 21/18, 64/18.

Introduction – The refugee crisis in 2018

In the past three years (2015, 2016, 2017), hundreds of thousands of refugees and migrants who had left their homes in order to reach the EU Member States, passed through Macedonia. The fluctuations in the dynamics of the refugee crisis during this period had continually tested the country's ability to fully respect the guarantees of the fundamental human rights under national legislation and the obligations defined in international agreements and instruments and, at the same time, to deal with the unprecedented influx of refugees and migrants transiting the "Balkan route". The Republic of Macedonia remained a country of transit, and not a final destination for refugees and migrants, as is evident from the low number of asylum or temporary protection requests in the country in contrast to the number of refugees and migrants who had been passing through on a daily basis.

During 2018, the borders of European countries remained closed, in accordance with the agreement reached between the EU and Turkey in March 2016. After the official closing of the "Balkan route", smuggling groups and illegal border-crossing became the prevalent ways in which refugees and migrants continued to pursue their intention - trying to reach Western European countries in an extremely difficult way. Faced with numerous challenges, some succeed in their goal, while others make more than ten unsuccessful attempts to cross the closed borders.

In the course of 2018, the refugees and migrants transiting the country were mostly men, while there were fewer women and children. Vulnerable groups mostly consisted of unaccompanied children and a smaller number of pregnant women. Unlike the previous years of the refugee crisis, there were almost no elderly people or persons with disabilities. According to the countries of origin, there were individuals and groups from various countries transiting at different times of the year, including the following: Afghanistan, Iran, Algeria, Pakistan, and Iraq as the most prevalent, and in less frequent cases, refugees and migrants came from Morocco, India, Bangladesh, and Palestine.

On one hand, during the year, Macedonia has managed to provide refugees and migrants with a comfortable stay in the country, providing basic conditions in transit camps in order to enable respect for their human rights. On the other hand, the problem that prevailed throughout the year was the practice of illegal "deportation" (pushback), i.e. deportation of refugees and migrants from the state without a proper, legal procedure. According to the organizations' field observations, the pushbacks to Greece, with or without the consent of refugees, became an everyday practice. Unfortunately, that practice has been exercised by the Serbian authorities, who acted in the same manner and transported the refugees to Macedonian territory, at their own request or against their will.

Finally, the political events that marked 2018 inevitably affected the handling of the refugee crisis and the treatment of refugees. Starting with the speculation about an agreement between Macedonia and Greece, up to the signing of the Prespa Agreement between Macedonia and Greece regarding the name dispute and the holding of the referendum regarding the change of the constitutional name of Macedonia for joining the European Union and NATO, the refugee crisis which persisted quietly all through 2018, was completely overshadowed.

7 "During 2017, a total of 17 000 migrants/refugees are registered to have entered the territory of the Republic of Macedonia" - Source: the Office of the United Nations High Commissioner for Refugees – UNHCR in Macedonia, from the Annual Report of the Macedonian Red Cross for 2017

Crisis situation

The first decision on declaring a crisis situation along the southern border with Greece and the northern border with Serbia, due to the increased number of entries and transit of migrants across the territory, was passed in August 2015 for a period of one month, after which it was extended five times. The final decision on declaring a crisis situation was valid up to 31 December 2018.

The declaring of the crisis situation triggered several consequences: firstly, the Crisis Management Center was activated and was given the coordinative role in the refugee crisis, i.e. it participated in the formation and completely took over the coordination procedure of the transit camps; secondly, the Army of the Republic of Macedonia was engaged along the borders as necessary for the management of the illegal migration and the other safety risks arising from the process. At the same time, after a reached agreement among several EU member-states, foreign police forces were deployed on the Macedonian-Greek border and were patrolling along the border in mixed teams with the Macedonian police force.

In October 2018, the Government of the Republic of Macedonia submitted a proposal to the Assembly of the Republic of Macedonia for the extension of the deadline for dealing with the crisis situation until 30 June 2019. The reason provided for this extension was the need to ensure continuity in the performance of the activities by the forces of the Army of the Republic of Macedonia and the security forces of the Ministry of Interior in order to secure, protect and guard the state border. The Assembly of the Republic of Macedonia, at its session on 9 November 2018, adopted the decision to extend the deadline by 30 June 2019.

Reception-transit camps and reception centers

In the course of 2018, the established transit camps⁵ in Vinojug, Gevgelija (RTC Vinojug) and Tabanovce, Kumanovo (the RTC Tabanovce) continued to function on the previously established principles. The management, that is, the coordination of the camps, is still in the hands of the Crisis Management Center, and the responsible institutions are still present via representatives of the Ministry of Interior (MOI), the Ministry of Labour and Social Policy (MLSP) and the Ministry of Health (MH). Apart from the state institutions, civil society organizations (both domestic and international) were highly present in the camps, which, depending on their mandate and area of action, provided various services and goods for the refugees who were either staying or transiting.

