



# REPORT

## TRAFFICKING IN HUMAN BEINGS AND SMUGGLING OF MIGRANTS IN NORTH MACEDONIA

Skopje, May 2019

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## Trafficking in human beings and smuggling of migrants in North Macedonia– Report

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Macedonian Young Lawyers Association

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### Circulation:

200

CIP – Каталогизација во публикација  
Национална и универзитетска библиотека  
„Св. Климент Охридски“, Скопје

343.9(497.7)“2015/2016“(047)

ТРГОВИЈА со луѓе и криумчарење на мигранти во Северна  
Македонија : извештај / подготвија Иван Штерјоски, Бојана  
Божиновска. – Скопје : Македонско здружение на млади правници,  
2019

Način na pristap (URL): [www.myla.org.mk](http://www.myla.org.mk). – Текст во PDF формат, содржи  
32, 30 стр. – Наслов преземен од екранот. – Опис на изворот на ден  
16.08.2019. – Насл. стр. на припечатениот текст: Trafficking in human  
beings and smuggling of migrants in North Macedonia : report / prepared  
by Ivan Sterjoski, Bojana Bozinovska. – Обата текста меѓусебно печатени  
во спротивни насоки. – Текст на мак. и англ. јазик. – Фусноти кон  
текстот. – Библиографија: стр. 29-31 ; Bibliography: стр. 27-29

ISBN 978-608-4843-20-7

a) Трговија со луѓе – Мигранти – Македонија – 2015-2016 – Извештаи  
COBISS.MK-ID 110883594



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# LIST OF ABBREVIATIONS

<b>ECHR</b>	Convention for the Protection of Human Rights and Basic Freedoms (European Convention on Human Rights)
<b>EU</b>	European Union
<b>LATP</b>	Law on Asylum and Temporary Protection
<b>LCP</b>	Law on Criminal Procedure
<b>LITP</b>	Law on International and Temporary Protection
<b>IOM</b>	International Organization for Migration
<b>ICMPD</b>	International Center for Migration Policy Development
<b>CC</b>	Criminal Code of the Republic of North Macedonia
<b>MARRI</b>	Migration, Asylum, Refugees Regional Initiative
<b>MOI</b>	Ministry of Interior of the Republic of North Macedonia
<b>MYLA</b>	Macedonian Young Lawyers Association
<b>MLSP</b>	Ministry of Labor and Social Policy
<b>OSCE</b>	Organization for Security and Cooperation in Europe
<b>UN</b>	United Nations
<b>RNM</b>	Republic of North Macedonia
<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>SOP</b>	Standard Operating Procedures
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>USAID</b>	United States Agency for International Development
<b>CSW</b>	Center for Social Work
<b>CMC</b>	Crisis Management Center
<b>CSO</b>	Civil Society Organization



# PREFACE

The links between human rights and the fight against trafficking are well established. Human rights law prohibits discrimination on the basis of race and gender; it requires equal or at least certain key rights for foreigners; such as the prohibition of arbitrary detention, forced labor, debt slavery, forced marriage and sexual exploitation; and it advocates for freedom of movement and the right to leave one's own country and return to it.

Even though the smuggling of migrants is a crime against the state and, therefore, does not constitute a violation of human rights, per se, it can be related to a large number of risks to human rights, especially for those who have the lowest level of socio-economic assets. Migrants that are smuggled can be vulnerable as a result of violence, abuse and exploitation, especially if they are victims of violent smugglers, they have no alternative to smuggling, or are unable or unwilling to gain access to justice and seek protection from the state. Within the context of smuggling, the migrants can be victims of criminal offenses such as extortion, kidnapping and gender-based violence. Additionally, their human rights may be impacted by the measures for preventing irregular migration or partial, severe measures, against smuggling of migrants. The international law insists that the states criminalize the smuggling, but not the migrants – victims of smuggling.

Taking into consideration the risks which the refugees and migrants transiting the territory of RNM face, and the challenges which the competent institutions face, we have prepared this three-year report. The aim of the report is to familiarize the public with the risks and problems which refugees and migrants face, their vulnerability, the need for more engaged access to institutions and society at large, for more efficient prevention and suppression of the smuggling of migrants and trafficking in human beings, as well as a consistent application of the laws and international standards.



## METHODOLOGY

The methodology used in the preparation of this report includes the following tools for data collection:

- field questionnaires;
- semi-structured interviews with representatives from competent institutions and representatives of CSOs which carry out activities with refugees, migrants and victims of human trafficking;
- research based on the study of available documents and reports in the subject area (desk research); and
- collection of public information obtained by submitting a request for free access to public information to the competent authorities - information holders..

The data obtained by the use of these tools were subject to qualitative and quantitative analysis and processing by a team of researchers - authors of this report.





# INTRODUCTION





With the arrival of nearly one million people who needed assistance from crisis areas in 2015 and 2016, North Macedonia, and other countries in the region, faced a massive influx of refugees and migrants that surpassed existing capacities for reception, accommodation and management of the new situation. Although the initial response of the institutions was slow and ad hoc, with the help of international organizations and through cooperation with CSOs, North Macedonia<sup>1</sup> managed to establish capacities for temporary admission and transit of refugees and migrants.

In the period when the European Union applied the principle of “open borders”, most of the refugees and migrants used the country’s territory for transiting to western and northern Europe. For these reasons, there was a need, in addition to the need for providing humanitarian assistance, for introducing mechanisms and procedures that would provide efficient and safe transit =. In coordination with states along the so-called “Balkan Route”, procedures that ensured a proper registration and facilitated transit of refugees and migrants were introduced.

At the beginning of March 2016, EU policy changes imposed border closures along the Balkan route. The transit of refugees and migrants continued through the routes for irregular migration, with a reduced intensity, but with an increased risk of violating the freedoms and rights of transiting persons. In the newly created situation, the refugees and migrants were forced to sleep in the open air without access to basic health care, thus facing the risk of becoming victims of violence, exploitation or other forms of abuse by organized criminal groups dealing in smuggling of migrants and trafficking in human beings.

The border closures led to a large number of women traveling alone, and unaccompanied children, along the Balkan route, who represent a particularly vulnerable category at risk of becoming victims of trafficking in human beings, or different types of abuse and exploitation. The refugees and migrants who used the “services” of smugglers were at an increased risk of becoming victims of exploitation, extortion and other forms of abuse and violation of rights.

Smuggling of migrants and human trafficking is carried out by organized criminal groups, in most cases with local logistical support. Smuggling of migrants also involves members of criminal groups from the refugee’s and migrant’s countries of origin, primarily Afghanistan

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1 The constitutional name of the country in the time of the reporting period was Republic of Macedonia.



and Pakistan, which are part of larger organizations operating at a regional level. The criminal groups use modern communication and surveillance equipment, and there is a justified suspicion that they also cooperate with some police members.

As a result of the modern equipment and methods used by the criminal groups, as well as the local support they receive, and for which there is a suspicion that certain police members are involved, the competent authorities face difficulties in dealing with the smuggling of migrants and human trafficking, and the suppression of criminal groups.

The procedure for identifying a victim of trafficking in human beings is carried out in accordance with a clearly defined methodology which outlines a standard operating procedure, and by coordinated action between the institutions and CSOs. The committed joint engagement of the institutions and the civil sector results in identification of a notable number of 'potential victims' of trafficking in human beings, but, with almost no exception, the procedures do not result in final determinations of the status for victims, as victims of trafficking in human beings, due to the fact that, in a large number of cases, the irregular migrants leave the territory of the RNM.

A strengthening of the institutional capacities for dealing with smuggling of migrants and trafficking in human beings has been noted - five mobile anti-human trafficking teams (for the Skopje, Kumanovo, Gevgelija, Bitola and Tetovo regions) are functional and, in 2018, a National Unit for the Suppression of Smuggling of Migrants and Human Trafficking was also established.

Once the Agreement between EU and Republic of Turkey entered into force, the number of migrants arriving from Turkey to Greece significantly reduced. Under these circumstances, the main challenge for the states along the route was how they were to provide protection for the persons who were found on their territory. Having no options allowing them to move in a legal manner, a large number of these people directed themselves to the dangerous routes of irregular migration, and only a significantly smaller number of them decided to return from North Macedonia to Greece. An additional pressure on the authorities in RNM was made by the large number of refugees and migrants who found themselves in Greece as a result of border closures. The tense atmosphere at the border escalated with the attempts by the refugees and migrants to forcefully remove the erected fence between RNM and Greece, which resulted in police interventions and unpleasant border situations that were reported by the world media<sup>2</sup>.

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2 <https://www.theguardian.com/world/2016/apr/10/clashes-between-migrants-and-police-at-border-between-greece-and-macedonia>



In the period after the border closures, the countries of the region faced serious challenges in dealing with irregular migration and suppressing organized criminal groups dealing in smuggling of migrants and trafficking in human beings. With the support of the EU and the international community, RNM made efforts to strengthen its capacities in response to the newly-created conditions. However, despite the enhanced border security measures and frequent controls in the territory of the country, the irregular migration did not stop, and the smugglers rapidly renewed their routes. There was an evident lack of adequate staff and technical preparedness of the institutions, and, to some extent, there was corruption. In the period that followed, the activities to suppress smuggling of migrants and trafficking in human beings were enhanced, which resulted in an increased number of detected cases that were resolved in court. However, the intensive activities of organized criminal groups dealing in smuggling of migrants and trafficking in human beings in the territory of the country are still visible. For these reasons the State Department, in the Annual Reports on Trafficking in Persons for 2016, 2017 and 2018, ranked RNM in second place, for the ranking of states that do not fully meet the minimum standards for the elimination of trafficking in human being.

