

2018 CSO's REPORT

ON IRREGULAR MIGRATION FOR SOUTH-EASTERN EUROPE



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Macedonian Young Lawyers Association

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2018 CSO's REPORT ON IRREGULAR MIGRATION FOR SOUTH-EASTERN EUROPE

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Introduction and Methodology

During the refugee crisis in Europe from 2015-2016, almost all the countries in the Balkan region found themselves faced with the challenge of dealing with the movement and transit of massive numbers of refugees through their respective territories. The general conclusion on how the region was handling the situation, as noted in many reports, is that most states failed to establish an individual system for assessing the needs of transiting persons within the frame of these mixed migration movements. Therefore, the role of NGOs was crucial, both in terms of assisting the state in the process of managing the refugee crisis, as well as helping the persons of concern to exercise their rights upon arrival in a given country. At the same time, the previously established cross-border cooperation among civil society organizations (CSO) in the region, whose mandate is dealing with refugee and asylum issues, successfully helped many persons of concern exercise their rights upon arrival, in a timely and efficient manner. This cross-border cooperation was established in August of 2012 with the adoption of the Information Sharing Protocol in Zagreb, later reinforced by the adoption of the Revised Zagreb Protocol. In December 2013, a new and more comprehensive mechanism for information sharing was adopted among CSOs through the Skopje Declaration on Asylum, Migration and NGO Cooperation¹. The declaration prescribed an initial model of cooperation among the CSOs in the region in terms of informing sharing on new developments in each country, as well as mechanisms for cross-border referral of individual cases.

However, events such as the introduction of a reinforced border regime in some of the countries in the region, the practice of frequent and unlawful returns of third-country nationals, and the detention of irregular migrants and asylum seekers has imposed the need for a more precise definition of cooperation mechanisms among CSOs. For this purpose, the Information Sharing Protocol Tool was adopted, which in reality operationalizes the existing Zagreb Protocol. Furthermore, the coalition of CSO's has been established in December 2017 as joint and carefully considered initiative of five organisations² which have already cooperated in many occasions, also as members of the European Council on Refugees and Exiles (ECRE), and its working group for the Western Balkans. This is an informal network and there is a possibility for other CSO's who have a common interests for co-operation that coincide with the strategic goals of the network to join.

This regional report on irregular migration is inspired by the goals set in the Information Sharing Protocol Tool. The objective is to: provide a comprehensive overview of the situation concerning asylum in the region; describe and analyse migration flows; report on current major developments in legislation, jurisprudence, and policies at the national level in nine³ of the south eastern European countries that were affected by the mass migration since 2015.

¹ <http://beta.seerefugee.com/wp-content/uploads/2017/11/skopjedeclaration.pdf>

² Belgrade Centre for Human Rights (BCHR); Civil Rights Program Kosovo (CRP/K); Group 484; Macedonian Young Lawyers Association (MYLA) and Vaša Prava Bosnia and Herzegovina (VP BiH)

³ Greece, North Macedonia, Albania, Kosovo, Serbia, Montenegro, Bosnia and Herzegovina, Croatia, and Slovenia

This report aims to provide analysis based on non-governmental sources of information and to help identify the areas where improvement is most needed. This is second annual regional report and it covered the period from 1 January –31 December, 2018.

The first regional report on irregular migration was published last year and included an overview of the national legal framework in each country for various areas relevant to irregular migration. The second report contains only the most relevant changes in legislation in the respective counties and the focus is more on records of the CSO's for the conduct of the responsible authorities in practice, sharing information on unlawful practices when dealing with irregular migrants and the consequent human rights violations.



Main Migration Trends

In 2018, the number of irregular migrants detected on the Western Balkan route halved from the previous year to 5 869. Most of the migrants detected on this route in 2018 came from Afghanistan, Pakistan and Iran⁴. This is related to the efforts taken by Western Balkan states to increase control of their borders and to stop migrants and refugees from illegally crossing their territories on their way to Western Europe. Nevertheless, despite the efforts of the Western Balkan countries to strengthen their control of the Balkan route, it still remained active in 2018, with continuous – though less intense – movement.

Regarding the migration movements, two main routes through the region stood out in 2018 with pressure shifting between them as border control activities were enhanced and reinforced in certain areas. Migrants travelled via both the central route via Serbia and the route stemming from the Greek- Albanian border section, along the Bosnian and Herzegovinian–Croatian–Slovenian corridor and, to a lesser extent, on Serbia's EU borders with Hungary, Croatia and Romania. During this period the backward movements have been noticed of Iranians coming from Serbia to North Macedonia and Greece using the visa-free access to Serbia, which was rescinded in October.

The most significant migration trends and changes in 2018, noted in CSO's reports are as follows:

- **The Western Balkan route** in 2018 saw shifts between the Greek-Albanian corridor and the Serbian-centered corridor. Throughout the year, most of the migratory pressure on the route materialized at the Bosnian and Herzegovinian-Croatian border, and also, to a lesser extent, on Serbia's border with Hungary, Croatia and Romania;⁵
- **In Greece**, during 2018, the arrivals from the land borders of Evros were significant increased (by 63%) compared to 2017 promoting the Evros land borders to a significant entry-point for mixed migration flows. Despite the low visibility in terms of policy and media, Evros land borders gradually became the major point of entry for irregular migrants setting more pressure to the inadequate reception conditions in the closed Reception and Identification Center (RIC) of Fylakio Orestiada/Evros⁶. The increased arrivals at the Evros land border which is not under the EU-Turkey Statement implementation⁷, have further added to the arbitrary and concerning practices of informal forcible removals (push-backs) of foreign nationals from Greece to Turkey at the Evros river border;
- There has been a substantial decrease in the migration flow through the **North Macedonia**. However, the number of people in transit through the country is thought to be much higher than what the official figures state. The country remains one of the main transit routes for irregular mixed migratory movements. Refugees and migrants enter North Macedonia from Greece and most of them try to cross the border into Serbia

⁴ Frontex data for Western Balkan <https://frontex.europa.eu/along-eu-borders/migratory-routes/western-balkan-route/>

⁵ Frontex Risk analysis for 2019, page 8, https://frontex.europa.eu/assets/Publications/Risk_Analysis/Risk_Analysis/Risk_Analysis_for_2019.pdf

⁶ <https://data2.unhcr.org/en/situations/mediterranean/location/5179>

⁷ EU/Turkey Statement, 18 March 2016. <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>



through northern villages. There is some backflow as there are refugees and migrants who decide to go back to Greece in order to explore their options through the relocation program. Illegal border crossings have decreased but there is still an indication of unlawful deportations and push-backs of refugees and migrants into Greece;

- The low recognition rates in Greece at the second instance in conjunction with the number of people that are stranded in Greece following the closure of the Western Balkan Route and the implementation of the EU-Turkey statement leads us to assumption that in the coming period the undocumented population in Greece will rise to more than 27.000 persons;
- **In Albania**, the number of persons who have passed through the country during 2018, including those intercepted at the border areas and in land territories and those approaching the border authorities on their own, has reached 5,730 persons which is 446% higher than the total number of persons intercepted during the entire year of 2017 (1049); Albania signed an agreement on cooperation on border management with the European Border and Coast Guard Agency (FRONTEX);
- **In Serbia**, the increasing of the mixed migration flow was influenced by the decision of the Government of Serbia to abolish visa requirements for the nationals of the Islamic Republic of Iran⁸ that was enacted in September 2017. An average of 150–200 newly arrived Iranians were registered per month comparing to 5–30 per month in the pre-September 2017 period⁹. The majority of Iranians accessed the territory of RS through Serbia's main airport in Belgrade, Nikola Tesla. It is estimated that around 12,000 Iranians failed to return home from RS¹⁰ ;
- **Montenegro** recorded a higher number of illegal crossings from Albania to Montenegro, as well as exits from Montenegro mostly towards Bosnia and Herzegovina but also towards Croatia. Irregular migrants were entering Montenegro across the green border area around the Božaj border crossing and to a smaller extent Sukobin on the border with the Republic of Albania, while in most cases they illegally try to leave Montenegro towards Bosnia and Herzegovina and in smaller number towards the Republic of Croatia;
- The number of refugees and migrants using the route through Bosnia and Herzegovina is increasing. The available reports suggest that most refugees and migrants entering Bosnia and Herzegovina come from Serbia or Montenegro. Compared with 2017 (755 detected arrivals), the authorities in **Bosnia and Herzegovina (BiH)** detected the arrival of 24,067 refugees and migrants to the country between 1 January 2018 and 31 December 2018. It is estimated that between 4,500 and 5,000 refugees and migrants remain in BiH in need of humanitarian assistance at various locations, in particular in Sarajevo and Una-Sana Canton (USC);

⁸ Decision published in Službeni glasnik Republike Srbije, no. 79/18, of 25 August 2018.