Same as in 2016, the two camps differed in terms of their openness, which contributed to differences in the way they functioned. The RTC Vinojug is a closed type of a camp, i.e. the refugees and migrants staying there have restrictions on movement outside the camp. They are not allowed to leave the camp without previous consent from the responsible institutions, as well as provided escort (from the MLSP or the Red Cross) during their leave from the camp. In contrast, refugees and migrants accommodated at the RTC Tabanovce were allowed to leave the camp for a city trip, shopping or other needs at any time and without being escorted by officials.

At the beginning of the year, around 70 refugees of different origin were accommodated at the RTC Vinojug, but this number was slowly decreasing as people were being transferred to Greece at their own request. According to the country of origin, they mostly came from Afghanistan, Syria, Iran, Morocco, and Algeria. During February, and as the dynamics of the situation in Macedonia changed, an increased number of refugees were registered within and outside the transit camps. For the first time after a while, the number of refugees remaining in transit camps reached 50. The refugees were mostly men, and there were few instances of women traveling with their spouse or family member and children, as well as part of families or unaccompanied children.

In the RTC Tabanovce, due to the openness of the camp for exiting and entering, as well as the higher degree of movement in this region, the number of refugees constantly varied throughout the whole year.

⁵ In the course of 2016, the transit centers were spontaneously renamed to "reception-transit" centers (RTC), for which no official decision was announced, but the same was evident in the written correspondence between the institutions.

The RTC Tabanovce continued with the selective practice of accepting and accommodating refugees and migrants in the camp. This type of practice observed in 2017 by the National Preventive Mechanism of the Ombudsman,⁶ in which selection is made according to uncertified criteria and without any specific rules, whereby some groups or individuals are granted entry in the camp and others are not, continued in 2018. Despite the numerous warnings and indications from the MOI and the CMC that the admission will no longer be selective, the practice still continues, leading to the conclusion that it has been established solely on the individual will of certain police officers deployed in the camp. This practice has also been noticed by the field collaborators of civil society organization working at the RTC Tabanovce and the mobile teams working near the unregulated route. Namely, the organizations reported that after intercepting unregulated migrants, they would try to persuade them to go to the reception-transit center with the explanation that they would be able to register and receive legal assistance and protection, where upon arrival, the migrants faced closed doors, i.e. they were denied entry. The authorities did not offer a full explanation but instead referred to procedures that were unfamiliar to the representatives from the civil society organizations. As a consequence of this practice, there were situations where more refugees and migrants stayed outside the center than inside.

Given the increase of unregulated migration, the refugees continuously refused to reside at the RTC Tabanovce. Most of the refugees and migrants passing through this region stayed in the camp with the sole purpose of obtaining basic products (food, water and warm clothing), health care or to rest briefly. However, the refugees generally did not want to reside in the camp, but only used it as a passing point and immediately left, without any delays. That was the reason for the increased frequency and constant changes in the number of refugees staying at this camp. According to interviews with the police officers, their impression is that refugees, in general, do not wish to stay in the Republic of Macedonia. The police believe that, if refugees were to choose between Macedonia and Serbia, they would rather choose Serbia because they are geographically closer to the desired destination. However, if they have to choose between Macedonia and Greece, then they would choose Greece because they have easier access to the programs for reallocation and packages from the European programs, as well as easier access to the smuggling groups.⁷

The infrastructure of both camps remained relatively unchanged throughout the year, with occasional problems and additions. Given the reduced number of refugees in the camps, there were no problems in terms of providing individual containers (houses) for every family that arrived. All containers were equipped with air-conditioning, i.e. they had conditions for warming in the winter and cooling in the summer. The hygiene in the camps was satisfactory⁸ and all the necessary means had been provided - clothing, food and medical care. Due to technical issues, the Internet connection in both camps was interrupted. By the end of the month, the problem had not yet been resolved, and the refugees living in the camps did not have any means of communication or access to information.

The refugees and migrants accommodated in the camp were provided with food and water. Although in previous years, food was being provided through the Ministry of Labour and Social Policy, from the middle of 2017 onwards, the obligation for providing food was transferred to the Red Cross, and this practice continued in 2018. The refugees and migrants who stayed and transited through the camps were regularly provided with clothing appropriate to the weather conditions. Apart from the Red Cross, clothing was often provided by civil society organizations, i.e. the "Legis" humanitarian organization, which reacted more efficiently to the weather conditions and refugees' needs.