The numerous deportations and suppression of irregular migrants contrary to the formal procedure continues, which additionally affects irregular migrants, placing them in positions where they resort to contacting smugglers, and reducing their confidence in the police.

Adult victims of trafficking in human beings face a problem in realizing their right to compensation for damages. There is a necessity for the immediate establishment of a special fund for the compensation of victims of trafficking in human beings, and the establishment of additional programs for social assistance and resocialization of victims of trafficking in human beings.

Activities have been undertaken for the purpose of amending the Criminal Code of RNM, according to which victims who were forced to commit a criminal act during their exploitation will be relieved of any responsibility.





# 1

# CHAPTER

## **LEGAL OBLIGATION OF THE STATE TO COMBAT TRAFFICKING IN HUMAN BEINGS AND SMUGGLING OF MIGRANTS**

## 1.1. LEGAL FRAMEWORK

The state's obligation to protect the victims of trafficking in human beings, and the migrants who have been the subject of smuggling, is contained in all the basic international instruments regulating this area. The Council of Europe Convention on Action against Trafficking in Human Beings prescribes that the victims should be identified and protected by the competent authorities. The states also have obligations to ensure that the victims have received legal representation, legal aid, and access to specific witness protection mechanisms, in accordance with the domestic law. The Protocol against Smuggling of Migrants by Land, Water or Airway also recognizes and emphasizes the importance that the states protect the rights of migrants in the prevention and combating of migrant smuggling.

North Macedonia is a signatory of these documents, and therefore its regulations in this area reflect the obligations of the state to provide adequate protection to victims of trafficking in human beings and smuggled migrants. Immediately after joining the Protocol against Smuggling of Migrants by Land, Water or Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children supplementing the UN Convention against Transnational Organized Crime in 2000, the RNM commenced a process of alignment of the national legal framework with the international standards in the subject area. Among the more important domestic regulations of this matter are: the Criminal Code, the Law on Criminal Procedure, the Law on Foreigners and the Law on International and Temporary Protection.

The criminal legislation criminalizes the acts of trafficking in human beings, smuggling of migrants, organizing a group and encouraging the commitment of human trafficking and smuggling of migrants, and child trafficking. Pursuant to the legal provisions, attempted trafficking



in human beings and the assistance of the commission of the crime is punishable, and the consent of the victim of trafficking in human beings for the purpose of exploitation is no defense. Any person who has suffered damage, including physical or mental injury, emotional suffering, material loss, or other violations or endangerments of his/her rights and interests, as a consequence of a committed crime, shall be considered a victim.<sup>3</sup>

As far as the status of victims of smuggling of migrants is concerned, in the absence of a precisely defined legal status, these persons, according to the provisions of the Law on Foreigners, have the status of foreigners who illegally reside on the territory of North Macedonia, due to unlawful entry, and they can be subjected to a voluntary return procedure, forcible removal, or, as it is often the case in practice, although it should be the measure of last resort, they can be detained in the Reception Center for Foreigners of the Ministry of Interior of RNM, until the necessary conditions for the implementation of the procedure for return or removal of a foreigner are met.

In regard to the identification and determination of the status of a victim of trafficking in human beings, it is worth noting that according to the Law on Foreigners<sup>4</sup>, a foreigner suspected of being a victim of trafficking in human beings is allowed a decision-making period of two months - in which he/she can decide whether to cooperate with the competent authorities in revealing the criminal act in question, or return to the country of origin. Thus, if the competent authorities determine that he/she shows a clear intention to cooperate, the foreigner will be granted a temporary residence permit for a period of six months. This may be extended for an additional period of six months, determined by the period necessary for the purposes of his/her court proceedings. Evidently, even in this case, the legal solution primarily recognizes the victim as a witness who is needed for the criminal case against the defendant being charged with the commission of "trafficking in human beings", as opposed to predominately as a victim.

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<sup>3</sup> Law on Criminal Procedure

<sup>4</sup> Article 81 of the Law on Foreigners, "Official Gazette of RM" No. 35/2006, 60/2007, 117/2008, 92/2009, 156/2010, 158/2011, 84/2012, 13/2013, 147/2013 and 148/2015]



## 1.2. INSTITUTIONAL FRAMEWORK

### NATIONAL COMMITTEE FOR COMBATING TRAFFICKING IN HUMAN BEINGS AND ILLEGAL MIGRATION

Being aware of the challenges it faces in combating trafficking in human beings and irregular migration, the Government of the Republic of North Macedonia made a decision to establish a National Committee for Combating Trafficking in Human Beings and Illegal Migration in 2001. The National Committee has an interinstitutional structure, i.e. it includes members of the Ministry of Interior, the Ministry of Labor and Social Policy, the Ministry of Education and Science, the Ministry of Health, the Ministry of Foreign Affairs, the Ministry of Justice, the Public Prosecutor's Office and the judiciary.

The Committee has the following competencies: to monitor and analyze the situation of trafficking in human beings and illegal migration, to coordinate the activities of the competent institutions, and to cooperate with international and non-governmental organizations involved in solving problems in the field of human trafficking. Within the Committee there is a Secretariat, as well as a subgroup for combating child trafficking. The Secretariat is a body within the National Committee, in which the representatives of international and non-governmental organizations, as well as experts from state institutions take part. In 2013, the Committee established a total of six local committees for combating trafficking in human beings and illegal migration, covering the municipalities of Tetovo, Bitola, Shtip, Prilep, Veles and Gevgelija.

### NATIONAL REFERRAL MECHANISM FOR VICTIMS OF HUMAN TRAFFICKING

Since 2005, the National Referral Mechanism for Victims of Human Trafficking has also been functioning in North Macedonia. This mechanism has the purpose of ensuring adequate identification, assistance and protection of victims of human trafficking, which is based on international standards. Within the framework of the National Referral Mechanism, a Coordinating Office has been functioning, and its work includes professionals from 30 centers for social work, and one representative from the Institute for Social Works. In the process of referral and assistance of victims of trafficking in human beings, a close cooperation has been established with the representatives of citizen associations that are active in the field and other stakeholders.





## SECTOR FOR BORDER AFFAIRS AND MIGRATIONS

The Ministry of Interior of the Republic of North Macedonia, more precisely the Sector for Border Affairs and Migrations has the key operational role in the detection and suppression of the smuggling of migrants and trafficking in human beings in the Republic of North Macedonia. Within this sector, there is a Mobile Unit for the suppression of cross-border crime and compensation, with jurisdiction over the territory of North Macedonia, with mobile teams from the border line going deeper into the territory. In dealing with irregular migration, the Sector for Border Affairs and Migrations is supported by the Sector for Suppression of Organized and Serious Crime through the units for combating trafficking in human beings and smuggling of migrants, which are responsible for conducting investigations for cases of trafficking in human beings and smuggling of migrants.

**The Basic Prosecutor's Office for Prosecuting Organized Crime and Corruption** is the competent authority for prosecuting perpetrators of the criminal acts of "smuggling of migrants" and "trafficking in human beings".

In order to more efficiently conduct investigations, and detect organized criminal groups dealing in smuggling of migrants and trafficking in human beings, a **National Unit for Suppression of Migrant Smuggling and Trafficking in Human Beings** was established by the signing of a memorandum of cooperation between the Ministry of Interior and the Public Prosecutor's Office of the RNM in 2018.

In North Macedonia, there are **five mobile teams** operating in Skopje, Kumanovo, Gevgelija, Bitola and Tetovo, with the competence to identify the vulnerable categories of persons and potential victims of trafficking in human beings, and they include representatives of the MOI, MLSP and the CSOs.





### 1.3. POLICIES IN THE AREA OF IRREGULAR MIGRATION, SMUGGLING OF MIGRANTS AND TRAFFICKING IN HUMAN BEINGS

Strategic planning concerning the issues of trafficking in human beings and smuggling of migrants is under the authority of the National Committee for Combating Trafficking in Human Beings and Illegal Migration. The composition of the Committee provides an inter-institutional and multidisciplinary approach to developing strategies and plans for dealing with illegal migration and trafficking in human beings.

The National Strategy and the National Action Plan for Combating Trafficking in Human Beings and Illegal Migration regarding the period 2013-2016 prescribed strong preventive measures that would address the root causes of human trafficking, and coordinate the actions of all competent institutions in dealing with the phenomena and protection of victims of trafficking in human beings and smuggling of migrants. Per the national strategy and action plan, awareness-raising campaigns, which had the purpose of better informing the public and reducing the risks of trafficking in human beings and illegal migration, were also planned and implemented.

However, these documents were prepared and adopted under conditions which did not foresee the culminated extent of the refugee and humanitarian crisis, witnessed in 2015 and 2016. The experience and challenges of the refugee crisis influenced the process of adopting the National Strategy and the National Action Plan for Combating Trafficking in Human Beings and Illegal Migration for the next period (2017-2020).

The new National Strategy and the National Action Plan for Combating Trafficking in Human Beings and Illegal Migration provides the following priority objectives: improved and enhanced coordination and cooperation among the key actors and the alignment of national policies, improved efficiency and effectiveness in the implementation of the planned strategic objectives, and the alignment with the new EU policies regarding the illegal migration.