⁹ See more in: Right to Asylum in the Republic of Serbia 2018, Belgrade Centre for Human Rights, Belgrade, 2019, pp. 10-11. Available at: <http://azil.rs/en/wp-content/uploads/2019/02/Right-to-Asylum-2018.pdf>.

¹⁰ Why are Iranians crossing the Channel in dinghies?, BBC, 26 November 2018. Available at: <https://www.bbc.com/news/uk-england-kent-46296249>.

- **In Croatia**, year 2018 was marked with criminalization of the work of lawyers, NGOs and activists who provide help and support to refugees and migrants, and who speak publicly about illegal pushbacks and violence at the borders, a persisting issue for the last couple of years. Numerous NGOs, international organizations and the media, as well as Croatia's Ombudswoman, reported the pushbacks from Croatia to Serbia and Bosnia and Herzegovina, resulting in denial of access to asylum procedures, and often including allegations of violence or theft by state authorities.
- Public data or information on return decisions and carried out removals are not available from Ministry of Interior sources in **North Macedonia, Serbia, Croatia and Slovenia**. These countries need to improve the system of recording statistical information in the area of asylum and migration;
- The 400 mile border between Slovenia and Croatia forms the southeastern border of the Schengen Area, the passport-free zone shared by member states of the European Union. More than 10 migrants died in 2018 attempting to access Slovenia territory through river Kolpa, avoiding the barbed wire;
- In June 2018, **Slovenia** restricted access to the asylum procedure to persons that entered the country and subsequently hindered their right to asylum. Individuals who were returned in an informal return procedure based on the Agreement between the Republic of Slovenia and the Republic of Croatia were not appropriately informed about the possibility to apply for international protection and were not processed in the preliminary procedure that would enable them to lodge an application for international protection¹¹;
- Limited access of CSO's to the detention centers is recorded in Croatia and North Macedonia, mainly access is for the purpose of legal advice for the applicants to apply for international protection;

¹¹ <http://pic.si/wp-content/uploads/2018/07/1.-REPORT-ON-FINDINGS-AND-OBSERVATIONS-ON-THE-IMPLEMENTATION-OF-RETURN-PROCEDURES-IN-ACCORDANCE-WITH-THE-PRINCIPLE-OF-NON-1.pdf>



GREECE

The low recognition rates in Greece at the second instance in conjunction with the number of people that are stranded in Greece following the closure of the Western Balkan Route and the implementation of the EU-Turkey statement leads us to assumption that in the coming period the undocumented population in Greece will rise to more than 27.000 persons;

1. Introduction

During 2018, arrivals from the land borders of Evros significantly increased (by 63%) compared to 2017, upgrading the Evros land borders to a significant entry-point for mixed migration flows. Despite low visibility in terms of policy and media, the Evros land borders gradually became the major point of entry for third country nationals (TCNs), with arrivals on land exceeding the respective numbers of sea arrivals (in April 3,822 TCNs entered Greece from the land borders while 3,032 from sea borders)¹², putting more strain on the inadequate reception conditions in the closed Reception and Identification Centre (RIC) of Fylakio Orestiada/Evros. The increased arrivals at the Evros land border, which is not under the EU-Turkey Statement implementation¹³, have further added to the arbitrary and concerning practices of informal forcible removals (push-backs) of foreign nationals from Greece to Turkey at the Evros river border. The number of TCNs who alleged that they had been pushed back from Greece to Turkey, and who again had entered Greek territory and subsequently been apprehended by the Greek police, is constantly on the rise. This has created a new normality in the Evros region, as illustrated in the report published by HumanRights360 in cooperation with the Greek Council for Refugees and ARSIS-Association for the Social Support of Youth¹⁴, this is further illustrated to the return policy trends below. Simultaneously, the increase in new arrivals at the sea borders compared to 2017¹⁵, and the continuation of the geographical restriction in the islands following the implementation of the EU-Turkey Statement from 18 March 2016, placed further strain on the islands where TCNs remain stranded in appalling reception conditions. New arrivals on the islands are taken to hot spots which were initially planned to accommodate people during the short registration process, but in reality they accommodate persons who have remained for more than a year. Although the EU-Turkey Statement was meant to be a temporary and extraordinary measure, two years later it has been established as a permanent 'practice' failing to ensure protection for all applicants of international protection in Greece. In particular, the imposition of the geographical restriction on the islands has put in place a containment policy intended to prevent TCNs from entering Greece and applying for international protection, and above all, it prevents secondary movement to other European countries. Following this containment policy, tensions have heightened on the islands, where 14,600 of the 71,200 TCNs who arrived in Greece through the islands since the EU-Turkey Statement were accommodated, while allegations of ill-treatment and excessive use of force by law enforcement officials have persisted. The majority of victims of the reported incidents were refugees and migrants trapped on the Aegean islands as a result of geographical restrictions following the implementation of EU-Turkey Statement. Notwithstanding the above, the European Commission has endorsed and supported¹⁶ the first two years of implementation of the EU-Turkey Statement, disregarding the consequences of this containment policy which has caused tremendous suffering in the already overcrowded island camps and has jeopardized access to protection services, according to the provisions of the EU's Common European Asylum System (CEAS).

¹² <https://data2.unhcr.org/en/situations/mediterranean/location/5179>

¹³ EU/Turkey Statement, 18 March 2016. <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>

¹⁴ https://www.humanrights360.org/the-new-normality-continuous-push-backs-of-third-country-nationals-on-the-evros-river/?fbclid=IwAR0mvHfvz6r2tlz4LLbBHRfQIWYHaVNU_DwJcPtCqx5HnSeZcwSvmkg-Ekw

¹⁵ <https://data2.unhcr.org/en/documents/download/67711>

¹⁶ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180314_eu-turkey-two-years-on_en.pdf

Moreover, the EU relocation scheme, which was presented to be one of very few formal options available for those eligible to safely leave Greece and move elsewhere in Europe, concluded on 30 March 2018 with 22,822 approvals out of 24,911 requests¹⁷, falling considerably short of the goals it had set out to achieve and appearing to be inadequate. Member states failed to accept their fair share, setting political obstacles to the adequate implementation of the scheme and failing to agree on the continuation of a fair distribution of TCNs to all Member States, instead keeping their own political agenda and trapping applicants of international protection in Greece.

Finally, it is reported that a new route through the Balkans has been detected¹⁸. TCNs travelling through the Balkans, usually from Greece and Bulgaria, tried to transit through Bosnia and Herzegovina to other EU member states. These groups included people who had travelled north from Greece via Albania and Montenegro, as well as those moving on from Serbia into Hungary via the two 'transit zones' to seek asylum.

2. Statistical Data on Irregular Migration in 2018 Compared with Statistics for 2017

During 2018, a total of 50,508 people arrived in Greece, of which 32,494 arrived by sea compared to 27,718 in 2017 and 18,014 from the land borders compared to 6,592 in 2017¹⁹. With regards to sea arrivals, the majority of the population are from Afghanistan (26%), Syria (24%) and Iraq (18%), with more than half of the population being women (23%) and children (37%), while 40% are men. There are no statistics provided showing the breakdown per nationality and gender for the land border arrivals. Between January and December 2018, the majority of refugees and migrants in Greece arrived to Lesbos (15,034), Samos (8,544) and the Dodecanese Islands (4,934), while in April, the majority of refugees and migrants arriving in Greece landed in Evros (3,822 arrivals). It is estimated that 71,200 refugees and migrants remained in Greece in 2018, among whom 14,600 remained on the islands and 56,600 on the mainland. In 2018, 12,023 children arrived in Greece by sea including 1,803 Unaccompanied and Separated Children (UASC). An estimated 3,741 children²⁰ were present in Greece as of 31 December 2018. In total, 1,983 children (including 283 separated children) are out of long term or temporary accommodation, of which 701 are in RICs, 86 in protective custody, and 124 pending transfer to long term or temporary accommodations.

Between January and December 2018, 66,970 TCNs applied for international protection. In the same period, 46,323 decisions were issued at the first instance while 58,793 are still pending²¹.

¹⁷ http://asylo.gov.gr/en/wp-content/uploads/2018/03/Relocation-procedures-up-to-25-3-2018_en.pdf

¹⁸ file:///C:/Users/USER/Desktop/Regional%20report%20on%20irregular%20migration_USAID/Summary%20.pdf

¹⁹ <https://data2.unhcr.org/en/situations/mediterranean/location/5179>

²⁰ <https://data2.unhcr.org/en/documents/download/67534>

²¹ http://asylo.gov.gr/en/?page_id=110

12,626 persons were granted refugee status and 2,579 subsidiary protection, while 15,563 were rejected at the first instance. The Appeals Authority do not provide comprehensive statistical data to ensure the necessary publicity at the second instance, thus we do not have concrete figures regarding the pending applications at the second instance. In parallel, the number of 'undetected' persons from Evros, which first appear in other Police Directorates around the country, continues to be high and cannot be precisely assessed. The majority of these TCNs were either released from Evros, or ended up unregistered in Thessaloniki or the mainland without any guidance, support or assistance, consequently exposed to possible ill treatment and/or abuse, and 'forced refoulement'.