The organizing of educational and recreational activities in the camps was left solely to the civil and international organizations. The "Open Gate" (La Strada) Civil Society Organization, which had signed a Memorandum of Cooperation with the Ministry of Labour and Social Policy, and in cooperation with UNICEF, completely undertook the organizing of educational activities for the children. In times when the number of refugees in the camps was significantly high, there were regular teaching lessons for the children in various subjects, such as languages (Macedonian, German), Mathematics, Geography, and other social sciences. Recreational activities, in addition to the ones for children, were often organized for women accommodated in the camps. With the decrease in the number of refugees and migrants accommodated in the camps, the educational and recreational activities reduced as well. They took place only in rare instances when children were present in the camp. What is most important is that at no time during the refugee crisis did the Ministry of Education officially engage in organizing educational activities for children staying at the camp at different times, in spite of the fact that access to education is one of their basic guaranteed rights. According to the data obtained by the NGOs, with the official reduction in the number of refugees staying in the RTC Tabanovce, neither lessons nor educational activities have taken place, nor was there any kind of a program established in the interest of the people accommodated there. According to them, any type of help from the local population and activists was welcomed, but what lacked was the institutional support and treatment of this vulnerable group.

From the observations by the Helsinki Committee, it can be confirmed that effective medical care was provided and available to the refugees and migrants staying in or transiting the camps. Considering the vulnerability of the refugees and the difficulties they face on a daily basis, there were occurrences of different health problems: fatigue, dehydration, and wounds from long walks, dog bites, people who had been beaten and physically abused, and also people with more

6 <http://ombudsman.mk/upload/NPM-dokumenti/2017/Posebena%20izvestaj-Tabanovce-22.12.2017.pdf>, pages 10 and 11

7 Data obtained from an interview with representatives of the Ministry of Interior.

8 Beginning in April 2017, hygienists in the camps were contracted by IOM (International Organization for Migration) instead of the Ministry of Labour and Social Policy. After this change, the hygiene in the camp improved significantly.

serious illnesses such as cancer, epilepsy or other permanent conditions that require continuous therapy. There were several cases of pregnant women, even women with critical pregnancies, who despite the doctors' insistence to stay, decided to continue their journey.

Primary medical assistance was provided by the Red Cross, which secured a 24-hour presence in the camps and mobile teams to assist refugees on unregulated routes, especially in the Lipkovo region. According to the Red Cross reports, during the year, first aid and assistance were provided 14,958 times in the transit centers and in the surrounding regions. Doctors appointed by the Ministry of Health, who intervened when necessary, were also present at the camps. Throughout the year, women were provided with regular gynecological examinations conducted in a mobile clinic, and when needed (in cases of critical pregnancy or need for specialist examination), women were transferred to the city hospital. Transport to local city hospitals was also provided for refugees who needed a medical examination by a specialist. Dental examinations were provided for all refugees in need.

The accommodation conditions in the Reception Centers for Foreigners (Gazi Baba) and Asylum Seekers (Vizbegovo) in Skopje were improved, primarily due to the reduced number of refugees, migrants and asylum seekers accommodated in those centers. In that sense, during the reporting period, 384 persons were accommodated in the Gazi Baba Reception Center for Foreigners and 186 persons in the Center for Asylum Seekers (Vizbegovo).⁹ This situation is due to the low number of asylum requests and, at the same time, to the practice of accommodating fewer migrants and refugees in the Reception Center for Foreigners, especially when it comes to persons who are victims of smuggling, i.e. they were being referred to some of the RTCs, where they could be detained for registration and issuance of a statement.¹⁰ Such an action represents a rather positive step in the direction of abandoning the previous practice of excessive abuse of this opportunity by the responsible institutions.

Unregulated migration and deportation

Compared to 2017, the current 2018 has been characterized by an increasing influx of unregulated migrants and refugees who are trying to reach their desired destination by crossing the border illegally and through smuggling routes. During the reporting period, over 18,000 unregulated migrants have been registered¹¹ by field observers working in the areas of Lojane, Vaksince, Lipkovo, and Gevgelija. Furthermore, in the period from January to September 2018, border police forces and the army has prevented 13,143 attempts for illegal crossings of the border of the Republic of Macedonia with Serbia and Greece.¹²

