



Macedonian Young Lawyers Association

MYLA ANNUAL REPORT ON IMMIGRATION DETENTION IN MACEDONIA 2017

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Title:

MYLA ANNUAL REPORT ON IMMIGRATION DETENTION IN MACEDONIA—2017

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Authors:

Martina Martinova
Bojana Bozhinovska

Editor:

Zoran Drangovski



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INTRODUCTION

In 2017, the refugees and migrants continued to transit through Macedonia using irregular and smuggling routes. In response, immigration detention remained to be a growing phenomenon, causing an increase in concerns surrounding the possible violations of human rights for those held in detention within Macedonia's borders.

One of the main concerns is that the immigration detainees were not adequately informed about the legal grounds for their detention, the possibilities to challenge the detention, nor did they have access to legal assistance. Legal assistance and the opportunity to adequately challenge the legality of detention are fundamental safeguards against arbitrary detention and therefore, the access to effective legal aid is crucial for all persons detained.

Another issue is that the persons faced obstacles in accessing the asylum procedure prior to release. Even though the majority of them asked for international protection once they were provided with access, often they are not able to start an asylum procedure during the detention.

Alternatives to detention were not available. The facility for accommodation of vulnerable categories of asylum seekers ("safe house") was often used as an alternative form to detention for women and children. However, even though the conditions in this facility were better for fulfilling some of the basic needs of vulnerable categories, the persons' right to freedom of movement was restricted. MYLA believes that real alternatives to detention should be available and highlights the fact that using alternative forms of detention for asylum seekers, whose freedom of movement is guaranteed, is unlawful.

Since as early as 2015, the Macedonian Young Lawyers Association (MYLA), supported by UNHCR, has been actively engaged in the protection of refugees and migrants affected by immigration detention. MYLA conducts regular monitoring of the immigration detention facility and provides information on the international protection to immigration detainees.

This report shows comparative data on the profile of detained third-country nationals, discusses the legal grounds for detention, the conditions in the immigration detention facility, and the access to the asylum system. The issues presented are intended to serve as an indicator for further developments in policy and practice in order to protect the rights of those affected by immigration detention.



KEY FINDINGS

The number of immigration detainees in 2017 was significantly lower compared to 2015 and 2016.

The detention conditions diverged from the relevant domestic and international legislation and standards.

Detainees were not adequately informed about the legal grounds for their detention, the possibilities to challenge the detention, nor did they have access to legal assistance.

The persons detained in the immigration detention centre faced obstacles in accessing the asylum procedure prior to release.

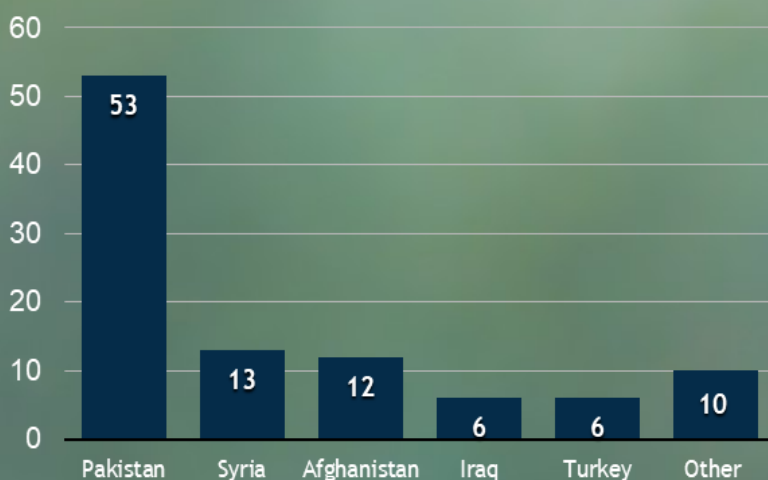
58.64% of the asylum seekers in Macedonia in 2017 were immigration detainees prior to seeking asylum.