In the area of capacity building, it has been prescribed that the position of the National Coordinator should be strengthened with a number of measures aimed at strengthening the capacities of the National Coordinator's Office also prescribed. The Strategy also provides for the strengthening of the financial, technical and human capacities of



government institutions, as well as for citizen associations working in the subject area, in order to successfully implement policies. The need to strengthen the role of local authorities has been recognized, and for that purpose, strengthening the coordination and cooperation of institutions at the central, local and regional level, for the needs of identifying, assisting and supporting potential victims and groups at risk, has been prescribed.

The strategy also acknowledges the necessity of aligning the national with the international legal framework. The compensation of victims of trafficking in human beings, by establishing an appropriate model compensation fund for victims of trafficking in human beings, has an important place in the strategy. The National Strategy prioritizes the need to investigate the situation of trafficking in human beings, as well as the monitoring and evaluation of policies that will ensure professionalism and independence in policy making and implementation.

These priorities, as well as the financial independence and sustainability of implementing the government institution's and CSO's policies, is expected to result in: an increase in the number of detected cases of trafficking in human beings and prosecution of perpetrators; more efficient monitoring of trends in trafficking in human beings and illegal migration; improved identification of cases of victims of trafficking in human beings and vulnerable categories of migrants; improved prevention of trafficking in human beings and illegal migration; as well as provision of adequate assistance, support, protection and reintegration of the identified victims, especially victims of child trafficking and unaccompanied children-foreigners.<sup>5</sup>

The prevention of smuggling of migrants and trafficking in human beings has a prominent place in the Action Plan 3-6-9 of the Government of RNM. According to the plan, the Government will start negotiations with the European Commission on the Status agreement for the European Border and Coast Guard Service (FRONTEX), because it considers it to be of mutual interest. The plan also provides for the establishment of a special unit ("task force") for combating trafficking in human beings and smuggling of migrants, composed of representatives of the Basic Public Prosecutor's Office for Combating Organized Crime and Corruption and MOI, which, as we have mentioned, was established in 2018.

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5 National Strategy and National Action Plan for Combating Trafficking in Human Beings and Illegal Migration 2017-2020



However, despite the apparent progress in capacity building to deal with irregular migration and trafficking in human beings, there is a notable lack of sustainable policies in dealing with migration flows, which is also acknowledged by the fact that a key measure in dealing with the migrant crisis is the continuation of a state of emergency on the southern and northern border, that is, an *ad hoc* measure, instead of the implementation of sustainable solutions based on strategic planning and an in-depth analysis of the situation.





# 2

# CHAPTER

## **IRREGULAR MIGRATION IN NORTH MACEDONIA – MIGRATION FLOWS AND CHALLENGES**

## 2.1. CHRONOLOGY OF SOME MORE IMPORTANT EVENTS OF THE MIGRATION CRISIS IN NORTH MACEDONIA

**APRIL 23, 2015:**

→ 14 migrants lost their lives in a train crash near Veles, increasing the number of victims to 25. In that period, a large number of migrants from Somalia and Afghanistan walked near the railroads in an attempt to reach Western Europe.

**JUNE 18, 2015:**

→ Amendments to the Law on Asylum and Temporary Protection were adopted, introducing the possibility for migrants to file an “intention to apply for recognition of the right to asylum” by which they receive legal residence within 72 hours.

**JUNE 26, 2015:**

→ At the European Council meeting, it was agreed that 40,000 migrants from Italy and Greece would be relocated to other EU Member States. EU also agreed to accept an additional 20,000 refugees who were outside the EU territory. It was announced that the relocation scheme should be voluntary and that there were no mandatory quotas for the States. The new UNHCR data of that period indicated that 63,000 migrants arrived in Greece and 62,000 in Italy during the first half of 2015.



**AUGUST 19-22, 2015:**

→ The Government of RNM declared a state of emergency in order to deal with the large influx of migrants, since the number of people trying to enter the country reached more than 3,000 people per day. The Army of RNM was also involved in securing the southern border. Thousands of migrants gathered at the border and tried to bypass the police. The police responded by pushing the migrants back to Greece using tear gas, grenades and batons.

**NOVEMBER 19, 2015:**

→ A restrictive policy for accepting only migrants from Syria, Afghanistan and Iraq was introduced, and RNM began profiling the southern border.

**NOVEMBER 28, 2015:**

→ RNM began to build a barrier along the border with Greece. And again, there were clashes between migrants and the police, resulting in 40 persons being injured.

**JANUARY 21, 2016:**

→ The registration process changed, making it mandatory for the migrants entering the country to state the destination country.

**FEBRUARY 15, 2016:**

→ The leaders of the Visegrad Group met with their colleagues from Bulgaria and RNM in Prague and announced that the Balkan route would be closed at the border between Greece and RNM by mid-March, if Greece did not protect its northern border. At the meeting, it was agreed that the Visegrad states would assist RNM and other Balkan states in protecting their borders.

**MARCH 9, 2016:**

→ The Balkan states announced their stricter restrictions on the entry of migrants, in an attempt to close the Balkan route. Slovenia, Croatia, Serbia and RNM announced that only migrants who planned to seek asylum in the country and those with clear humanitarian needs would be allowed entry, and that those without valid documents would be turned back.

**MARCH 14, 2016:**

→ At least 1,500 refugees and migrants from the Idomeni camp in Greece crossed the northern border and arrived in RNM near the village of Moin. Later on, that very night, almost all refugees and migrants who entered the country as part of this group were returned to Greece by the authorities of RNM. The police and military security forces managed to intercept these persons, while 3 people lost their lives trying to cross the Suva River. In relation to this case, eight of the returned persons filed an appeal against RNM to the European Court of Human Rights.



**MARCH 18, 2016:**

→ The EU and Turkey agreed to jointly deal with the irregular migration. They agreed that, starting on March 20, the irregular migrants arriving in Greece should be returned to Turkey if they did not seek asylum or if their claim was rejected. For every Syrian who would be returned back, the EU would accept another refugee from Syria. Turkey would take stricter measures to prevent irregular migration and, in return, the EU would provide Turkey with 3 billion euros to help it accommodate the refugees, and allow Turkish citizens to travel freely to the Schengen area by June.

**APRIL 10, 2016:**

→ Some clashes occurred in the Idomeni camp on the border between Greece and RNM. Hundreds of migrants tried to break through the border barrier and threw stones at the police. The police responded with tear gas, grenades and plastic bullets. More than 200 migrants and a minimum of 15 police officers were injured.

**2016:**

→ As a result of the large number of refugees and migrants who, due to the introduction of restrictive measures and border closures, found themselves in Greece and other countries along the Balkan route,, intensive migration flows and irregular migration to RNM were noted; with the highest presence of irregular migrants from Afghanistan, followed by from Pakistan, Syria, Iraq, Iran, Morocco, etc. In 2016, the MOI detected 35,177 attempted irregular border crossings.

**2017:**

→ MOI recorded a total of 4,129 attempted of irregular state border crossings, of which 86% were on the southern border, 9% on the northern border, and a small part on the other borders.

**2018:**

→ After a trend of reduced migration in 2017, in 2018 there was, again, an increase in migration flows and irregular migration in RNM. In the first nine months of 2018 the Border Police prevented 13,143 people from crossing the border between the Republic of Greece and RNM, which represents an increase of more than 400% compared to the same period in 2017.

**JANUARY 5, 2019:**

→ The European Union recorded the lowest number of new arrivals in the last five years. About 150,000 of them used the Mediterranean route; 57,000 were brought to the Spanish ports, making the West-Mediterranean route the most active migration route in 2018.







**IN 2018**, an increase in the number of detected cases of smuggling of migrants was also noted. Where in 2018 **52 CASES OF SMUGGLING OF MIGRANTS WERE DETECTED**, in which at least 861 persons were victims of smuggling, **IN 2017, 19 CASES OF SMUGGLING OF MIGRANTS WERE DETECTED, AND 212 PEOPLE APPEARED AS VICTIMS OF SMUGGLING.** The trend of an increase in irregular migration is also demonstrated by data indicating that, **MERELY IN THE MONTH OF OCTOBER 2018, 98 SMUGGLED PERSONS WERE DETECTED, REPRESENTING MORE THAN 45% OF THE NUMBER OF SMUGGLED PERSONS THROUGHOUT THE WHOLE YEAR OF 2017.**





## 2.2. CHALLENGES IN DEALING WITH IRREGULAR MIGRATION AND SMUGGLING OF MIGRANTS IN NORTH MACEDONIA

The issue of irregular migration and smuggling of migrants is primarily treated by the states as a matter of a security, and only afterwards as a matter of protecting the rights of victims of smuggling of migrants and trafficking in human beings. For these reasons, one of the challenges that RNM faces, in preventing smuggling of migrants and trafficking in human beings, is efficient border security and management – as a basic precondition for the prevention and suppression of cross-border crime.

The second challenge that RNM faced was with the provision of protection for persons who appeared to be victims of smuggling of migrants or human trafficking cases. This is a very complex challenge which involves, but is not limited to, the establishment of institutional mechanisms and effective policies for dealing with the smuggling of migrants; introduction and strengthening of the mechanisms for protection and ensuring access to justice; resocialization and prevention of secondary victimization of the victims of smuggling of migrants and trafficking in human beings.

In dealing with the refugee crisis and smuggling of migrants in the period referred to in the report, RNM also dealt with additional challenges. The political crisis in 2016, when there was a provisional government governing the country, influenced the state capacities, first and foremost in regards to the adoption of policies and strategies for dealing with irregular migration. The negative narrative surrounding refugees and migrants being promoted to the public by many stakeholders, according to which the refugees and migrants were presented as a threat to state security, and as persons intending to massively settle in RNM and change the state demographic, was also a challenge to the authorities.