People who take unregulated routes are not provided with any kind of treatment and are left on their own, i.e. the only protection and help they can receive come from NGOs, while they are completely ignored by the institutions. The main problem arose from lack of information, i.e. whether the refugees were being forcefully or willingly returned from Serbia, or whether they were migrants who came from Serbia and were headed south for the first time. The persons intercepted by field observers do not provide accurate statements, which is mostly because of the fear that it would incriminate them in some way. In this case, institutions have a key role in identifying these persons as to provide them an effective protection of their human rights and dignity, especially given that these individuals are left completely unprotected.¹³

Thus the Helsinki Committee has noted several trends in the movement of refugees and migrants who were found on Macedonian territory. The first case involves groups or individuals coming back from Serbia, either willingly or forcefully. The refugees that come back willingly are the ones who, after a shorter or a longer stay in Serbia, they do not see any possibility of continuing their journey, but are caught in a hopeless situation. Hence, one of the options for them is to go back to Greece where it is easier to get in touch with smuggling groups and in this way continue to the western countries where they may have a family member or where they can more easily acquire some means for survival. In rare cases, there are refugees who have lost all hope or desire to return to their families, so they plan to return to their country of origin. In several instances, the Helsinki Committee has noted refugees and migrants who were forcibly returned from Serbia, i.e. "deported" by the security services. After entering the RTC Tabanovce, those groups have two options: one, to be transferred to Greece with organized transportation by the responsible institutions, and two, to be accommodated in the camp, from which they can try to cross the Macedonian-Serbian border after a short period of time.

⁹ According to the reports of the Macedonian Red Cross.

¹⁰ According to data obtained from representatives of the MOI.

¹¹ Data obtained from the monthly reports of the Macedonian Red Cross.

¹² Data obtained from an interview with a representative of the MOI.

¹³ Data obtained from the focus group conducted with the civil society organizations.

In another case, refugees who come from Greece arrive alone or with the help of smugglers. When refugees travel alone, in most cases they are being intercepted by police on secondary roads in an attempt to find a way to reach the Macedonian-Serbian border. There have also been cases where refugees move across inconspicuous terrain and along railway tracks, which takes the problem back to the very beginning of the refugee crisis and poses a great danger to their safety. In most of the registered cases (in the Ministry of Interior newsletters and by the field observers), the groups that are being brought in the camp are intercepted while traveling with smugglers. In almost all cases, refugees are victims of smugglers who charge a substantial amount of money (from 2,000 to 5,000 euros) and deceive them, that is, they do not take them to the agreed destination. In a large number of cases, once they notice that they have been intercepted by the police, smugglers leave the vehicles and the refugees behind.

With the help from the field collaborators and in lack of official statistics by the Ministry of the Interior, the Helsinki Committee has been keeping records of the number of people who have been “deported” to Greece.¹⁴ Thus, in the course of 2018, the practice of «deportation» of refugees and migrants to Greek territory persisted, with migrants originating in various countries, mostly from Syria, Afghanistan, Pakistan, Iraq, Iran, Algeria, and fewer from Palestine, Morocco, and Libya.

Illegal deportation is contrary to human rights standards, that is, group expulsion of foreigners is prohibited as pursuant to Article 4 of the Fourth Protocol to the European Convention on Human Rights (ECHR), which is also confirmed by the practice of the European Court of Human Rights in numerous judgments.¹⁵ In this regard, the transfer of refugees and migrants over the border without any review or examination of each case, without cooperation with the security services and responsible institutions of the neighboring country, as well as without any formal decision for their expulsion from the state, is utterly unacceptable. This practice significantly contradicts...

In the period from January to September 2018, the Ministry of the Interior has registered 44 cases of smuggling, involving 763 migrant-victims of smugglers.¹⁶ The number of detected cases has increased significantly compared to last year's data.

Access to asylum

Although the Republic of Macedonia is generally not a destination country for refugees and migrants passing through its territory, a number of asylum applications have been submitted during 2018. According to the observations of the Helsinki Committee, access to the asylum procedure was relatively unrestricted, since the organizations present in the reception-transit centers have reported cases where the police officers did not act immediately upon the applications for recognition of the right to asylum, thus providing the applicants time to change their minds.¹⁷

In the course of 2018, all cases in which refugees in transit camps expressed their intention to seek asylum, legal assistance was provided promptly and the procedure for seeking asylum was explained in detail. Thus, the persons (refugees or migrants), whose requests for recognition of the right to asylum were processed, were then transferred to the Reception Center for Asylum Seekers - Vizbegovo, Skopje as soon as possible, where interviews were conducted regarding their asylum application. At the same time, it was pointed out that this practice was often “abused” by asylum seekers as a way of securing transportation to Skopje, from where they would immediately leave the Reception Center and head towards Kumanovo and the Serbian border.¹⁸

Persons who were detained in the Reception Center for Foreigners as witnesses in the criminal proceedings against smugglers were generally informed about the possibility of submitting a request for recognition of the right to asylum, but according to the reports, such an option was made available only after giving a statement in the proceedings, which is essentially a violation of the right to asylum.