In the field of returns, in the period from December 2017 to December 2018, 322 TCNs²² were returned to Turkey under the framework of the EU-Turkey Statement. The vast majority of those returned to Turkey are nationals from countries other than Syria. The majority are Pakistani nationals (39 percent of the total). Syrians constitute 19 percent of the total number of those returned, and are followed by Algerians, Afghans, Bangladeshis and Iraqis. Of all those returned, 45 percent either did not express intent to apply for asylum, withdrew their intent to apply for asylum, or withdrew their asylum claims in Greece. According to official police statistics from the first half of 2018, 7,113 TCNs were returned to their countries of origin²³ compared to 19,096 in 2017. The number of TCNs without legal documentation can only be estimated, as no official data exists. Over the last few years there has been an improvement regarding access to the asylum process and a significant increase in the recognition rates for asylum claims (around 49.4%)²⁴. Nevertheless, the low recognition rates at the second instance, in conjunction with the number of people stranded in Greece following the closure of the Western Balkan Route, and the implementation of the EU-Turkey Statement, leads us to the safe assumption that in the coming period we will see the undocumented population rising to more than 27,000 persons.

3. Legal Framework on Irregular Migration and Asylum

During 2018, Law 4540/2018 (O.G A'91/22.05.2018) on the transposition into Greek legislation of the provisions of Directive 2013/33/EU of European Parliament and of the Council of 26th June 2013, which lay down standards for the reception of applicants for international protection (recast, L180/96/29.6.2013), including other provisions, was adopted by the Greek Parliament. The new law amended the legislation within two thematic parts, one related to the transposition of the Reception Conditions Directive (Recast) (RCD) and the second related to the amendments in the asylum legislation. The Law includes provisions, inter alia, for: the establishment of a Competent Authority for Reception, as well as a Competent Authority for Unaccompanied and Separated Children (UASC); the adoption of an extended scope as regards protection of UASC independently of their status; and the provision of alternative

²² <https://data2.unhcr.org/en/documents/download/67482>

²³ http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=78538&Itemid=73&lang=

²⁴ Reference period, 2018 http://asylo.gov.gr/wp-content/uploads/2019/01/Greek_Asylum_Service_Statistical_Data_GR.pdf



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care options for UASC, including foster care and supervised independent living. At the same time, it determines that the competent appeals bodies are to examine the backlog of pending appeals at the Appeals Authority from 2015-2016.

The much anticipated Law on Guardianship of Unaccompanied Minors was voted on in July of 2018 (Law 4554/2018, O.G A' 130 18/07/2018) in which the definition of 'separated children' was used for the first time and includes provisions for the Competent Authority for UASC, the establishment of a Register of Guardians, and other relevant provisions. The latter law has not yet been implemented, making the situation of the UASCs much worse. The operation of the Pre-Removal Detention Centres was extended until 31 December 2022²⁵, while the use of detention in police stations (totally inappropriate for immigration detention) has continued both in the mainland and on the islands.

On 17 April 2018, the Council of State annulled the first Decision²⁶ of the Director of the Asylum Service regarding the restriction of the freedom of movement on the basis that the reasons for which the decision was issued (which dictate the imposition of the restriction of movement) are not evident from the text of the decision of the Director (e.g. the public interest served by the issuance of the decision: the application of the EU Turkey Statement, the management and allocation of the refugee population in Greece etc.). Following the above judgment, a new restriction of freedom of movement (geographical limitation) decision was issued on 20 April 2018²⁷ by the Director of the Asylum Service in compliance with the ruling of the judgement. On 05 October 2018 the second Decision was withdrawn²⁸ and replaced with a third Decision, issued by the Director of the Asylum Service, explicitly exempting geographical restriction, the Dublin Regulation, and vulnerable cases. A new application for annulment has been filed by GCR on the Asylum Services' Director's decision, contesting the legality of the Decision.

4. Policies and Practices of Immigration Detention of Irregular Migrants and Vulnerable Groups

Administrative detention has gradually resumed over the last few years, based mainly on grounds of a public order, which is usually not properly justified, while the detention centres which were largely emptied over the course of 2015 gradually became overcrowded again. It is to be mentioned that time limits governing the detention of TCNs in view of removal differ from those provided for the detention of asylum seekers. In relation to pre-removal detention, national legislation transposing the Returns Directive provides a maximum detention period that cannot exceed 6 months, with the possibility of an exceptional extension not exceeding 12 months in cases of lack of cooperation by the third-country national concerned, or delays

²⁵ <http://asylo.gov.gr/wp-content/uploads/2019/01/ΠΠΟΚΕΚΑ-ΥΠΙ.pdf>

²⁶ Decision number οικ./10464/31.05.2017, O.G B' 1977, http://asylo.gov.gr/?page_id=141

²⁷ Decision number 7001/9/37-vy' (1.) and Decision (2.) number οικ. 8269 (O.G B, 1366/20.04.2018), http://asylo.gov.gr/?page_id=141

²⁸ Decision number οικ./18984/05.10.2018, O.G A' 4427, http://asylo.gov.gr/?page_id=141.

in obtaining the necessary documentation from third countries. Due to lack of interpreters and translation of the administrative decisions in a language they understand, and the lack of free legal assistance for review of detention, TCNs in pre-removal detention centres are often unaware of their legal status and do not know they have the option to challenge their detention. Psychosocial support, medical care and legal assistance are not provided in any of the pre-removal detention centres due to funding problems, nor is information available to detainees in pre-removal detention facilities in a language that they understand. Furthermore, administrative detention that exceeds the legal time frame has been imposed on asylum seekers, while all new irregularly arriving TCNs are initially detained in the RICs on the islands. Although an ex officio judicial review of the detention order has been provided²⁹, in practice, asylum-seekers do not have effective access to this review due to a lack of interpretation, legal assistance and limited capacity of the administrative courts. Thus, asylum-seekers may be detained for a total period exceeding three months, even though detention of asylum seekers should not exceed a total period of three months.³⁰

Additionally, due to the inadequate registration processes and limited capacity asylum-seekers on the mainland still face problems of access to asylum and, if not registered, face possible arrest and detention. This risk is also faced by those who arrive irregularly in a place where they cannot go through the reception and identification procedures in a RIC where they will be properly registered and have access to asylum. Although both asylum seekers and persons in view of their removal should, in principle, be detained only in the pre-removal detention centres³¹, detention of such people, which includes minors, also takes place in police stations³². The conditions in these facilities are subject to constant deterioration due to insufficient maintenance, very bad hygiene conditions and lack of medical and legal services. The number of persons detained in police stations is not known, despite the fact that these facilities are still used for the administrative detention of TCNs. As a rule, there is no available data regarding the number of persons detained in police stations and other detention facilities leading to a significant underestimation of the detained population in Greece. The only data that is provided concerns the capacity and the occupancy of police stations and holding facilities in Police Directorates located in the Eastern Aegean islands. Following the implementation of the EU-Turkey Statement and the expansion of the detention policy at the end of 2017, there were 8 active pre-removal detention centres in Greece with a total capacity of 5,925 persons and two pre-removal detention centres started operating in Lesbos and in Kos. Another one has been established in Samos in June 2017, but had not yet become operational by March 2018. Police stations continue to be used for prolonged immigration detention. New arrivals in the Evros region, including vulnerable individuals and families, have been detained for several weeks before their transfer to the RIC of Fylakio, due to its limited capacity. Detention of UASC is systematically imposed and may be prolonged for periods ranging from a few days to more than two months, pending their transfer to an accommodation facility. UASCs are detained in police stations and pre-removal facilities on the mainland in “protective custody” or in Reception and Identification Centres on the islands in unacceptable detention conditions. Detention of UASCs in the land border of Evros has systematically been imposed and may be prolonged for periods ranging

²⁹ Art. 46 (5) Law 4375/2016.

³⁰ Art. 46 (4) Law 4375/2016

³¹ Art. 6 (9) Law 4375/2016 and art. 31 (1) of Law 3907/2011.