And finally, even though an obvious step forward in building capacities for dealing with irregular migration and smuggling of migrants has been made, a careful analysis of the situation leads us to the conclusion that there is a lack of strategic, long-term and sustainable approach for dealing with irregular migration and smuggling of migrants in RNM. This is exemplified by the fact that the state, in dealing with the migrant flows, has made decisions to extend the state of emergency on the southern and northern border every six months, that is, it has decided on an *ad hoc* solution instead of adopting systematic solutions that are sustainable in the medium and long term.

## **2.3. SMUGGLING OF MIGRANTS IN NORTH MACEDONIA – ROUTES AND SMUGGLERS' MODE OF OPERATION (MODUS OPERANDI)**

In the period in which there was facilitated, regular transit of refugees and migrants, the main transit route passed through RNM. The refugees and migrants made entry into the reception-transit center Vinogorje, which was established right next to the border with Greece. After the registration and the short stay in the center, the refugees headed towards the reception-transit center Tabanovce, from where they crossed the border with Serbia, near the village of Miratovac. In most cases, the refugees and migrants from there headed towards the village of Horgos in northeastern Serbia from where they crossed the border with Hungary, and in a smaller number of cases, towards Croatia.

After the border closures along the Balkan route in March 2016, the smugglers rapidly renewed the routes for smuggling of migrants in the region. A significant part of the migration flows were directed through Albania and Bosnia and Herzegovina to Croatia, as well as from Bulgaria, through Serbia to Croatia. However, due to the geographical position of RNM, and despite the enhanced control measures on the border with Greece, some of the migrants continued to transit irregularly through its territory, most often organized by the criminal groups dealing with smuggling of migrants.

The most frequent routes for smuggling of migrants from Greece to North Macedonia pass through the vicinity of the village of Moin, to the



west of the river Vardar, and the villages of Stojakovo and Selemli, to the east of the river Vardar. The border crossing “Bogorodica” is used for the smuggling of migrants in passenger and freight vehicles, there have also been noted cases of smuggling of migrants in the passenger and freight trains at the railway border crossing “Gevgelija”. For illegal border crossing of migrants, smugglers also use the Belasica Mountain, from where the migrants are transferred to the Dojran area. Due to increased security measures on the green border, there has been a noted trend of increased attempts to smuggle migrants through official border crossings using passenger or freight vehicles.

For illegal border crossings between RNM and Serbia, the most frequent routes of irregular migration and smuggling of migrants pass through the region of Lipkovo - the green border of the village of Lojane to the village of Miratovac in Serbia, as well as the area around the village of Tabanovce, in the municipality of Kumanovo<sup>6</sup>.

There are also irregular crossings organized by groups dealing in the smuggling of migrants, though to a much smaller extent, from Bulgaria to RNM, in the area around Berovo and Delchevo.<sup>7</sup>

The organized criminal groups, dealing in the smuggling of migrants, are well organized and use modern means of communication and surveillance. In most cases, they establish cross-border cooperation with criminal groups from other countries, and it is considered that some of the criminal groups dealing with smuggling of migrants in North Macedonia are part of larger international criminal groups. Adult males make up the largest demographic of smugglers, but women have also been detected to be involved in the smuggling of migrants<sup>8</sup>.

The criminal groups dealing in the smuggling of migrants have a vertical structure with a clearly defined role for each group member – “kachak”, cleaner, transporter, performers and the like. The person who has the role of a “kachak” in the group has the duty of accepting the migrants after their illegal entry into RNM. The persons who have the role of cleaners have the task of identifying possible police patrols, controls, or ambushes along the route that the vehicles take, and informing the other members of the criminal group about it. For this purpose, the members use mobile applications to make online calls, and instant messaging and mobile applications that determine the GPS coordinates. On receiving a notification warning about the police patrols, the vehicles that transport the migrants change or

6 MAPPING OF SMUGGLING IN THE WESTERN BALKAN REGION, Dr. Slobodan Cvejik and Sande Kitanov, International Organization for Migration-IOM, 2017

7 Ibid

8 Annual report of the National Committee for Combating Trafficking in Human Beings and Illegal Migration for 2016



adapt their direction of movement. There is suspicion that some of the criminal groups cooperate with certain police officers from whom they receive up-to date information about police patrols, controls, and ambushes.

On the basis of previously conducted actions for detecting and suppressing criminal groups smuggling migrants, it can be concluded that the smuggling of migrants from Greece to the territory of RNM begins with a prior agreement with criminal groups from the Republic of Greece, with which they jointly plan the number of migrants that will be unlawfully transferred to the territory of RNM, at what time, in which way, and where they will be delivered. The migrants, who are delivered near the border with Greece, in most cases are transported to the border villages in the Municipality of Lipkovo - Lojane and Vaksince. From there, an irregular border crossing between RNM and Serbia is organized, thus allowing them to continue towards European Union countries .

For the services the criminal provide, they ask the migrants to provide monetary compensation, the amount of which depends on several factors - the number of people who are being smuggled, the period during which the smuggling is carried out, and so on. According to statements of injured migrants given in criminal proceedings, the compensation for smugglers ranges from 150 euros, up to almost a thousand euros. The method of compensating smugglers varies – there have been noted cases of advance payment, but also payment upon arrival at the desired destination, or the payment of an agreed installment at a transit country. Fast money transfers are also used for payment, most often by the migrant's family that is located in one of the European countries, or the country of origin.

A serious problem in the suppression of smugglers is the emergence of migrants who follow directions received by smugglers to illegally cross the border between Greece and RNM on their own, after which the smugglers take them over by vehicles with no registration plates or by rented vehicles. There have also been some noted cases in which the persons responsible for transporting the migrants, having received an advance payment, have departed in an unknown direction, leaving the migrants in the vehicle.



## 2.4. IDENTIFICATION OF VICTIMS OF SMUGGLING OF MIGRANTS AND TRAFFICKING IN HUMAN BEINGS

The essential differences, between smuggling of migrants and trafficking in human beings, impact the respective procedures for identifying victims of these criminal acts. In the cases of smuggling of migrants, any irregular migrant who transits through the territory of a state is a potential victim, given the fact that, in the absence of a possibility of regular transit, his/her purpose is to cross the border irregularly in order to reach to the planned destination. A significant number of migrants, not knowing how to cross the border irregularly, decide to use the “services” of smugglers. It is important to note that in certain cases, for personal material benefits, the criminal groups that deal in smuggling of migrants, once they notice an irregular migrant, force him/her to cooperate with them by using threats and physical force.

Contrary to the smuggling of migrants, in which the main element is the existence of intention and the taking of action in order to illegally cross borders, in the human trafficking cases, the ultimate goal is the exploitation of victims of trafficking in human beings, this can have a diverse nature (forced prostitution, begging, forced labor exploitation, pornography, petty crime, trade in tissues, cells and organs, etc.). In the initial phase of the human trafficking cases, there might not be an element of use of physical force, threats and coercion, that is, the victim is misled in a large number of cases and he/she begin with voluntarily cooperation with traffickers in human beings. However, the elements of use of physical force, threats, and other forms of coercion occur regularly in the later phase of victim’s exploitation, where, in most of the cases, the victim has limited freedom of movement and a relationship between the exploiters and the victim is established, having many elements indicative of slavery.

The identification of victims of trafficking in human beings is based on a precisely defined methodology and steps taken by the institutions and organizations. The procedure for identification and referral of victims of trafficking in human beings in RNM is regulated by standard operating procedures, which determine in detail the method of dealing with potential victims, as well as persons who have been



identified to have the status of victims of trafficking in human beings. The revised version of the Standard Operating Procedures for the Treatment of Victims of Trafficking in Human Beings from 2010 was in place until November 2018, when new Standard Operating Procedures for Treatment of Victims of Trafficking in Human Beings were adopted. According to these procedures, the identification is an urgent process in which, through information gathering and a series of indicators, it is determined whether a person is a victim of trafficking in human beings. After the initial contact with the person, and determination of the circumstances that indicate a justified suspicion that the person is a potential victim of trafficking in human beings, the person is referred to the competent authority for initial referral. The National Referral Mechanism, the Center for Social Works, the Ministry of Labor and Social Policy and the Human Trafficking and Migrant Smuggling Unit, and from 2018, also the National Unit for Suppression of Migrant Smuggling and Trafficking in Human Beings, are the competent authorities for the first referral.

The competent authority determines the identity of the potential victim, collects information from the victim and determines his/her urgent needs. =Based on collected data, and use of indicators, an early risk assessment is made. And finally, in order to determine all the facts and circumstances relevant to the procedure, an interview is conducted with the potential victim to determine a status of a victim of trafficking in human beings. With the help of an interpreter, the interview is also conducted in a language comprehensible to the victim. If the status of a victim of trafficking in human beings is determined, there follows a period of reflection and recovery, in which the victim resides in the Center for Victims of Trafficking in Human Beings or the Reception Center for Foreigners. Each victim-foreigner is appointed a responsible person, that is a police officer from the Human Trafficking and Migrant Smuggling Unit within the Ministry of Interior; or the National Unit for Suppression of Migrant Smuggling and Trafficking in Human Beings from 2018, who is responsible for victims of human trafficking until the completion of the period of reflection and recovery, that is until he/she leaves the Center for Victims or the Reception Center for Foreigners.