According to the data obtained from the Sector for Asylum at the Ministry of Interior, a total of 249 applications for recognition of the right to asylum for 284 persons were submitted in the course of 2018. After the procedures have been conducted and decisions have been adopted, the Sector for Asylum reports that only 3 persons have been granted subsidiary protection. There are no registered cases of approved right to asylum in 2018 for the persons you applied for asylum during the year, while 9 applicants were rejected for asylum during 2018.

14 All groups or individuals who have been noticed by the Helsinki Committee for Human Rights to have been transferred to the Greek territory have been registered in the weekly and monthly reports of the Committee, which are published and available at: <http://mhc.org.mk/pages/reports?locale=mk#WoVeMqjwblU> in Macedonian and in English language. The reported cases and numbers also include the number of refugees to which the observers from the Helsinki Committee had access to or had knowledge of their transference without being transferred to the camp.

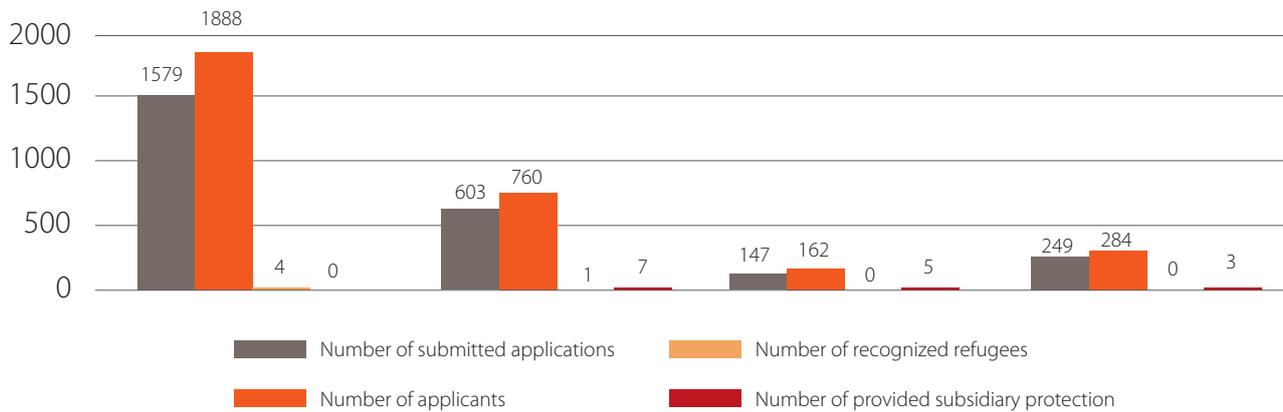
15 A collection of verdicts of the European Court of Human Rights with comments - Mirjana Lazarova Trajkovska, Skopje, 2016, page 130, Prohibition of collective expulsion of aliens http://myla.org.mk/wp-content/uploads/2016/09/ZBIRKA-PRESUDI_AZIL_WEB.pdf

16 Data obtained from an interview with a representative of the MOI.

17 Data obtained from the focus group conducted with the civil society organizations.

18 Data obtained from the focus group conducted with the civil society organizations.

Review of asylum applications 2015-2018



In comparison to the previous year, in 2018 an increase in the number of submitted asylum applications was registered, but still the low numbers of approved asylum applications and subsidiary protection remain. The trend of non-recognition of refugee status for persons who are coming from war afflicted areas and whose individual circumstances could grant them asylum, brings into question the effectiveness of reviewing the individual circumstances of each asylum application on a case by case basis.

National Action Plan for the Integration of Refugees and Foreigners 2017-2027

Following the adoption of the National Strategy for the Integration of Refugees and Migrants (hereinafter referred to as the Strategy) in 2017 as one of the key documents of the Ministry of Labor and Social Policy that regulates the country's policy in dealing with recognized refugees and foreigners on its territory, in 2018, an Action Plan 2017-2027¹⁹ for the Integration of Refugees and Foreigners was prepared (hereinafter the Action Plan).

The action plan is divided into 6 different areas of action in accordance with the Strategy: System Integration, Early Integration, Housing, Education, Employment and Naturalization. Each activity included in the action plan is foreseen in a specific time frame with a designated institution responsible for its implementation.