³² <https://www.synigoros.gr/?i=childrens-rights.el.dnews.445808>.

from a few days to more than three months, pending their transfer to an accommodation facility. In some cases, due to lack of capacity at the RIC of Fylakio, TCNs from countries with 'low recognition' rates (i.e. Pakistan), including families, are not registered as asylum seekers when expressing their will to claim asylum while in the RIC, but rather after they are transferred to the Pre-Removal Centre. Legally they are still under active Deportation Orders, so a risk of direct or indirect refoulement is present (no guarantee against the enforcement of removal). These persons also have no proof of their expressed willingness to seek asylum. Lastly, the limitations on the period of detention for asylum seekers begins only after the full registration of the claim, and without adequate monitoring these cases are not highlighted and addressed.

5. Return Policy

In 2018 a very small number of persons (see statistics above) were returned, which illustrates the in the field reality of returns in Greece. The Greek state conducts very limited returns, both within the framework of deportations³³, as well as returns³⁴ to Turkey for several administrative and economic reasons. According to Law 3907/2011, transposed into Greek legislation as the Return Directive³⁵, TCNs residing illegally in Greece are issued with a return decision³⁶, while TCNs entering Greece irregularly are issued with a deportation decision³⁷. Before the issuance of this decision, TCNs are granted a period of at least 48 hours to express their objections, while a return/deportation decision may provide for an appropriate period for voluntary departure of 30 thirty days. An appeal against return/deportation decisions may be lodged within 5 days of the notification of the decision while the decision of the appeal has an automatic suspensive effect of the removal. Though limited in its implementation by the authorities, the law also foresees the possibility of compulsorily postponement of the removal of a TCN who is in the process of a return procedure, taking into consideration the specific circumstances of each individual case³⁸. The TCN is notified via a certificate of postponement of removal valid for six months and may be renewed after a new assessment on the continuation of the impossibility of removal. Besides forced returns, the Assisted Voluntary Return and Reintegration Program (AVRR) is implemented by IOM. AVRR addresses TCNs who do not have the appropriate documentation to stay in Greece, or they do not desire to stay in Greece, as well as asylum seekers who have resigned from their request for international protection, and asylum seekers whose applications have been rejected. The number of voluntary returns has increased (14,439 from June 2016 until 31 January 2019 in the field of return and 3,571 in the field of reintegration of migrants from June 2016 until 31 January 2019). At the same time, the allegations of informal forced removals (push-backs) of foreign nationals from Greece to Turkey at the Evros river border increased. Pushbacks constitute an unofficial practice, going against the official processes

³³ L. 3386/2005, OG A' 212 /23.08.2005

³⁴ L. 3907/2011, OG A'-7/26.01.2011

³⁵ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

³⁶ Art. 21 (1) of L. 3907/2011, OG A'-7/26.01.2011

³⁷ Art. 76 (1) of L. 3386/2005, OG A' 212 /23.08.2005

³⁸ Article 24 of Law 3709/2011, OG A'-7/26.01.2011

and protection mechanisms for the irregular entry and stay in Greece, as well as official return and deportation procedures. The number of TCNs who alleged that they had been pushed back from Greece to Turkey, had again entered Greek territory and had subsequently been apprehended by the Greek police, is constantly on the rise; creating a new normality in Evros region as illustrated at the report which was published by HumanRights360 in cooperation with the Greek Council for Refugees and ARSIS-Association for the Social Support of Youth³⁹. The frequency and repeated nature of the testimonies of people in detention centres under protective custody, and in reception and identification centres, constitutes evidence of the practice of pushbacks being used extensively and not decreasing, regardless of the silence and denial by the responsible public bodies and authorities, and despite reports of complaints and denouncements that have recently come to light. The monitoring report demonstrates the particularly alarming issue that the persons involved in implementing the practice of push-backs speak Greek, as well as other languages, while reportedly wearing either police or military uniforms. It is observed that the practice of push-backs constitutes a particularly wide-spread practice, often employing violence in the process. The practice of push-backs is prohibited both by Greek and EU law, as well as by international treaties and agreements signed and ratified by Greece. These testimonies as recorded in the report were also registered with the Network for Children on the Move under the mandate of the Ombudsman for Minors, and were communicated to the Greek Ombudsman. In short, we observe that the practice of push-backs constitutes a particularly wide-spread practice, often employing violence in the process, leaving the state exposed and posing a threat for rule of law in the country. Following the report on push-backs the prosecutor of Orestiada began a preliminary investigation into the allegations of push-backs and the Ombudsman's office continues its open investigation.

6. Cases of Human Trafficking and Smuggling of Irregular Migrants

Greece is a destination, transit, and, to a limited extent, source country for women and children subject to sex trafficking, as well as men, women, and children subject to forced labor. As Greece is one of the main entry points for migration flows into Europe, potential victims of trafficking may be identified amongst the undocumented migrants entering the country. On 20 September 2016, Government Decision No. 30840 "Establishment and Operation of the National System of Identification and Referral of Victims of Trafficking in Human Beings" was published, providing the legal basis for the formalization of the National Referral Mechanism (NRM) which finally became operational on 1 January 2019.

There were no standardized operating procedures or agreements with NGOs in regards to the implementation of the NRM. The National Centre for Social Solidarity (EKKA), which has been

³⁹ https://www.humanrights360.org/the-new-normality-continuous-push-backs-of-third-country-nationals-on-the-evros-river/?fbclid=IwAR0mvHfvz6r2tz4LLbBHRfQIWYHaVNU_DwJcPtCqx5HnSeZcwSvmkg-Ekw

assigned the task of managing the NRM, is responsible for developing such standardized operating procedures, as well as other instructions necessary for the effective functioning of the NRM, together with the Office of the National Rapporteur on Trafficking in Human Beings. The first-level identification of a presumed victim of trafficking can be initiated by anyone working for a public office, an NGO, or an international organization. According to an analysis of trafficking cases by the Hellenic Police, in almost all cases the identification of victims started either when the victims contacted the authorities after managing to escape the control of the perpetrators, or on the basis of information obtained by the police during investigations. The process of identifying a victim of trafficking of human beings (THB) is currently provided for in Article 1 of the Immigration and Social Integration Code.

The Public Prosecutor's Office is the only authority competent to grant victim status (so-called "act of identification"), on the basis of documents sent by the police, which include a statement (complaint) from the presumed victim. The prosecutor can also grant victim status to a person who does not cooperate with law enforcement authorities, under a specific procedure requiring a written opinion of two specialists who are psychiatrists, psychologists or social workers and are employed at a public office, NGO, IOM or other international organization listed in an Annex to Presidential Decree 233/2003. If the report drawn up by these specialists states that the person cannot cooperate in the investigation, but there are indicators of THB, the prosecutor may decide to grant victim status to the person concerned. Thus, formal identification as a victim of trafficking takes place irrespective of whether prosecution is initiated. In regards to the procedure requiring the written opinion of two specialists, there is conflicting information.

According to prosecutors, the expert opinion of psychiatrists and/or psychologists is always sought when presumed victims of THB do not cooperate in an investigation. However, according to NGO representatives, this procedure is very rarely used and presumed victims are not referred to psychiatrists or psychologists. In accordance with the authorities, it is not possible to provide detailed data on the number of cases in which the alleged trafficking victims, who did not cooperate in criminal proceedings, were identified as trafficking victims on the basis of psychiatric or psychological reports due to lack of computerization of the criminal justice system⁴⁰. According to police statistics for the first half of 2018, 19 cases were investigated involving 83 suspected traffickers compared to 34 cases involving 147 suspected traffickers in 2017⁴¹. Of these, 80 were sex trafficking cases and 6 labour cases (147 sex trafficking cases and zero forced labor cases in 2017). These cases involved 18 victims (17 women, 1 man) of which 11 were minors. In 2017, the cases involved 38 victims of which 35 were women.

The Hellenic Police Unit maintained an Anti-Trafficking Unit within the organized crime division composed of two units in Athens and Thessaloniki that investigated trafficking, and 12 smaller units across municipalities investigating trafficking as well as organized crime related offenses.

⁴⁰ http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=82074&Itemid=73&lang=

⁴¹ http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=82074&Itemid=73&lang=

7. Lessons Learned and Challenges

In 2018, Greece was faced with many challenges: fluctuating migration flows at various entry points; the externalization of EU policy that imposed a containment policy in the islands in order to prevent secondary movement; the criminalization and harassment of humanitarian groups and individual volunteers to end their work helping people on the move; and the lack of a migration strategy from the Greek State in the field of integration. As a result, even more people are stranded at the islands and in the mainland in appalling conditions. Although the capacity of the Asylum Service has significantly improved, 58,793 applicants had pending decisions in 2018. The Reception and Identification Service (RIS) was burdened by continuous amendments of legal provisions regarding the determination of the competent authority under the mandate which has been given to the RIS, as well as of the determination of its director. Thus, access to asylum and reception services remains rather problematic, while Greece seems completely unprepared to facilitate the integration needs of TCNs. Moreover, the number of undocumented persons in view of removal is another challenge for the authorities, especially taking into consideration that the Greek State already conducts limited returns. Capacity building and training of public officials always seems to be a pressing need, while the involvement of different international agencies (EASO, Frontex) in the management of the migration situation in Greece does not seem to address the pressure on asylum/reception systems and at the borders in a quantitative and qualitative manner. EU's proposals for the CEAS's reform and for a more efficient and secure EU visa policy are generally focused on the externalization of migration management and the penalization of secondary movement.