PERSONS DETAINED IN THE RECEPTION CENTRE FOR FOREIGNERS

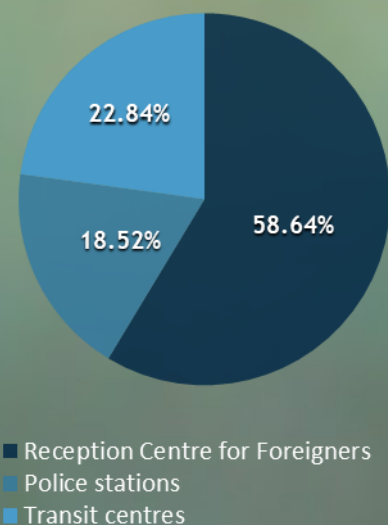
The Reception Centre for Foreigners is the only immigration detention facility in Macedonia. In 2017, MYLA conducted regular weekly visits to the centre.

During the year at least 100 individuals were affected by immigration detention in Macedonia. The majority of them were male and between the ages of 18-59, with the exception of three unaccompanied children and one mother with two minor children. The majority of the detainees originated from Pakistan, Syria and Afghanistan.

It should be noted that due to the limited access of MYLA to detainees and detention areas the numbers presented are to be considered approximate.



Country of Origin of Detainees in 2017



Place of Submission of the Asylum Applications in 2017

LEGAL GROUNDS FOR DETENTION

Under the applicable legal framework, a foreigner can be detained in Macedonia for the purposes of establishing identity and forced removal.

During the immigration detention visits, MYLA was not able to determine the legal grounds for detention of the individuals interviewed. The reason behind this lies on the lack of provision of detention decisions to the persons and the absence of access of MYLA to the case files.

According to MYLA's findings based on the conversations with the detainees, the majority of them

were apprehended while traveling with migrant smugglers. They were told by the police that they are held in detention as witnesses in the criminal procedure against the smugglers and were released right after providing a statement before Court. It should be noted that there is no legal provision that permits detention of witnesses.

However, there were also several cases where persons were detained because of other reasons such as possession of forged travel documents, irregular entry to the airport etc.

CONDITIONS OF DETENTION

MYLA had limited access to the holding cells and area of the immigration detention facility. The following section summarizes the experiences of detainees regarding the conditions obtained by MYLA during the interviews.

ACCESS TO INFORMATION Most of the detainees complained on the lack of information on the grounds and length of detention. There is a lack of interpretation services to ensure that detainees fully understand their legal status, the decisions that concern them, and the documents they are instructed to sign.

FOOD Detainees had been provided with food once every 24 hours. In some cases, they were given food once in 48 hours. The detainees complained on the insufficient quantity, poor quality and nutritional value of the food they receive. Some of the detainees also complained that the food had not been tailored to their individual medical conditions.

ACCESS TO FRESH AIR The detainees had not been able to move freely within the facility and did not have the possibility to stay outside in open air, with exception to female detainees who were allowed to walk in the yard of the facility.

HEALTH CARE There was one doctor from the Red Cross regularly visiting. Only limited medical treatments available to the detainees despite particular cases where individuals were facing serious health issues. Additionally, there was no support provided by social workers or psychologists for mental health care.

RIGHT TO PHONE CALLS Mobile phones were not allowed. Detainees were able to use the phone at the centre free of charge. However, the right to use the phone was limited to once-twice a week.

TREATMENT There was lack of an individualized approach based on the characteristics, situation and the needs of foreign nationals in detention. No recreational activities were available.

ACCOMODATION In 2017, there had been no overcrowding of the immigration detention centre and the living space per detainee was sufficient. The number of detainees was low compared to the total capacity of the facility. In the reporting period, between 4-15 detainees were accommodated in one room.

ACCESS TO THE ASYLUM SYSTEM

The persons detained in the immigration detention centre faced obstacles in accessing the asylum procedure.

Detainees were not permitted to submit an asylum application prior to providing statements as witnesses before the court in the criminal procedures for migrant smuggling. Upon providing statements, almost all of them have been able to submit asylum applications and they were accommodated in the Reception Centre for Asylum Seekers.

However, there was one case when a family was not able to apply for asylum even though they have already provided statements before court. After several interventions by MYLA, the family successfully submitted asylum applications. The police accommodated the asylum seekers in the facility for accommodation of vulnerable categories of asylum seekers ("safe house") with delay of 8 days.