The action plan foresees many activities whose implementation will contribute to a significant improvement of the system for the protection of refugee rights in the country, serving as a final and functional Inter-ministerial body with the aim of periodically conducting legal analyses of the systemic disadvantages, including research on migration trends. At the same time, the involvement of institutions in the action plan is important because they need to conduct regular information campaigns in order to strengthen the capacities of the public for understanding the issues related to refugees. This is especially relevant when we consider the hate speech and xenophobia aimed at refugees and migrants in the public in recent years, as well as politicians' attempts to influence public opinion, causing a sense of insecurity and fear among citizens, which often resulted in hate crimes against migrants and refugees transiting the territory of the Republic of Macedonia.

Equally important is the introduction of mechanisms for establishing broader consultations that would include representatives of refugees, non-governmental organizations and academic institutions in the action plan as NGOs have a special contribution in dealing with the refugee crisis and migrant flows. The involvement of non-governmental organizations would also mean monitoring the implementation of the action plan and ensuring its consistent use in practice.

However, the political situation in Macedonia in 2018 has kept the implementation of these activities in the background. Therefore, no significant progress has been made in terms of fulfilling the activities envisaged in the Plan.

19 <http://www.mtsp.gov.mk/predlog-zakoni1.nspix>

Legal framework – amendments

In December 2017, the Ministry of Interior initiated a procedure for amending the existing Law on Asylum and Temporary Protection, which did not fully meet the standards foreseen in the European directives and it contained poor legal solutions.

A new law, now renamed to the Law on International and Temporary Protection, was adopted at a session of the Assembly of the Republic of Macedonia on 04.04.2018. The purpose of the new law is to incorporate the EU Directives on refugees and migrants. For the first time, the law encompasses and recognizes “sexual orientation” as the basis for persecution and for seeking asylum in Macedonia. While retaining the possibility of submitting “an asylum application”, the time restriction for family reunification and the determination of each EU, NATO member-states and EFTA as a safe third country have been lifted.

One of the novelties foreseen in the new law is that the reasons for the persecution, i.e. the elements will now be taken into consideration when reviewing the asylum application and the special importance of each category. In Article 7, paragraph 5 of the new draft law, according to the European Parliament Directive 2011/95/EU, for the first time, sexual orientation and gender identity have been indicated as characteristics of a particular social group that could face persecution and would have the possibility to seek international protection. In the same paragraph, it is noted that sexual orientation is not considered a punishable offense and that gender and gender identity will be taken into account when determining the belonging to a particular social group. Bearing in mind that very few laws in Macedonian legislation explicitly mention sexual orientation and gender identity²⁰ as grounds for protection, the introduction of this change in the law can be considered a major step.

To a large extent, the comments submitted by the Helsinki Committee regarding the draft law²¹ were accepted and addressed in the final draft adopted by the Assembly of the Republic of Macedonia.

Unfortunately, the provision which limits the freedom of movement of asylum seekers remained unchanged in the new law. Namely, Article 63 stipulates that, in exceptional cases, the freedom of movement may be restricted in order to establish the identity and citizenship, to establish the facts and circumstances of the asylum application, especially if it is established that there is a flight risk, for protection of the public order and national security, or when a foreigner is detained in order to prepare for a return or removal procedure. The exceptional cases of restriction on freedom of movement defined in such a way may lead to arbitrary deprivation of liberty in several respects, particularly when taking into account the assessment of the flight risk as a condition for restricting freedom of movement.

Considering the larger wave of refugees in the past three years, the use of the possibility of restricting the freedom of movement of asylum seekers can cause significant burdens on the state in terms of the capacities of the reception centers for asylum seekers and foreigners. This would lead to a greater and more serious violation of their fundamental human rights and freedoms, especially the absolute prohibition of torture, depriving and degrading treatment, which, as demonstrated by the experience, is not inevitable. Moreover, the Law provides for the initial possibility of limiting freedom for a maximum of three months, with the possibility of extension for another three months. In addition, the procedure for detaining an asylum seeker is unspecific and problematic, especially considering that the decision is not passed by a competent court, but by the Ministry of Interior, thus challenging the constitutionality of this law. In May, the Macedonian Young Lawyers Association filed an initiative on the constitutionality of the Law before the Constitutional Court.²²

20 http://mhc.org.mk/system/uploads/redactor_assets/documents/2473/Analiza_na_zakonska_Ramka_vo_odnos_na_pravata_na_LGBTI_MK_02.pdf

21 Annual Report 2017 - Rights of Refugees, Migrants and Asylum Seekers in the Republic of Macedonia, p. 18 http://mhc.org.mk/system/uploads/redactor_assets/documents/2896/Help_On_Route_-_MK__3_.pdf

22 Initiative for opening a procedure for assessing the constitutionality of the Law on International and Temporary Protection <http://myla.org.mk/wp-content/uploads>

Registered incidents and human rights violations

In addition to the already established everyday practice of illegal deportation of refugees and migrants, which is contrary to Article 4 of the Fourth ECHR Protocol, the Helsinki Committee has registered several other violations of the rights of refugees and migrants in individual cases or incidents. The most severe case involves violation of the right to life and inhuman or degrading treatment of refugees.