In addition to the Standard Operating Procedures for the Treatment of Victims of Trafficking in Human Beings, during the treatment, the competent bodies take into account the Standard Operating Procedures for the Treatment of Vulnerable Persons-Foreigners and the Standard Operating Procedures for the Treatment of Unaccompanied Children-Foreigners.

Having in mind the fact that there is a large number of unaccompanied women and children among the irregular migrants, in identifying



potential victims of trafficking in human beings, particular attention should be paid to such migrants who transit through the territory of RNM. Unlike the procedure for identifying victims of trafficking in human beings, the procedure for determining vulnerable categories of persons at risk of becoming victims of trafficking in human beings is an informal procedure and has a preventive role which includes identifying persons at risk, informing them, raising their awareness, and careful monitoring of the situation of these persons.

During the stay of refugees and migrants in the reception-transit centers, especially in the first quarter of 2016, when the borders along the Balkan route were still “open”, the organizations that work on prevention and detection of human trafficking cases, in accordance with the established methodology, undertook activities identify persons with an increased risk of becoming victims of trafficking in human beings and persons for whom there was a suspicion that they were, or they are, victims of trafficking in human beings. At the same time, they worked with the refugees and migrants to raise their awareness regarding the risks of becoming victims of trafficking in human beings or smuggling of migrants, as well as the consequences that may result in these cases.

After the border closures along the Balkan route, and the inability to resume the regular transit, the risks to refugees and migrants, in becoming victims of smuggling of migrants and trafficking in human beings, have increased. The redirecting of refugees and migrants to irregular migration routes has also complicated organizations’ access to vulnerable categories of refugees and migrants, and hence the ability to act preventively through information and awareness-raising, for identifying vulnerable categories of refugees and migrants who are at risk of becoming victims, or are victims, of trafficking in human beings. An additional problem is the lack of knowledge of English by some refugees and migrants, as well as the lack of interpreters for the languages spoken by the refugees within the MOI. Therefore, in a significant number of cases, the communication between border police and migrants is not possible, which significantly impacts the possibility of identifying potential victims of trafficking in human beings and vulnerable categories of persons.

- ➔ In 2016, one victim of trafficking in human beings – a foreigner – was identified, and 121 potential victims of trafficking in human beings were identified among the irregular migrants, of whom 44 were children. The potential victims were identified by the MOI, the Ministry of Labor and Social Policy and the Citizen Association Open Gate – La Strada. Thus, none of the persons identified as potential victims of trafficking in human beings were identified to have the status of a victim of trafficking in human beings.



- ➔ In 2017, the MOI identified 12 adult males, among the irregular migrants, as potential migrant victims, while the Association of Open Gate - La Strada - identified 63 potential victims of trafficking in human beings (34 men, 9 women and 20 children of whom 17 boys and 3 girls) among irregular migrants.

It is worthwhile mentioning a typical case of identifying potential victims of trafficking in human beings: Reported in 2016, a migrant smuggling group was suppressed after a reactive investigation was conducted between the German authorities and the authorities of RNM. An eight-member criminal group that smuggled migrants was discovered, out of 50 migrants from Afghanistan, Pakistan and Iraq being identified, 31 persons were identified as potential victims of trafficking in human beings. The eight-member criminal group, motivated by personal material gain, used physical force and coercion, to establish control over a group of migrants, using their vulnerability and helplessness to extort them for money. Some of the migrants that were found were accommodated in the Reception Center for Foreigners, and some of them in the safe house.

Undoubtedly, intense and committed activity of the institutions and the civil sector focused on identifying potential victims of trafficking in human beings, and reducing the risks for irregular migrants to become victims of trafficking in human beings and smuggling of migrants, has been noted. A process of capacity building has been noted by the establishment of the five mobile teams for the areas in and around Skopje, Gevgelija, Kumanovo, Bitola and Tetovo. In 2018, a National Unit for Suppression of Smuggling of Migrants and Trafficking in Human Beings was established, which should contribute to improved communication and coordination between the MOI and the Basic Public Prosecutor's Office.

Formal procedures (standard operating procedures) have been established that ensure coordinated action of the institutions according to a detailed methodology, with the purpose of acting in the best interest of the victims of trafficking in human beings. However, primarily due to the short stay of the irregular migrants in RNM, in most of the cases for persons identified as potential victims of trafficking in human beings, the final status of a victim of trafficking in human beings is not granted.







# 3

# CHAPTER

## **SMUGGLING OF MIGRANTS AND TRAFFICKING IN HUMAN BEINGS**



### **3.1. RESULTS OF COMBATING SMUGGLING OF MIGRANTS AND TRAFFICKING IN HUMAN BEINGS FOR THE PERIOD OF 2016-2018**

In the past period, the Republic of North Macedonia had undertaken significant measures focused on strengthening its capacities for dealing with the smuggling of migrants and trafficking in human beings. A significant number of cases of trafficking in human beings and smuggling of migrants have been detected, whereas many of these cases have been concluded by court judgements for conviction. However, the activities of organized criminal groups dealing with smuggling of migrants and trafficking of human beings continue, and not a single police officer has been convicted in the criminal proceedings. In the annual reports of the State Department on Trafficking in Human Beings for 2016, 2017 and 2018, RNM is ranked in second place, i.e. it has been noted that the country does not fully meet the minimum standards for the elimination of trafficking in human beings.<sup>9</sup> The recommendations of the last report indicate that it is necessary to find, prosecute and convict the smugglers, including also the police officers who are their accomplices. The need for a proactive approach in identifying victims of trafficking in human beings is also emphasized, and for this purpose, among others, it is recommended that the police officers who screen for potential victims of trafficking in human beings among migrants, refugees, and other groups at risk, be trained.<sup>10</sup>

<sup>9</sup> <https://www.refworld.org/country,,,,MKD,,5b3e0ae7a,0.html>

<sup>10</sup> <https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282698.htm>



- ➔ In 2016, a total of 108 smuggling of migrants cases were detected in RNM, attempting to smuggle 1,961 persons. The largest number of migrants originate in Afghanistan, followed by persons originating in Pakistan and Syria. Of these cases, criminal proceedings, for the criminal act of “smuggling migrants”, under Article 418-b of the CC.<sup>11</sup>, have been undertaken against 93 persons, out of which 19 are foreign nationals.
- ➔ According to the Basic Public Prosecutor’s Office for Prosecution of Organized Crime and Corruption, during 2016, 77 criminal charges were filed against a total of 102 persons for committing a criminal act of smuggling of migrants. The orders for conducting investigation procedures against 56 persons were issued, an indictment application was filed against 33 persons, and judgements for rejection of the criminal charges were passed for 3 persons. Upon a plea agreement in a pre-trial procedure, judgements were passed for 21 defendants, and upon a plea agreement after an investigation procedure, judgements were passed for 19 defendants. Indictments have been filed for 16 people. after which convictions were passed for 14 of them.
- ➔ According to the data of the Basic Court Skopje 1 Skopje, in 2016, of the criminal cases related to trafficking in human beings and smuggling of migrants, a total of 91 cases were received, in which 106 persons were charged as defendants, of which 83 cases have been concluded and 99 people convicted, of whom 96 are males and 3 are females.
- ➔ In 2016, including judgments that were initiated before 2016, in a total of 69 cases, 85 persons were sentenced to prison, whilst sentences were suspended in 14 cases, for a total of 14 persons. The duration of the pronounced imprisonment measures ranged from 8 months to 18 years, and a total of 47 persons were effectively imprisoned, while 72 judgements resulted in confiscation of objects, including 5 cases in which money was seized.
- ➔ In 2017, the MOI prevented the border crossing of 3,220 people, which meant a decrease of more than 90% compared to 2016, when 35,177 persons made attempts to irregularly cross the borders. The entry into RNM was prevented in 56.6% of the cases. It is typical that the largest number of cases to exit RNM are on the border with Greece, due to the trend of irregular transit of migrants from the Republic of Serbia to Greece.

<sup>11</sup> Annual report of the National Committee for Combating Trafficking in Human Beings and Illegal Migration for 2016