NORTH MACEDONIA

There has been a substantial decrease in the migration flow through the North Macedonia. However, the number of people in transit through the country is thought to be much higher than what the official figures state. The country remains one of the main transit routes for irregular mixed migratory movements. Refugees and migrants enter North Macedonia from Greece and most of them try to cross the border into Serbia through northern villages. There is some backflow as there are refugees and migrants who decide to go back to Greece in order to explore their options through the relocation program. Illegal border crossings have decreased but there is still an indication of unlawful deportations and push-backs of refugees and migrants into Greece;

1. Introduction

As a country along the so-called “Balkan route,” North Macedonia was faced with the huge influx of refugees who were transiting through the country towards EU member states. It was estimated by UNHCR in North Macedonia⁴² that during the migration crisis approximately 2,000 persons per day on average were entering the country through unofficial border crossing points, along the border line with Greece near Gevgelija, and passing through North Macedonia into Serbia. After closure of the borders 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 in migrant smuggling. However, the number of irregular entries has decreased by push-backs, or the informal returning of refugees by the state from their territory to another country, has become more common practice. According to MYLA data, 740 refugees and migrants were pushed back to Greece after having entered North Macedonia in 2017, and 6,997 in 2018⁴³.

Approximately 25,000⁴⁴ refugees and migrants passed through North Macedonia and 8,863 of them were provided with legal aid and counseling in 2018. About 32,500 migrants are considered to have illegally crossed the country's borders in both directions since the beginning of 2018, including many Iranians crossing illegally from Serbia and moving onwards to Greece⁴⁵. Irregular migrants represented a significant portion of the overall migration flow through the country in 2017, with the majority originating from Pakistan (49 %) and Afghanistan (24 %). Most of them just passed through the country, remaining on Macedonian territory for a maximum of one week. Some took advantage of the accommodations and services at the two transit centres in North Macedonia – Vinojug and Tabanovce – with an average of 25 to 50 people present at the camps daily.

A total of 4,129 attempted irregular border crossings were prevented, the vast majority, at the border with Greece in 2017⁴⁶ and 9,638 in 2018⁴⁷. The only readmission case in 2017 was the readmission arrangement between North Macedonia and Greece, when 50 refugees from the Tabanovce Transit Centre were transferred by bus to Greece. There are no records in 2018 for persons returned to Greece by readmission agreements, there is data only for persons returned to North Macedonia by readmission agreements⁴⁸.

According to the annual report⁴⁹ of the *National Commission for Combating Human Trafficking and Illegal Migration*, the migration movements and transiting of the migrants and refugees through the country has increased four times in the second half of 2018 compared with the

⁴² Statistics for irregular movements – UNHCR office in North Macedonia;

⁴³ MYLA statistics on recorded push backs

⁴⁴ Report of the Red Cross for 2018 for persons provided with humanitarian assistance in the villages close to the North Macedonian border with Serbia;

⁴⁵ EU progress report for North Macedonia, 2018

⁴⁶ EU progress report for North Macedonia,

⁴⁷ Respond of the MoI received upon MYLA request for free access of information of public character;

⁴⁸ Respond of the MoI received upon MYLA request for free access of information of public character;

⁴⁹ Annual report of the National Commission for Combating Human Trafficking and Illegal Migration for 2018

previous year. A total of 16,895 attempts for illegal crossings have been registered by the police and 88.4% of them have been registered at the border with Greece.

14,943 attempts at irregular crossing have been registered at the southern border, most of them by people originating from Pakistan, Afghanistan, Iran, India, Syria, Iraq, etc⁵⁰. The northern border with Serbia is used by migrants for illegal exit from the country, but also, backward movement of a significant number of refugees and migrants departing Serbia for North Macedonia, and subsequently to Greece, were registered. There is an increase in the amount of irregular crossings on the northern border with Serbia, where 1,661 so called "attempts for irregular entries" were registered. These new trends are a result of the visa-free regime introduced by Serbia for Iran and India nationals who are using direct air-lines introduced by Iran and Istanbul and arriving in Belgrade. Using the smuggling networks they arrive to Bujanovac, Presevo and Miratovica, and then enter North Macedonia. However, their numbers have decreased since mid-October to December 2018 as a result of the decision of the Ministry of Foreign Affairs in Serbia, which abolished the visa liberalization introduced for Iranian citizens. However, the number of people in transit in the country is assessed by the CSO's that work on the field as being much higher than the official figures.

It can be concluded that, like 2017, in 2018 there was a continued lack of reliable data on the scope and structure of migration flows⁵¹ despite the effective border controls ensured with the help of the army, and deployment of guest officers from EU Member States and Serbia at the southern border. Due to continuing movements, the state of emergency at the southern and northern borders was extended until 30 June 2019.

According to MoI, 52 criminal offences related to smuggling migrants were registered in 2018 against 72 persons.

The majority of intercepted refugees and migrants in these situations were transferred to the Reception Centre for Foreigners in Skopje and were detained as witnesses in the procedure against the smugglers.

In 2018, 361 persons were detained at the Reception Centre for Foreigners, among whom 55 were children (37 were unaccompanied).⁵² The migrants originated from Afghanistan(48), Albania(42), Kosovo(30) Iraq(29), Iran(24) Turkey(18) India(11) Bangladesh(10) Syria(8) Germany(6) Sri Lanka(4) Palestine(4) Congo(3) Serbia(3) BiH(3) Bulgaria(2) Romania(1) Croatia(1), Lithuania(1) Georgia(1) USA(1) Romania(1) France(1) Canada(1) Algeria(1) Libya(1) Eritrea(1) and 1 stateless person. 270 males, 36 females and 55 children have been detained in 2018 in Transit center Gazi baba. According to MoI almost all of them "left" the center after they submitted request for asylum except 11 persons who were deported (Iran- 5, Turkey-2, India-2 and Germany-1). The country continued to arbitrarily detain a number of people apprehended in irregular movements in order to ensure their witness statements in court cases against smugglers⁵³.

⁵⁰ Report of the National Commission for Combating Human Trafficking and Illegal Migration for 2018 and EU progress report for North Macedonia, 2018

⁵¹ EU Progress report 2018 <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-the-former-yugoslav-republic-of-macedonia-report.pdf>

⁵² Response of the MoI received upon MYLA's request for free access to information of public character;

⁵³ EU Progress report 2018 <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-the-former-yugoslav-republic-of-macedonia-report.pdf>

A total of 264 requests for asylum (for 299 persons) were submitted in 2018, compared with 2017 when 147 applications were submitted for 162 persons⁵⁴. Most of the applicants originated from Pakistan, Afghanistan and Syria, while the other applicants were from Iran and Iraq. In 2018, only six persons were granted subsidiary protection. Not a single asylum application was approved granting refugee status over the year.

2. Statistical Data on Irregular Migration in 2018 Compared with Statistics for 2017

Migrants and refugees	No. of foreigners passing through the country	Foreigners who were refused entry	Foreigners with orders of departure	Submitted asylum applications	Foreigners readmitted	Foreigners with rejected asylum applications in the final instance	Migrants intercepted by smugglers
2018	32,500 ⁵⁵	9,638	11	264	/	/	361



⁵⁴ MYLA data on asylum cases, 2017

⁵⁵ EU Progress report 2018 <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-the-former-yugoslav-republic-of-macedonia-report.pdf>

3. Legal Framework on Irregular Migration and Asylum

North Macedonia has legislation and policies in place governing migration movements in the country. Specific laws and policies regulating the issue per se include regulations, procedures and involvement of different state actors to ensure effective border security and border management in the country. In this regard, it should be emphasized that North Macedonia has considerable policies and regulations in place which are aligned with EU regulations and directives. At the center of the border management system are the Law on Border Control, the Law on Foreigners, the Law on International and Temporary Protection, and bylaws associated with these regulations as well as the Criminal Code.

The Law on Foreigners⁵⁶ was adopted by the parliament on 28 May 2018 as a new law which is harmonized with EU legislation⁵⁷. The law entered into force but it has a delayed enforcement of 1 year, i.e. it shall be enforced as of 20 May 2019. The law regulates the conditions of entry, exit, movement, departure, stay, return of illegally staying foreigners, as well as the rights and obligations of foreigners in North Macedonia. The provisions of this law are applicable to all foreigners with the exceptions of those that seek international and temporary protection in the country and those that enjoy privileges and immunities under international law on the basis of reciprocity. In this regard, victims of human trafficking will not be regarded as persons that have illegally entered the country if they can prove that their entry in the county was as a result of human trafficking. The law also foresees the establishment of an integrated base of foreigners, and includes the data on asylum, migration and visas which will be shared among competent authorities for better monitoring of the movement and stay of foreigners in the country. Bylaws associated with this law are being prepared with the assistance of external experts. These are yet to be adopted by the authorities.