>> The right to life, torture, humiliating and degrading treatment (Article 2 and Article 3)

A rather extreme case was registered at the beginning of July, in which a refugee from Iraq suffered an electric shock on the railway in Gevgelija, which caused him severe burns throughout the entire body. He was initially taken to the hospital in Skopje, from where he was soon released with serious body wounds and taken to the camp in Tabanovce. Due to pain and bleeding, he was then immediately transferred from Tabanovce to the hospital in Kumanovo. However, the doctors at the hospital in Kumanovo refused to admit him, claiming that the hospital in Skopje was responsible for his treatment, after which he was returned to the transit camp. After a while, he was admitted to the hospital where he stayed for ten days. Upon completion of the treatment, at the request of the person, he was transferred to Gevgelija with the help of the Red Cross. Such negligent treatment by the hospital in Kumanovo, which refused to treat a patient, represents torture, humiliating and degrading treatment and a violation of the right to life.

Hate speech and hate crimes against the refugees

During 2018, although less frequent in comparison to the previous year, the calls for violence, insults and xenophobic speech aimed at refugees and migrants still existed among the public.

Thus, for example, the Helsinki Committee has registered three cases of hate speech aimed at refugees and migrants on the platform www.govornaomraza.mk. Hate speech and insults aimed at refugees were most severe on social networks. One of the registered cases involved a Facebook status posted by a professor at the "Iustinianus Primus" Faculty of Law.²³ In the said status post, the professor called the migrants thieves and rapists, and thus warned citizens that they would settle in the country, and everyone would be forced to deal with such people. The hate speech was further spread in the comments on her post.

The other two cases were about shared pictures of refugees compared with dogs in a derogatory manner by which it degrades, insults and spreads untruths and prejudices.²⁴ The picture was shared on a Facebook page created for the purpose of promoting the rights of refugees.

Considering the vulnerability of refugees, especially when they move via unregulated routes across the country, without any protection or witnesses, they are often exposed to physical attacks. During 2018, there were 3 registered hate crimes against refugees,²⁵ i.e. physical attacks and robberies in which the refugees are the victims.

The first case involved a robbery of two people from Afghanistan who, according to their statements, after illegally crossing the Greek-Macedonian border, were intercepted by four people and were robbed by them, and according to their statements, 700 euros and two mobile phones were taken from them by the robbers. Migrants were handed over to police officers at the Police Station Negotino for further investigation. The second case was reported by a refugee from Pakistan, who was moving along the railway, where he was attacked by four unknown persons with a passenger motor vehicle and stole around 150 euros and 6,000 denars from him. The Sector for Internal Affairs Veles brought criminal charges against 4 people on the grounds for suspicion of committing the criminal act of "robbery". The third registered case concerns eight Iranian migrants who were found by the police. Thus, the persons reported that the same day after they had made an illegal entry from the Republic of Greece to the Republic of Macedonia, about 200 meters from the border with the Republic of Serbia, two unknown persons robbed them by threatening them with a knife and taking 8,000 euros.

²³ <http://www.govornaomraza.mk/reports/view/943>

²⁴ <http://www.govornaomraza.mk/reports/view/943>

²⁵ Available at <http://www.zlostorstvaodomraza.mk/reports#>

Several cases of violent crimes against migrants have been registered in the MOI Newsletter. One of the cases was registered near the village of Krivolak, Negotino, in which four unknown persons robbed more than four people — migrants, citizens of India. The perpetrators stole 950 euros and four mobile phones. Regarding this incident, the Sector for Internal Affairs in Veles brought criminal charges against 3 people from the village of Krivolak, Negotino on the grounds for suspicion of committing the criminal act of “robbery”.