- ➔ As a result of the reduced irregular migration and smuggling of migrants, a significant decrease in detected cases of committed criminal acts of smuggling of migrants was noted. In 2017 the MOI detected 19 cases of smuggling of migrants in which 212 migrants were victims of smuggling (as a reminder, in 2016 the number of detected cases was 107 in which 1,961 migrants were victims of smuggling).
- ➔ In 2017, the MOI did not file criminal charges for the commission of the criminal offence of trafficking in human beings, referred to in Article 418-a of the CC of the Republic of North Macedonia. From the cases initiated in the previous years, in 2017, one judgement was passed in relation to such a criminal act - the defendant was sentenced to imprisonment for a term of 2 years. Criminal charges were filed against 3 persons, for the criminal act of trafficking in children referred to in Article 418-d; criminal investigation orders were issued for 2 persons; and an indictment was filed for 1 person. In none of these cases did a foreigner appear as the victim.
- ➔ During 2017, 97 potential victims of trafficking in human beings were identified, 75 of the identified persons were irregular migrants, of whom for 63 of them there were grounds for suspicion that they were subject to exploitation in the transit countries, prior to their arrival in RNM (34 men, 9 women, 17 boys and 3 girls).
- ➔ Prosecution for the committal of the criminal act of smuggling of migrants were taken against 36 persons, 88% of whom are citizens of the RNM, and the others are citizens of Albania, Georgia and Greece. The most frequently represented countries of origin of smuggled migrants are Pakistan - 47%, Afghanistan - 26.5%, Iraq - 13.2%, and so on. Two criminal groups that dealt with smuggling of migrants from the Republic of Greece, through the Republic of North Macedonia, to the Republic of Serbia, have been suppressed, and criminal charges have been filed against 27 persons for three criminal acts: organizing a group and instigating the execution of acts of trafficking in human beings, trafficking in juvenile persons, and smuggling of migrants, referred to in Article 418-c of the CC.
- ➔ During 2017, the Public Prosecutor's Office for Prosecution of Organized Crime and Corruption filed 11 criminal charges against 22 persons for committing the criminal act of smuggling of migrants referred to in Article 418-b of the CC. For 2 persons, the criminal charges were rejected and for 1 person a judgement was passed at a plea agreement during summary proceedings. Indictment applications were filed against 8 persons, orders for conducting an investigation procedure were issued against 20 persons, whereas the procedures were canceled for 4



persons, and for 10 persons judgement was passed at a plea agreement during the investigative procedure. Indictments were filed against 17 people. Judgments were passed for 2 persons at a plea agreement after the submitted indictment. First-instance convictions were passed for 22 persons, second-instance judgement was passed for 13 persons; for 7 persons the penalties were confirmed, for 5 persons the penalties were changed in regard to the amount of the penalty, and in only one case the first-instance judgement was annulled.

- ➔ In 2017, 41 cases of criminal acts related to smuggling of migrants and trafficking in human beings were received in the Primary Court Skopje 1 Skopje, regarding 53 persons. 43 cases have been completed and 43 persons have been convicted. Concerning the cases received in the previous years, 33 judgements were passed imposing sentences of imprisonment for 33 persons, whilst suspended sentences were passed in 3 cases, for 3 persons. The duration of the imprisonment sentences ranged from 8 months to 15 years. In 2017, 47 persons, convicted for criminal acts related to smuggling of migrants and trafficking in human beings, were effectively imprisoned. Per one judgement, a confiscation of property and property benefit was conducted, whilst seizure of objects was conducted in 18 cases.
- ➔ In the first ten months of 2018, 44 migrant smuggling cases were detected, in which 861 persons were victims of smuggling, and represented a notable increase compared to the 19 cases of migrant smuggling, with 212 persons as victims in 2017. In the first ten months of 2018, criminal prosecution proceedings were taken against 35 persons who were charged with committing the criminal act of "smuggling of migrants".

Based on the above statistics, it can be noted that, in most of the cases, the detected criminal acts related to smuggling of migrants and trafficking in human beings resulted in convictions in which prison sentences were imposed, and, in a smaller number of cases, suspended sentences. In a significant number of cases a judgment is reached at a pre-trial plea agreement, or after an investigative procedure has been conducted. Decisions dismissing the filed criminal charges are very rare.



## **3.2. PROFILE, VULNERABILITY AND RIGHTS AT RISK OF THE MIGRANTS-VICTIMS OF SMUGGLING AND HUMAN TRAFFICKING IN NORTH MACEDONIA**

Vulnerability means a reduced capacity of an individual or group to confront, cope with, or recover from violence, exploitation, or other types of abuses and right violations. Undoubtedly, irregular migrants represent a vulnerable category, at an increased risk of becoming victims of smuggling of migrants or trafficking in human beings. Namely, not having the ability to continue regular transit, unable to adapt to changes in circumstances, and thereto being in an impaired psychological state as a result of the negative and traumatic experiences they have faced in their countries of origin, the exhausting journey and the long waiting period; these persons are ready to continue their transit to the European Union countries at all costs.

After the border closures along the Balkan route eliminated the possibility of regular transit to their final destination countries, the refugees and migrants focused on irregular migration routes. Thus, almost every irregular migrant who intended to continue transit to European Union countries was at an increased risk of becoming a victim of smuggling of migrants and trafficking in human beings. The citizen associations and institutions worked intensively on identifying vulnerable categories of refugees and migrants in the reception-transit centers, on informing them in order to raise their awareness of the risks of smuggling of migrants and trafficking in human beings, as well as on identifying potential victims of trafficking in human beings.

The largest number of irregular migrants in the period of 2016-2018 originated from Afghanistan, Pakistan, Syria, Iraq, Iran and Morocco, with the remaining originating from a large number of other countries, almost exclusively in Asia and Africa.

At the beginning of 2016, facilitated transit was provided for refugees and migrants originating from Syria, Iraq and Afghanistan. However, restrictive measures were introduced gradually, per which, first of all, persons originating from Afghanistan were prevented from regularly crossing the borders, followed by a brief period of informal profiling of refugees and migrants from Syria and Iraq (deemed crisis areas), on the border between RNM and Greece, in order to determine which refugees and migrants could cross the border. The restrictive mea-



sures reached their culmination on 07.03.2016, with the complete border closures along the Balkan route for all refugees and migrants in transit.

The border closures along the Balkan route have resulted in a large number of women with children and unaccompanied children to remain stranded in the states along the route. On the day of the border closures, a total of 1,024 refugees resided in the reception-transit centers and in their immediate vicinity on the territory of North Macedonia. Almost all of them were at a high risk of becoming victims of smuggling of migrants, and for a large number of them there were additional risk factors of becoming victims of trafficking in human beings.

As it has already been mentioned, in 2016, 121 potential victims of trafficking in human beings were identified among irregular migrants, of whom 44 were children. In 2017, 75 potential victims of trafficking in human beings were identified, of whom 46 were adult males, 9 female, and 20 children. The gender composition of the identified potential victims of trafficking in human beings among irregular migrants is, on the one hand, due to the fact that adult males were the most prevalent irregular migrants who have transited through the territory of RNM in the period of 2016-2018. On the other hand, it shows that besides women and unaccompanied children, who are particularly vulnerable categories at high risk of being victims of trafficking in human beings, all irregular migrants face the potential risk of being victims of trafficking in human beings.

With the help of the International Organization for Migration and the active participation of the civil sector, the Standard Operating Procedures for the Treatment of Victims of Trafficking in Human Beings, the Standard Operating Procedures for Treatment of Unaccompanied Children - Foreigners, the Standard Operating Procedures for Treatment of Vulnerable Categories of Persons – Foreigners, and the Standard Operating Procedures for Prevention and Response to Gender-based Violence in Emergency and Crisis Situations and Disasters were adopted. They were adopted for the purposes of adequately treating vulnerable categories of migrants, and improving coordinating activity among institutions, and among the institutions and the civil sector.

According to the Standard Operating Procedures for Treatment of Vulnerable Categories of Persons – Foreigners, vulnerable categories of persons are listed as: elderly persons, persons with disabilities, children, pregnant women, women and girls, parents with children, LGBTI and victims of trafficking in human beings.





The risks that appear as a result of smuggling of migrants and their consequences include, but are not limited to, – the risk to the migrants in becoming victims of trafficking in human beings and thus being involving in at least one of the following types of exploitation – sexual exploitation, begging, forced labor exploitation, pornography, petty crime, trade in tissues, cells and organs, etc.. At the same time, there is a danger for the irregular migrants in becoming victims of physical violence, threats, unlawful deprivation of liberty, fraud, robbery, and extortion. These are, in fact, the most common criminal acts that irregular migrants have reported to the civil society organizations on the ground, but, with almost no exception, the migrants have decided not to file criminal charges against the committed criminal acts in order to avoid additional detention on the territory of RNM. For these reasons, the detection of other criminal acts committed by smugglers and traffickers, in a large number of cases, is limited by the ability to obtain information from victims of smuggling of migrants and trafficking in human beings. after having detected a case of smuggling and suppressed the criminal groups.

In RNM, the migrant's debt to smugglers is considered as one of the key indicators of trafficking or exploitation. In some cases, the smugglers have divided families in order to extort additional funds, threatening that they would harm other family members if they did not pay the money demanded. Cases of sexual and psychological violence have also been noted, especially against women and unaccompanied and separated children, by the smugglers or other members of the group. Some reports note statements given by the victims regarding extortion of money by the smugglers, especially in the villages of Vaksince and Lojane. There are also statements according to which the smugglers are reported to have offered their services in exchange for sexual intercourse with women who travel".<sup>12</sup>

Regarding the exploitation of migrants, the smugglers also take measures that restrict the movement of migrants and increase the migrants' dependence on smugglers, such as the confiscation of the migrants' passports. The increase in risk for migrants in becoming victims of trafficking in human beings has also been influenced by the increase in the compensation amount that the smugglers have demanded from the refugees and migrants who were stuck along the Balkan route. The lack of sufficient funds to pay the smugglers results in an increase of vulnerability for these persons, and it increases the risk for them in becoming victims of sexual or labor exploitation in order to provide money for the journey, especially if we take into account that they are surrounded by organized criminal groups dealing in smuggling of people.

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<sup>12</sup> Report on Trafficking along Migration Routes to Europe, ICMPD, 2018, p. 61



The forms of exploitation conducted in the context of smuggling of migrants include: sexual exploitation, forced labor, and kidnapping. Most often, the smugglers conduct kidnapping and extortion. Another aspect of the connection between smuggling and trafficking are the cases in which migrants are forced to become involved in the activities for the purposes of smuggling, thus they are also exploited in this manner.<sup>13</sup>

### 3.3. AVAILABLE ASSISTANCE AND SUPPORT FOR THE VICTIMS

Victims of trafficking in human beings are a particularly vulnerable category of persons who need protection, support and special care, both in the process of separating the victim from the perpetrator, and in the later phases of reflection, recovery, resocialization and reintegration. Thus, in addition to providing protection for victims of trafficking in human beings, it is almost equally as important to act preventively, i.e. to provide adequate assistance and support to persons who, due to the existence of one or more risk factors, are at an increased risk of becoming victims of trafficking in human beings.