The Law on International and a Temporary Protection⁵⁸ was adopted on 14 April 2018 as a new law which replaced the previous law on asylum and temporary protection, and which is fully harmonized with the EU's directives. This law regulates the conditions and procedures for obtaining international and temporary protection in the country, including the termination and annulment of the protection given to foreigners or stateless persons. It also defines the rights and responsibilities of asylum seekers and persons with granted international protection. This law is complementary to the Law on Foreigners as *lex specialis*. From the moment of submitting an application for international protection until the final decision is made, the Law on Foreigners does not apply.

Compared to the previous existing regulations, for the first time this law has introduced the possibility to restrict the freedom of movement of asylum seekers in the country in exceptional cases. Exceptional cases, in line with the law, are considered as establishing identity and citizenship, assessment of the facts under which the request for international

⁵⁶ Official Gazette of No 97/2018

⁵⁷ The adopted text of the law indicates all of the EU directives applicable to foreigners and their family members with which the law is compatible

⁵⁸ Official Gazette No. 64/2018

protection has been made when there is a risk of absconding, protection of public order and national security, or detention for the purpose of removal of foreigners residing illegally in the country in accordance with the Law on Foreigners, for which an application for international protection is submitted with intent to delay or distract the removal decision. The assessment of the risk of absconding of the applicant is made based on evaluation of facts in each individual case, taking into account background information, refusal for cooperation, or if the applicant has provided a fake identity. The limitation of freedom of movement is carried out at the reception centres for asylum seekers (open centre) or centre for foreigners (detention centre). The maximum duration of this measure cannot exceed 6 months. The specifics of the restrictions and manners of performance of the limitation of freedom of movement are prescribed through the bylaw⁵⁹ adopted by the Minister of Interior on 25 December 2018.

Finally, the provisions for removal and expulsion stipulated in the Law on Foreigners will apply only in cases when the rejected applicant or foreigner with terminated protection status fails to comply with the decision to leave the country within the time provided by the authorities.

North Macedonia has also initialled a status agreement with the European Border and Coast Guard (FRONTEX)⁶⁰ that will allow teams from the European Border and Coast Guard Agency to be deployed in North Macedonia. Once in force, the agreement will allow the Agency to carry out joint operations with and within North Macedonia, especially in the event of sudden migratory challenges. The draft agreement is expected to be formally signed at a later phase after completion of the necessary legal proceedings.

Finally, apart from the above mentioned agreements and treaties, North Macedonia is a member of numerous other binding and nonbinding treaties and agreements which indirectly tackle questions related to migration. Out of those nonbinding agreements are the Global Compact of Refugees and the Global Compact for Migration, recently adopted by the UN General Assembly in December 2018.

North Macedonia has adopted several strategies on migration policies and management: Resolution on Migration Policies 2015-2020⁶¹, National Integrated Border Management Development Strategy 2015 – 2019, The Strategy for Combatting Trafficking in Human Beings and Illegal Migration in North Macedonia, Police Development Strategy 2016-2020, and the National Counter-Terrorism Strategy of North Macedonia. The Strategy for Integration of Refugees and Migrants is still in the draft stage and has not been adopted by the government due to the political crisis at the time when this strategy was introduced to the public. Finally, North Macedonia has signed readmission agreements with EU of persons residing illegally in the EU, and bilateral readmission agreements with other countries, EU- and non-EU members. On 1 June 2018, a protocol related to the readmission agreement with Kosovo entered into force.

⁵⁹ Official Gazette No. 239/2018

⁶⁰ European Commission - Press release, available at http://europa.eu/rapid/press-release_IP-18-4567_en.htm European Border and Coast Guard Agency (EBCGA)

⁶¹ <https://iomskopje.org/wp-content/uploads/2018/11/Resolution-on-Migration-Policy.pdf>

Regarding the bylaws associated with these laws, the bylaw on the limitation of freedom of movement for the asylum seekers has been adopted, as well as the Rulebook on the manner of accommodation of asylum seekers at the Reception Centers for Asylum Seekers. Two bylaws related to the Law on Foreigners are being prepared with the assistance of external experts. They are yet to be adopted by the authorities.

4. Policies and Practices of Immigration Detention of Irregular Migrants and Vulnerable Groups

The legal framework of immigration detention in North Macedonia is set forth in the Law on Border Control⁶² and the Law on Foreigners⁶³. When it comes to the limitation of freedom of movement, the provisions of the Law on Criminal Procedure⁶⁴ are also relevant. Under the Law on Border Control, a person can be detained for up to 24 hours to enable implementation of border control procedures.

According to the Law on Foreigners, a foreigner can be detained in North Macedonia for the purpose of establishing identity, after which forced removal may be determined. In the Law on Foreigners, it is noted that the MoI may detain a person for up to 24 hours to ensure his deportation. A foreigner may be detained until the reasons preventing his/her deportation from the territory of the Republic of North Macedonia cease to exist, but no longer than 12 months. Under article 158, a person who refuses or is unable to prove his identity may be detained for the purpose of establishing his/her identity. If the foreigner refuses or is unable to prove his/her identity, the authorized officers of the MoI may further detain him/her for a period no longer than 12 hours. Under the Law on Criminal Procedure there is a possibility of detainment for the purpose of establishing identity⁶⁵, checking alibis or other reasons, when it is necessary to collect data for conducting a procedure against that person. However, according to the Law on Criminal Procedure⁶⁶ detention may last up to 24 hours from the moment of deprivation of liberty, and during this time the detained person must be brought before the competent judge.

The Law on Asylum and Temporary Protection⁶⁷, for the first time, introduced the possibility of detaining asylum seekers in special conditions, as prescribed by law. According to Article 63, in exceptional cases, asylum seekers may have their freedom of movement limited if other less coercive alternative measures are inapplicable, in accordance with the national legislation. The exceptional cases are noted in Article 64: establishing and checking identity and citizenship; establishing the facts and the circumstances on the basis of which the

⁶² Official Gazette of the Republic of Macedonia, No. 171/2010, last amendment: 31.08.2015

⁶³ Official Gazette of the Republic of Macedonia, No. 35/2006, last amendment: 31.08.2015

⁶⁴ Official Gazette of the Republic of Macedonia, no.150/2010, 100/2012 and 142/2016)

⁶⁵ Official Gazette of the Republic of Macedonia, no.150/2010, 100/2012 and 142/2016), Article 159

⁶⁶ Official Gazette of the Republic of Macedonia, no.150/2010, 100/2012 and 142/2016), Article 161 paragraph 3

⁶⁷ Official Gazette of the Republic of Macedonia, No. 49/2003, last amendment: 11.04.2016

application for recognition of the right to asylum has been filed which cannot be determined without a limitation of movement, especially if it is estimated that there is a risk of escape, protection of the public order or the national security, or detention of a foreign national in accordance with the regulations on foreign nationals regarding the refoulement of foreign nationals who are staying in the country illegally.

Articles 63 and 64 from the law are contrary to the fundamental freedoms and rights of the person and citizen recognized by international law and determined by the Constitution, and especially with the right to freedom from Article 12 of the Constitution of the Republic of North Macedonia. Therefore, on 17 May 2018, an initiative⁶⁸ was submitted by MYLA to the Constitutional Court for initiating a procedure for assessing the constitutionality of Articles 63 and 64 of the Law on International and Temporary Protection.

In this reporting period, MYLA did not receive any decisions for deprivation of freedom of movement during the asylum procedure according to the new Law on International and Temporary Protection. Four children were referred to alternative care arrangements immediately upon registration.

From the provisions referring to the detention of foreigners, we can see that the grounds for immigration detention are not clearly prescribed within the law. Even the relevant authorities cannot explain the legal grounds for the systematic deprivation of liberty of refugees and migrants detained as witnesses in criminal procedures. The written decisions themselves do not specify the legal grounds for detention. The detainees are not informed of the reasons for their detention. The majority of them are apprehended by police while traveling with migrant smugglers, and they are told that they are being detained as witnesses in criminal proceedings against the smugglers. In the first half of the year, 24% out of 270 refugees and migrants who traveled in various groups were detained, and the rest were returned to Greece in the absence of a formal procedure. The legal grounds for detention also could not be determined during immigration detention visits conducted by MYLA⁶⁹. Detention for the purpose of securing witnesses in criminal proceedings is not foreseen in any national law. In addition, it should be mentioned that the Law on Foreigners allows detention of a foreigner without a court order, despite the fact that the right of human freedom is constitutionally guaranteed: "No one can be restricted in freedom, except by a court decision and in conditions and procedures as prescribed by law"⁷⁰.