Some of the cases were reported by the field observers working in the transit centers in Tabanovce and Vinojug. According to their report, a Syrian refugee who arrived at the RTC Vinojug stated that the smuggler had taken 2.000 euros and promised to take him to Serbia.²⁶ Instead, the smuggler left the refugee near the bus station in Gevgelija. After being questioned by the police, he was sent back to Greece. The second case concerns three adult men from Afghanistan who arrived at the camp in Vinojug, Gevgelija. They left their country three years ago and reached Turkey through Iran. They went from Turkey to Bulgaria where, according to their statements, they were beaten by Bulgarian police officers. They had visible scars, and one of them stated that he had lost sight of one eye as a consequence of the beating. The third case was reported by RTC Tabanovce, in which, according to the statement of a refugee from Pakistan, when he was in Greece, he met with smugglers and agreed to pay 4.000 euros to be taken to Germany. When he arrived in Serbia, he was robbed by the smugglers, physically tortured and held hostage by the smugglers who demanded more money from his family for his release. He explained that he managed to escape and reported the case to the police. Another case from RTC Tabanovce involved a refugee from Algeria who arrived at the camp from Serbia. According to his statement, he was severely beaten by locals in the vicinity of Skopje, after which he had visible wounds and bruises. He received help from the field collaborators to report the case to the Ministry of Interior.

In the course of 2018, there has been an improvement in the efficiency in the prosecution of violent crimes against migrants. In addition to the criminal charges brought against suspects of smuggling of migrants and robbery suspects, one of the positive cases is the filing of criminal charges against an employee at the Regional Center for Border Affairs North by the Sector for Internal Affairs at MOI for abuse of official position and authorization under Article 353 of the Criminal Code. In this case, the employee, who acted as a responsible police officer, issued an order for the preparation of a false certificate for returning confiscated objects from detained migrants, while keeping the objects for himself.

Conclusion

The monitoring of the events related to the refugee crisis during 2018 leads to the conclusion that, despite the decrease in the dynamics compared to the previous year, the refugee crisis should in no case be considered as ended, thus keeping in mind the vulnerability, the risk and the danger to the lives of refugees and migrants who are still on the move. In the Republic of Macedonia, the official number of refugees and migrants present in the camps was relatively low compared to the number of refugees and migrants, men, women and children, traveling on unregulated roads, which has significantly increased compared to last year. Refugees and migrants who travel via on unregulated routes are invisible to the country's protection system and are left solely at the “mercy” of smuggling crime groups or on their own survival instinct.

Regarding the actions undertaken by responsible institutions, an improvement has been noted in comparison to the previous years, especially in relation to the detection and prosecution of the smuggling groups operating in the country. However, in certain instances, responsible institutions have continued the already established practices that are contrary to the principles and standards of human rights prescribed in international documents.

Although the refugee crisis is a complex political, worldwide issue, what the country can do is continue building its capacities as to guarantee the enjoyment of the fundamental human rights and freedoms of all people on its territory, regardless of their origin or their desired destination.

26 Monthly Report on Human Rights of Migrants, Refugees and Asylum Seekers in Serbia and Macedonia — January 2018 http://mhc.org.mk/Pomos_na_ruatata_iz-vestaj_Janari___2018.pd

Recommendations

1. Completely abandoning the practice of illegal, group “deportation” (push-backs) of refugees and migrants to the neighboring countries, without an established trans-border cooperation with the security forces. This practice represents a violation of the fundamental human rights and freedoms of migrants and an inhuman treatment. All procedures for return (readmission) must comply with human rights standards and be implemented through inter-state cooperation.
2. To make the Action Plan for Integration of Refugees and Migrants (2017-2027) operational as soon as possible.
3. More active involvement of the institutions in the regular, timely registration of all refugees and migrants who transit the state in order to monitor their movement and increase the possibility of protecting their human rights.
4. Measures raise public awareness on the refugee crisis are necessary due to the high level of xenophobia among the citizens, the lack of knowledge on the refugees and migrants’ rights, the reasons for their flight and the problems they face. It is necessary to increase public awareness and access to information about the crisis, which would reduce the existing intolerance and hate speech.
5. The right to seek asylum must be guaranteed for all refugees, migrants and foreigners who are detained at the territory of the Republic of Macedonia, without any delay or restrictions imposed by the institutions.
6. Educational and recreational activities within the reception-transit centers must take place, regardless of the number of migrants, their age or status in the country.
7. The selective admission of refugees in the reception-transit centers must not be prohibited. Humanitarian aid and protection from safety risks must be provided to all refugees and migrants moving through the country in order to avoid exposing them to additional risks.
8. Refugees and migrants transiting the country must not be restricted in terms of their freedom of movement and must not be held illegally in custody as witnesses in criminal procedures against smugglers.
9. To increase the presence of police officers in the reception-transit centers in order to guarantee the safety of everyone present in the camps.



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