In order to provide assistance and protection to victims of trafficking in human beings, in accordance with the international standards, the National Referral Mechanism for Victims of Trafficking in Human Beings has adopted a Program for Assistance and Support for the Reintegration of Children-Victims of Trafficking in Human Beings,<sup>14</sup> and a Program for Assistance and Support for Reintegration of Victims of Trafficking in Human Beings.<sup>15</sup> The programs provide the following services for victims of trafficking in human beings: transport and safe housing, health care, legal aid, social protection, access to education and employment support.

The needs of the victim of trafficking in human beings are defined by a preliminary assessment, on the basis of which a reintegration plan is prepared. Thus, there are two kinds of assessment for each victim:

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<sup>13</sup> Report on Trafficking along Migration Routes to Europe, ICMPD, 2018, pp. 62-63

<sup>14</sup> Program for Assistance and Support for the Reintegration of Children-Victims of Trafficking in Human Beings, 2014

<sup>15</sup> Program for Assistance and Support for the Reintegration of Victims of Trafficking in Human Beings, 2014



- **an individual assessment** that refers to the factors that are directly linked to the victim, taking into account both the physical and mental conditions of the victim; and
- **a situational assessment** that focuses on the situation of the victim's environment, such as the specific socio-economic situation of the victim's family and the reintegration infrastructure in the country.

During the decision-making period, the assessment of a victim who is accommodated in the Reception Center for Foreigners is done with the participation of the victim, the person responsible for the victim from the MOI, the Reception Center for Foreigners, and representatives of citizen associations. The planning of services and measures is based on the victim's needs assessment – the victim's consent is necessary for the implementation of the plan.

However, victims of trafficking in human beings who are foreign nationals face some difficulties in realizing their rights. A foreigner, for whom there are grounds for suspicion that he/she is a victim of trafficking in human beings, has the right to a decision-making period of two months, in which he/she can decide whether to return to their country of origin or a third country, or to cooperate with the competent authorities for the purposes of testifying to the criminal act of "trafficking in human beings".<sup>16</sup>

In the decision-making period, the potential victims of trafficking in human beings are accommodated in the Reception Center for Foreigners, which, even though formally provides legal, social, medical and psychological assistance to victims of trafficking in human beings, it does not provide suitable conditions for admission and support. The Reception Center primarily serves as closed facility for detaining foreigners who have illegally entered the territory of RNM, until their identity is confirmed or the conditions for conducting a return or forcible removal procedure are fulfilled. The accommodation of a victim of trafficking in human beings in such an environment during an extremely sensitive period and process, such as the reflection and recovery process, is inadequate.

After the decision-making period, if a decision is made determining a status of victim of trafficking in human beings, a temporary residence permit in the RNM is issued to the victim, after which, with his/her consent, he/she is accommodated in a center for victims of trafficking in human beings. The Center for accommodation of victims of trafficking in human beings provides temporary accommodation and care for victims of trafficking in human beings, for a maximum period

<sup>16</sup> Article 81 of the Law on Foreigners, "Official Gazette of RM" No. 35/2006, 60/2007, 117/2008, 92/2009, 156/2010, 158/2011, 84/2012, 13/2013, 147/2013 and 148/2015]



of six months; the victim is provided with accommodation, food, day care and counseling services<sup>17</sup>. In 2018, this center was transformed into a Center for victims of human trafficking and sexual violence, thus the new stretched competency is an additional challenge for the institution in providing adequate assistance and support to victims of trafficking in human beings.

In most of the cases, during the period of decision-making or after their participation in the criminal proceedings, the foreigners-victims of trafficking in human beings leave the territory of RNM. The return is made through the Transnational Referral Mechanism, if it exists in the country of origin, or through other official forms of communication. The victims have the opportunity, at their own expense, to leave the territory of RNM and to return to their country of origin or a third country<sup>18</sup>.

In addition to the provision of assistance and support to victims of trafficking in human beings, the preventive measures, i.e. the provision of assistance and support to vulnerable categories of persons, at a high risk of becoming victims of trafficking in human beings, are extremely important. During the culmination of the refugee crisis, the civil society organizations undertook activities focused on informing migrants and raising their awareness of the risk that some of these people might become victims of trafficking in human beings. In the reception-transit centers, interviews were conducted with the refugees and migrants, and there were cases identified where, due to the existence of one or more risk factors, they were at an increased risk of becoming victims of trafficking in human beings. Vulnerable categories were also identified among persons who had submitted an application for recognition of asylum in RNM. Some of the vulnerable categories that were asylum seekers were accommodated in the facility for accommodating vulnerable categories of asylum seekers – so-called “safe house”. Undoubtedly, this facility has a useful role in providing shelter, assistance and support to vulnerable categories of asylum seekers, but its capacities do not correspond to the special needs of the various categories of vulnerable persons. The safe house does not have physically separated facilities for the accommodation of people of different sexes, thus, through the use of common premises there is inevitable contact between them, which may have a negative impact, primarily on those who are victims of gender-based violence.

In regard to migrants in transit, who have not applied for asylum recognition and for whom risk factors for increased likelihood of becoming victims of trafficking in human beings have been identified, but

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17 Article 145 of the Law on Social Protection

18 Standard Operating Procedures for Treatment of Victims of Trafficking in Human Beings, 2018



for who there are no grounds for suspicion that they are victims of trafficking in human beings, the role of citizen associations and competent institutions is limited to providing information to them, and raising their awareness of the increased risks they face in becoming victims of trafficking. While identifying and providing assistance and support to vulnerable categories of foreigners, citizen associations and the competent authorities act in accordance with the Standard Operating Procedures for Treatment of Vulnerable Categories of Foreigners, that were adopted in June 2016. These documents define, in detail, the competencies for treatment of vulnerable categories of foreigners at particular stages of the procedure; and establish a unified and multidisciplinary manner of acting in the foreigner's best interest, which is in accordance with the domestic legal framework and international standards. Certain vulnerable categories of foreigners, accepted and identified in RNM, who are not capable of advocating for their rights during the procedure for recognition of the right to asylum or temporary residence, have the right to be appointed a guardian. The procedure for appointing a guardian, who will advocate for the the realization of their rights and interests, shall be conducted by the competent Center for Social Works, ex officio or upon a request of another competent authority.

### 3.4. ACCESS TO JUSTICE

In an attempt to cope with the large number of attempts at unlawful border crossing, most of the states along the route, instead of enforcing legal return procedures of foreigners in accordance with the law and readmission agreements that were made, continued to apply the established practice of illegally returning migrants. According to data from the Macedonian Young Lawyers Association, in only 2016, a minimum of 8,524 refugees and migrants were returned from RNM to Greece contrary to lawful procedure. After the border closures along the Balkan route in March 2016, the refugees and migrants continued their attempts to cross the border between Greece and RNM, using routes for irregular migration, usually moving in groups of 20 to 40 persons. In most of the cases, the persons who were intercepted by the police were afterwards transferred to the Vinojug transit center, from where, after a formal fingerprinting and photographing, they were returned to Greece, contrary to lawful procedure. On March 14, 2016, it was reported that between 2,000 and 3,000 refugees and migrants crossed the border between Greece and RNM, near the village of Moin. The police and the military security forces managed to intercept these persons, whereby 3 persons lost their lives trying to cross the Suva



River.<sup>19</sup> A case, in relation to this, is currently being heard before the European Court of Human Rights, upon an appeal filed by eight of the returned persons.

Smuggling of migrants also took place on the northern border during 2016, especially in the villages in the territory of the municipality of Lipkovo. Here it was also noted that, in some cases, refugees and migrants were imprisoned in houses and tents near the villages of Vaksince and Lojane, as part of the smugglers' methods for extorting money. The insufficient police presence at these locations prevented access to justice and the protection of these refugees and migrants.

The return of migrants contrary to lawful procedure continued in the following period. As a result of the reduced migration flows, in 2017, a smaller number of returns contrary to lawful procedure were registered. However, under these circumstances, there were 894 cases of return to Greece contrary to lawful procedure registered.<sup>20</sup> The increase in the number of refugees and migrants who transited through the territory of RNM in 2018 resulted in a significant increase of the number of informal returns - during this period, the MYLA registered a return of 6,997 refugees and migrants to Greece contrary to formal procedure. The available data points to the fact that the informal returns become a regular practice, rather than returns via formal procedure which was executed by the competent authorities in an extremely small number of cases. Namely, in 2016 only 2 persons were returned via formal procedure to Albania from North Macedonia, and not a single person was returned via formal procedure during 2017.

This practice leads to a situation where the migrants resort to the use of smugglers' services even more so, and to creating mistrust in uniformed officers amongst refugees and migrants. Finally, by returning refugees and migrants contrary to formal procedure, access to a legal remedy, that is, access to justice for these persons is not possible.

A concerning phenomenon is also the detention of irregular migrants due to immigration reasons. Additional cause for serious concern are the findings that a significant number of the detained persons are not informed of the legal basis of their detention, and are not given the opportunity to challenge the detention decision. Legal aid and the right to appeal are the basic safeguard measures against arbitrary detention, whereby the foreigner must be informed about the reasons for detention in a language that he/she understands, and he/she should be ensured access to an effective legal remedy and legal aid.