However, the practice of detaining migrants and asylum seekers for the purpose of securing their testimony as witnesses in criminal proceedings continues. The authorities are using detention without properly assessing if detention is necessary and proportionate according to national and international law. During the reporting period at least 361 individuals were affected by immigration detention in North Macedonia (270 males, 36 females and 55 children). The majority of the detainees originated from Pakistan, Syria and Afghanistan. The average

68 Initiative to the Constitutional Court for Articles 63 and 64 of LITP <http://myla.org.mk/wp-content/uploads/2018/05/%D0%A3%D1%81%D1%82%D0%B0%D0%B2%D0%BD%D0%B0-%D0%B8%D0%BD%D1%86%D0%B8%D1%98%D0%B0%D1%82%D0%B8%D0%B2%D0%B0-%D0%97%D0%B0%D0%BA%D0%BE%D0%BD-%D0%B7%D0%B0-%D0%BC%D0%B5%D1%93%D1%83%D0%BD%D0%B0%D1%80%D0%BE%D0%B4%D0%BD%D0%B0-%D0%B8-%D0%BF%D1%80%D0%B8%D0%B2%D1%80%D0%B5%D0%BC%D0%B5%D0%BD%D0%B0-%D0%B7%D0%B0%D1%88%D1%82%D0%B8%D1%82%D0%B0.pdf>

69 MYLA report on detention for 2017, <http://myla.org.mk/wp-content/uploads/2016/09/MYLA-Mid-year-Report-on-Immigration-Detention-in-Macedonia-January%20-%20%94June-2017.pdf>

70 Article 12, paragraph 2 of the Constitution of the Republic of Macedonia

length of detention was 10.9 days which is an increase compared to the length of stay in 2017.

There is only one official detention centre in North Macedonia, the Reception Centre for Foreigners in Skopje. The Centre is a dedicated immigration detention facility operated by the police under the authority of the MoI. Although there is no official report, unofficial reports put the facility's capacity at 80-100 people. The Procedures for the Reception Centre for Foreigners, or house rules of the detention centre, supplements the legal mandate for the detention centre and provides the operating rules⁷¹. Construction of a new facility for reception and accommodation of foreigners with unregulated stay is planned for 2018-2020 with the support of the EU⁷².

Access to legal counsel for irregular migrants is guaranteed under the Law on Foreigners⁷³. This right appears to have been limited or not applied at all. MYLA lawyers were only allowed to inform and counsel detainees on the asylum procedure, and when it came to detention they did not have access to the detainees' files. During interviews, most of the detainees complained about the lack of information regarding the reasons for, and duration of, their detention. No interpretation services were offered to ensure that detainees fully understand their legal status, the decisions that concern them, and the documents they are instructed to sign⁷⁴. In addition, there was no effective judicial review of the detention decisions, which is a basic safeguard against arbitrary and unlawful detention.

The same is noted by the European Committee for the Prevention of Torture (CPT) in a report; the vast majority of detained persons their delegation had spoken to did not have access to legal aid at any stage of their proceedings⁷⁵. Translations of detention orders and related documents were not available to detainees or anyone outside the detention centre⁷⁶. In addition, the procedures at the detention centre are only posted on a few information boards⁷⁷. Although the law provides detainees with the right to appeal detention decisions, there are concerns about the efficacy of this process taking in consideration the limited access to legal aid⁷⁸.

In the reporting period MYLA reported cases of separation during apprehension by the police. The majority of persons in detention did not receive detention decisions on time, nor were they adequately informed of the reasons of detention and their rights in a language they understand. Therefore they were unable to challenge their detention. Access to legal assistance for persons in detention was limited to assistance regarding international

⁷¹ Official Gazette of the Republic of Macedonia, No. 06/2007, amended 53/2009 and 75/2013

⁷² National Strategy for Combating Trafficking in Human Beings and Illegal Migration and Action Plan 2017-2020

<http://nacionalnakomisija.gov.mk/wp-content/uploads/2016/12/Nacionalna-strategija-i-akciski-plan-za-borba-protiv-trgovija-so-lugje.pdf>

⁷³ Law on Foreigners, Article 142 (legal aid), Article 141 (right to translation)

⁷⁴ MYLA report on detention for 2017, <http://myla.org.mk/wp-content/uploads/2016/09/MYLA-Mid-year-Report-on-Immigration-Detention-in-Macedonia-January%E2%80%94June-2017.pdf>

⁷⁵ European Committee for the Prevention of Torture (CPT), Report to the Government of the former Yugoslav Republic of Macedonia on the visit carried out to FYRoM by the CPT from 7 to 17 October 2014, 17 March 2016, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806974f0> pp.71, paragraph 130.

⁷⁶ European Committee for the Prevention of Torture (CPT), Report to the Government of the former Yugoslav Republic of Macedonia on the visit carried out to FYRoM by the CPT from 7 to 17 October 2014, 17 March 2016. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806974f0> pp.71, paragraph 129; HRW (2015)

⁷⁷ European Committee for the Prevention of Torture (CPT), Report to the Government of the former Yugoslav Republic of Macedonia on the visit carried out to FYRoM by the CPT from 7 to 17 October 2014, 17 March 2016, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806974f0> pp. 71, paragraph 129

⁷⁸ Law on Foreigners, Article 108

protection provided by MYLA. Four children were referred to alternative care arrangements immediately upon the registration at the center.

In the first half of 2018, 45% of asylum seekers were detained prior to seeking asylum. Some of the persons detained in the immigration detention centre faced obstacles in accessing the asylum procedure.

5. Return Policy

The Law on Foreigners regulates the conditions of entry, exit, departure, stay, as well the return of foreigners illegally staying in the country. The Ministry of Interior is the responsible body deciding on the return of a foreigner whose legal residence in the country is cancelled or revoked, as well as for foreigners who reside illegally or are expelled from the country. Chapter V of the law contains provisions for the return of foreigners in which there are articles regulating: conditions for return, responsibility of the Ministry of Interior for issuing return decisions, expulsion of foreigners, voluntary return of foreigners, removal, etc. In addition, there are specific provisions that guarantee the principle of non-refoulement and to protect foreigners from the risk of inhuman treatment in the country to which the foreigner is to be returned, especially regarding minors and other vulnerable persons, as well as victims of human trafficking.

The same provisions are applicable for return of illegally staying third-country nationals and there are no specific provisions for the return of illegal migrants. The return procedure of irregular migrants is left to be regulated by the bilateral readmission agreements signed between the respected counties.

The new Law on Foreigners has not taken into account the recommendations for the country noted in the EU progress report for 2018: "...the country in the national legislation to put in place a return mechanism for irregular migrants, which is in line with the EU acquis." The law should contain provisions for harmonization of national legislation with Return Directive 2008/115 / EC⁷⁹ in regard to the Article which prescribes that the state should provide an effective monitoring system in case of forced return and removal of foreigners from the country. Also the law lacks provisions for establishing an effective free legal aid system to foreigners, especially for returnees and those kept in detention, which is set as a minimum legal safeguard in the return directive.

The procedure and conditions for the return of third country nationals is regulated in the specific readmission agreements signed between North Macedonia and other countries in the region. As specified in the Stabilization and Association Agreement between the EU and the Republic of North Macedonia in 2001, an agreement on the readmission of persons residing illegally in the EU was ratified by the Republic of North Macedonia in 2007⁸⁰. The Republic

⁷⁹ Directive 2008/115 / EC <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:en:PDF>

⁸⁰ Agreement between the European community and the former Yugoslav Republic of Macedonia on the readmission of persons residing without authorization, Official Journal of the European Union n° L334/7, 19/12/2007. Available at: <http://ec.europa.eu/world/agreements/downloadFile.do?fullText=yes&treatyTransId=11641> [accessed on 29/09/2017]

of North Macedonia has also signed readmission agreements with other countries, both EU member states and non-member states. Thus, to date, the Republic of North Macedonia has bilateral readmission agreements with Albania, Austria, Belgium, Bosnia-Herzegovina, Bulgaria, Denmark, France, Germany, Hungary, Iceland, Italy, Kosovo, Moldova, Montenegro, Norway, Poland, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden and Switzerland.