During the reporting period, one rejected asylum seeker in first instance was taken to the detention facility by police officials, without taking into consideration that a lawsuit with suspensive effect was already submitted. Since immigration detention of asylum seekers is contrary to the law, MYLA took several legal and advocacy actions regarding the unlawful detention of the asylum seeker which resulted with his release after 19 days.

In 2017, 95 persons have applied for asylum at the Reception Centre for Foreigners. The asylum procedure for all of them was stopped since they have left the Reception Centre for Asylum Seekers soon after they have been admitted.

The average length of stay in the centre of these asylum seekers is almost 5 days. Most of them (28.42%) left the centre the same day of arrival or within one day, 21,05% left the centre within two days and 23,15% left the centre within three days of arrival.

FAMILY SEPARATION

Three cases of family separation were identified during the year. As a result of the push backs, one family separation case was reported in the first half of the year. Family separation also occurred as a result of the practice of the police not to detain all members of one family, but only a part of them, and to accommodate the rest in the Reception Centre for Asylum Seekers. There were two such cases in 2017.

LENGTH OF DETENTION

The average length of detention is 19.5 days, with the longest detention being 82 days. The maximum time limit of 12 months was not exhausted.

PUSH BACKS

The interviewed detainees reported that at the time they were caught by the police, they travelled in groups. However, not all of the persons were detained. Out of 203 people, 36.95% (71) were detained and the rest were returned to Greece in absence of a formal procedure.

MYLA'S WORK RELATED TO IMMIGRATION DETENTION

LEGAL AID

MYLA provided legal aid and representation to 95 asylum seekers affected by immigration detention in 2017.

MONITORING

MYLA's monitoring team, consisted of a lawyer and an interpreter, carried out 39 immigration detention visits in 2017. During those visits, 35 refugees and migrants were interviewed and informed on international protection.

ADVOCACY

MYLA regularly provides the relevant authorities with the findings of the monitoring conducted and submits to them recommendations. During 2017, MYLA had several meetings with competent authorities, civil society organisations, and international organisations aimed at strengthening the human rights protection system in the context of immigration detention in the country. MYLA also provides advocacy in individual cases upon need.

CAPACITY BUILDING & NETWORKING

On May 31st, 2017 MYLA joined the International Detention Coalition (IDC), a unique global network of organisations and individuals working together to end the immigration detention of asylum seekers, refugees, and migrants.

RESEARCH & REPORTING

This is the third report on immigration detention in Macedonia published by MYLA. All of the reports are available on www.myla.org.mk.

CONFERENCES

MYLA supported by the UNHCR Representation in Skopje and funded by the EU within project "Global technical assistance and capacity building programme to prevent detention of children and to protect children and other asylum-seekers in detention", held a conference on "Immigration Detention in Macedonia - Current practices, applicable legislation and possible alternatives" on June 19th, 2017 in Skopje.

CONCLUSIONS

- No child should be held in immigration detention;
- Alternatives to detention should be available in law and implemented in practice;
- Ensuring presence of witnesses in criminal proceedings by detaining them is contrary to the law. Adequate alternatives should be explored;
- Effective legal assistance and the opportunity to adequately challenge the legality of the decision are crucial in ensuring that the rights of the persons detained are respected and fulfilled and
- Detention conditions should meet relevant domestic and international legislation and standards.

About the Macedonian Young Lawyers Association

The Macedonian Young Lawyers Association (MYLA) is an independent, non-profit professional organisation which provides legal aid and strategically litigates to protect human rights.

Equipped with the knowledge and innovative capacities of young lawyers, MYLA promotes the rule of law and influences policy through research and advocacy. MYLA strives for a society in which the rule of law is established and people proactively strive for the respect of human rights.

MYLA is the only organisation in Macedonia that provides free legal aid and represents asylum seekers, refugees, stateless persons, and other persons of concern in procedures related to asylum, legal residence, and other social rights.

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Macedonian Young Lawyers Association

Contact us:

Str. "Donbas" no. 14/1-6, 1000 Skopje
Tel: +389 2 3220 870

contact@myla.org.mk | www.myla.org.mk