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<sup>19</sup> MYLA Field report 2016, pp. 4-5

<sup>20</sup> YLA Field report 2017, p. 11



Based on the information received in conversation with detained persons, some of them were detained at the moment when they traveled with smugglers of migrants, and they were informed by the police officers that they were witnesses in criminal proceedings against smugglers of migrants and that they would be released after they gave a statement before the competent court, although according to the law, there is no ground for detaining witnesses.<sup>21</sup>

The number of detained persons for immigration reasons varies - in 2016, at the Reception Center for Foreigners, a minimum of 438 persons<sup>22</sup> were detained, while in 2017 the figure was lower, i.e. a minimum of 100 people were detained. In 2018, a rise in the number was noted again, i.e. a minimum of 211 people were detained.

The persons detained in the center faced obstacles in their access to the asylum rights recognition procedure. Some of the detained persons were prevented from submitting an application for asylum right recognition prior to giving a statement before a court as witnesses in a criminal proceedings against smugglers of migrants. During 2016, MYLA identified 135 cases in which the asylum application was not registered immediately according to the legal regulations, while in 2017, 17 cases were registered. The refusal by the police to provide access to the asylum procedure makes it impossible for the persons to obtain the rights they are entitled to according to the law, which further increases their vulnerability.

The victims of trafficking in human beings in RNM also face difficulty accessing justice. Namely, according to the applicable Criminal Code, there are no provisions that exempt victims, who were forced to commit some criminal act during their exploitation, from culpability. However, it is possible to overcome this situation if the draft amendments to the Criminal Code are adopted. They outline a supplementation to the law via a provision that prescribes the non-punishment of the victim of trafficking in human beings, who was forced to commit a criminal or other offense while he/she was a victim, and which was directly related to his/her position of a victim.

According to the applicable regulations, victims of trafficking in human beings, as injured parties of a criminal offense, are entitled to compensation for pecuniary and non-pecuniary damages. However, in practice, the victims of trafficking in human beings face obstacles in obtaining the compensation for damages for two reasons. Firstly, the victims often do not have enough financial resources to cover the costs of the procedure necessary for compensation for damages, and secondly, in order to avoid further confrontations with the traffickers

21 MYLA Annual report on the practices of foreigners' detention in Macedonia for immigration reasons, pp. 1 and 3

22 MYLA report on Immigration Detention in Macedonia in 2016



and re-living of the traumatic experiences, they decide not to initiate a procedure for compensation for damages against the perpetrators. For these reasons, The Council of Europe Convention on Action against Trafficking in Human Beings prescribes an obligation on each Member State to adopt additional measures through compensation funds, or measures and programs for social assistance and reintegration of victims<sup>23</sup>. Appropriate compensation by the state for victims of violence against women is also prescribed by the Council of Europe Convention on the Prevention and Combating Violence against Women and Domestic Violence (Istanbul Convention), which was ratified by RNM in 2018.

Even though the Program for compensation for damages for children who are victims, or who are injured by an act that is prescribed by law as a criminal act of violence and other acts of individual or group violence, is regularly adopted, when it comes to adult victims of trafficking in human beings, RNM does not have a formal mechanism for compensation for damages by the state. The National Strategy and the National Action Plan for Combating Trafficking in Human Beings and Illegal Migration 2017-2020 prescribes the establishment of a fund for compensation of victims of trafficking in human beings. Besides the material satisfaction of the victim, the realization of the right to compensation for damages to the victims of trafficking in human beings contributes to a personal conviction in the victim that the procedure before the competent authorities has been fairly undertaken, which plays an important role in the recovery of the victim and his/her cooperation in the process of reintegration. For these reasons, it is necessary, without any additional delays, for the state to take action in regard to the establishment of a special fund, through which victims can realize their right to compensation for damages, as well as additional measures and programs for social assistance and the reintegration of victims of trafficking in human beings, including victims who are foreign nationals.

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23 Article 15 of The Council of Europe Convention on Action against Trafficking in Human Beings







# 4

## CONCLUSIONS AND RECOMMENDATIONS



## CONCLUSIONS:

- The agreement reached between the EU and the Republic of Turkey has significantly reduced the number of new refugee and migrant arrivals, but the irregular migration flows have continued;
- The border closures along the Balkan route has increased the risks for refugees in becoming victims of smuggling of migrants and trafficking in human beings;
- The numerous deportations and deportations contrary to lawful procedure additionally influence irregular migrants, turning them to organized criminal groups dealing in the smuggling of migrants;
- The treatment of victims of smuggling of migrants is not exercised in accordance with the law and the needs of the persons - these persons are detained in the Reception Center for Foreigners for the primary purpose of ensuring their participation as witnesses in criminal proceedings, whereby they are not provided with effective access to legal aid and legal remedy;
- The accommodation of victims of trafficking in human beings in the Reception Center for Foreigners during the decision-making period does not acknowledge the special needs of victims of trafficking in human beings in this period of reflection and recovery;
- The victims of trafficking in human beings face a problem in realizing their right to compensation for damages, which they are entitled to as victims of a committed criminal act;
- Progress has been noted in regards to the strengthening of the capacities of institutions to deal with smuggling of migrants and trafficking in human beings, but at the same time there is lack of strategic measures that will ensure a sustainable response to the challenges. In the period covered by this report, the main measure being applied by the state in dealing with migration flows was the extension of the state of emergency on the southern and northern borders, which represents an ad hoc measure.



## RECOMMENDATIONS:

- There is a necessity to continue strengthening the capacities for dealing with smuggling of migrants and trafficking in human beings, including the adjustment of capacities and the infrastructure, which was built at the peak of the refugee crisis, to adapt it to the newly created conditions;
- The activities of institutions and the civil sector, focused on preventing the risks of irregular migrants becoming victims of smuggling of migrants and trafficking in human beings, should be continued and intensified, along with an increased field presence in the areas through which the most frequent routes of irregular migration pass, and the introduction of proactive measures to identify potential victims among the vulnerable groups at increased risk (through "screening" procedures for which it would be necessary to provide appropriate training to officials);
- The practice of suppression and group deportations contrary to lawful procedure should be abandoned, that is, the return of a foreigner should be done via a procedure determined by law and in accordance with the readmission agreements, through which the foreigner will be granted access to legal aid and legal remedy;
- Victims of smuggling of migrants should be treated according to Article 53 and Article 54 of the Law on Criminal Procedure, and, if necessary, an amendment to the Law on Criminal Procedure for the purpose of treating these persons as victims of a criminal act should be initiated;
- The institutions should provide appropriate facilities for admission and accommodation of potential victims of trafficking in human beings;
- Detention for immigration reasons should be applied exclusively in situations determined by law, while each detained foreigner should be given an explanation of the reasons for detention in a language that he/she understands, and he/she should be provided with an access to legal aid and legal remedy. No child must be detained and restricted in his/her freedom of movement;
- It is urgent that adult victims of trafficking in human beings are enabled in realizing their right to compensation for damages, which they are entitled to as victims of a criminal act. Without additional delays, a special fund for this purpose should be established;



- After conducting an in-depth analysis of the situation and a debate involving all stakeholders, the measure extending the state of emergency on the southern and northern borders should be replaced by sustainable measures and policies for dealing with irregular migration.



# ABOUT THE USAID MIGRANT AND REFUGEE HUMAN RIGHTS PROTECTION PROJECT

The overall objective of the project is to ensure that civil society organizations and government institutions protect the human rights of migrants and refugees and meet the distinct needs of the most vulnerable groups among them.

The specific project goals are: (1) increasing knowledge and capacities of front line workers for treating migrants and refugees with a particular focus on vulnerable groups; (2) improving referral mechanisms, collaboration and quality of cross-border information sharing on migrant and refugee related issues, among civil society organizations from the Western Balkan region; (3) public awareness raising and education about migrant and refugee issues; (4) awareness raising and education of migrants and refugees about their rights; and (5) ensuring protection of the human rights of migrants and refugees, particularly youth and women at risk.

- **Increase capacities of government institutions and civil society organizations:** The project works on building capacities by training frontline workers from government institutions and CSOs, so they can protect the human rights of migrants. To address the lack of regional referral mechanisms for vulnerable groups of migrants, and to strengthen the cooperation among civil society organizations from countries along the Western Balkans route, the project organizes cross border meetings with civil society organizations from Serbia and Greece and supports the preparation and adoption of Information Sharing Protocol.
- **Improved awareness of migrants, refugees, and the general public:** The project works on educating migrants and refugees about their rights, and on raising the general public awareness to address negative stereotyping and prejudices against migrants.





- **Protection of migrant youth and women at risk:** The project works on strengthening the government's and civil society's capacities to protect the human rights of migrants and refugees, particularly youth and women at risk. The Project also identifies vulnerable groups, such as women and girls, victims of trafficking in persons, unaccompanied or separated children, and ensure, through legal counseling and referral, their access to safe and effective services.



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- ❖ **Lence Markovik**, Project Coordinator, Open Gate – La Strada
- ❖ **Maja Varoslija**, Program Manager in Open Gate – La Strada
- ❖ **Jasmin Redzepi**, Secretary General of NGO Legis
- ❖ In an agreement with the Red Cross field workers, instead of conducting a semi-structured interview, they answered the questionnaire electronically.





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