The non-existence of any data for third country nationals returned from North Macedonia to other neighbouring countries by readmission agreements shows that they are not functional⁸¹. On the other hand, according to the EU progress report for the country for 2018, the number of unlawful returns has increased and since January 2018, international organizations recorded 8,823 persons returned irregularly to Greece⁸². This practice led to the conclusion that, during 2018, the country failed to offer protection to many new arrivals, to at least 8,823 refugees, instead pushing them back to Greece. These unlawful returns are performed without consideration of the individual circumstances of each person, without legal assistance and interpretation in a language they understand, as well as without the possibility of appeal. As noted in the Progress Report for North Macedonia for 2018, the conclusion is that “in the absence of an adequate system for the orderly management of irregular movements, in particular the possibility to effectively implement some readmission arrangements with neighbouring countries, illegal returns continued”.

6. Cases of Human Trafficking and Smuggling of Irregular Migrants;

During the period when there was facilitated, regular transit of refugees and migrants, the main transit route passed through the country. After the border closure along the Balkan route in March 2016, the smugglers rapidly renewed the routes for smuggling of migrants in the region. An important 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 the country, 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 criminal groups dealing in the smuggling of migrants. The most frequent routes for smuggling of migrants from Greece to North Macedonia pass in the vicinity of the village of Moin, to the west of the river Vardar, and the villages of Stojakovo and Selemlji to the east of the river Vardar. The border crossing “Bogorodica” is used to smuggle migrants in passenger and freight vehicles, and there have also been cases of migrant smuggling noted in passenger and freight trains at the railway border crossing “Gevgelija”. For illegal border crossing of migrants, the smugglers have also passed over Belasica Mountain, from where the migrants were transferred to the Dojran area. Due to increased security measures on the green border, there has been a noted trend of increase in the attempts to smuggle migrants through official border crossings using passenger or freight vehicles⁸³.

⁸¹ Respond of the MoI received upon MYLA request for free access of information of public character;

⁸² EU Progress report for the country for 2018, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-north-macedonia-report.pdf?fbclid=IwAR3N3SGNAvo088MEy-K3JaSxn_-e9Oxtnejrh8wOjpeeaBRtNopofw99GxM

⁸³ Trafficking in human beings and smuggling of migrants in North Macedonia – Report on the situation, achievements, and challenges in protection of migrants-victims of trafficking and smuggling, Report,

For illegal border crossings between Republic of North Macedonia and Serbia, the most frequent routes of irregular migration and smuggling of migrants pass through the region of Lipkovo - the green border at 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 Kumanovo⁸⁴.

Regarding the developments in legislation and policy, the government, in cooperation with international organizations, has developed indicators for identifying potential trafficking victims in mixed migration flows, together with standardized victim identification procedures. 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, identification is an urgent process through which, by 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 since 2018, the National Unit for Suppression of Migrant Smuggling and Trafficking in Human Beings, are the competent authorities for the first referral. In addition, there are five mobile teams operating in Skopje, Kumanovo, Gevgelija, Bitola and Tetovo, each with the competence to identify vulnerable categories of persons and potential victims of trafficking in human beings, and they include representatives of the MoI, MLSP and the civil sector⁸⁵.

In order to harmonize the national legislation with GRETA's observations and alignment with Article 8 of the 2011/36 / EU Directive in December 2018, the principal of non-punishment of victims of trafficking in human beings was incorporated in the Criminal Code. This legal amendment explicitly states that the trafficking victim who was forced to commit a criminal or other offense during the time of victimization, which is directly related to her position of victim, will not be punished. The same provision is foreseen for a child victim of trafficking. In May 2018, the new Law on Foreigners was adopted that fulfills the recommendations of GRETA regarding the temporary residence permit for trafficked persons, for the period for recovery and reflection and prescribes the provision of more rights for victims.

During 2018 there was a trend of increased identification of victims by the institutions and 9 victims of human trafficking (all females, 8 nationals and 1 foreigner, national of Albania) were identified. Most of the victims were trafficked for the purpose of forced sexual exploitation (in combination with begging, forced prostitution and coercion to commit crimes) while 3 are victims of forced marriage (forced to beg and sexual exploitation).

There were 124⁸⁶ potential victims of human trafficking, from which 87 are children (75 females and 49 males). 20 of the potential victims are identified among irregular migrants. Criminal charges were brought against 17 perpetrators for 7 cases for the criminal offence

⁸⁴ MAPPING OF SMUGGLING IN THE WESTERN BALKAN REGION, Dr. Slobodan Cvejik and Sande Kitanov, International Organization for Migration-IOM, 2017

⁸⁵ MYLA has representatives in mobile teams in Tetovo, Kumanovo, Gevgelija and Bitola

⁸⁶ ANNUAL REPORT OF THE NATIONAL COMMITTEE FOR FIGHT AGAINST TRAFFICKING IN HUMAN BEINGS AND ILLEGAL MIGRATION FOR 2018

human of trafficking in children. Only three criminal charges were brought against three people in 2017, for the criminal offence of trafficking in children.

Combatting smuggling networks is being set as a priority as well for 2018. Criminal charges were submitted against 73 people (72 males and 1 female) for smuggling migrants. For the criminal acts related to trafficking in human beings and illegal migration during the year 2018, a total of 60 cases were submitted to the Basic Court Skopje 1 - Skopje, in which 82 persons were charged, of which 48 cases were completed and 66 persons were convicted. The duration of prison sentences ranges from 1 to 6 years.

Victims of human trafficking may submit a request for compensation for material and non-material damages at any stage of the criminal proceedings. The court may also refer the victim to the relevant civil procedure for her/his right to receive compensation. Pursuant to the Criminal Procedure Law, a victim of a crime for which a prison sentence of at least four years is prescribed is entitled to compensation from a state fund under the terms and in the manner prescribed by a special law, if compensation cannot be recovered from the defendant. However, this law is in the process of being drafted and it is planned to be adopted in 2019. The national authorities have indicated that no victim of human trafficking has applied for and received compensation during the reporting period. In the reporting period, there was no verdict for closure of a business used to commit trafficking in human beings.

In the EU's progress report it is noted that: Some progress was also made in meeting last years' recommendations on improving the track record, stepping up law enforcement cooperation and substantially improving the operational capacity to fight trafficking in human beings. Further progress was made at the operational level by improving the effectiveness of the National Coordination Centre for the Fight against Organized Crime and participation in joint operations with EU Member States and neighboring countries⁸⁷.

7. Lessons Learned and Challenges

There has been a substantial decrease in the migration flow through North Macedonia. However, the number of people in transit through the country is thought to be much higher than what the official figures state. The country remains one of the main transit routes for irregular mixed migratory movements. Illegal border crossings have decreased but there is still an indication of unlawful deportations and push-backs of refugees and migrants into Greece. Even the EU progress report noted that in 2018, a total of 16,895 attempted irregular border crossings (compared with 4,129 attempted irregular border crossings) were prevented, the vast majority of which were at the Macedonian-Greek border. There is a need for a protection-based entry system and independent border monitoring system to be established that will ensure that there is proper screening of the needs of refugees and migrants.

Progress was made in improving the legal framework with the adoption of amendments to the Law on International and Temporary Protection and the Law on Foreigners. In the EU Progress

⁸⁷ EU progress report for North Macedonia, 2019 <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-north-macedonia-report.pdf>

report, 2019 it is noted that “Good progress was made, including on legal alignment in the area of migration”⁸⁸. However, the newly introduced amendments in the Law on International and Temporary Protection for deprivation of liberty of asylum seekers will remain a challenge in the coming period, since only one decision has been issued⁸⁹.

Migrants and refugees who do not fulfil the conditions for regular stay, or who have been rejected as asylum seekers, must be returned to their country of origin. In the reporting period, no data was received by MoI for third country nationals returned back to other countries from North Macedonia according to readmission agreements⁹⁰. However, per the data for prevented attempts of irregular border crossings (16,895 reported in 2018) as well for reported push backs (8,823), the country should ensure that the removal policy is based on common standards. The country should ensure that persons have access to the asylum procedure or be returned in a humane manner and with full respect for their fundamental rights and dignity. Free legal aid is not accessible in practice even for asylum seekers due to a number of requirements which they are not able to fulfil. Therefore, the required legal aid should be made available to those who lack sufficient resources. National legislation should provide for which cases legal aid is to be considered necessary. However, the country needs to put in place a return mechanism for irregular migrants, in line with the acquis⁹¹.

The state should ensure that all refugees and migrants kept in immigration detention are informed of the grounds of detention and should be provided with access to an effective remedy whereby the detainees can effectively challenge the lawfulness of their detention with the assistance of a lawyer, in line with standards laid out by the ECHR. There should be an individual approach to each deprivation of liberty, not systematic unlawful detention of migrants detained as witnesses in criminal procedures against smugglers. The state needs to ensure that all operations to identify, apprehend, and detain irregular migrants are conducted in a manner consistent with Macedonia's national and international human rights obligations.

The ineffectual identification of victims of human trafficking means that there is a lack of protection-sensitive profiling which need to be ensured. Increased attention should be given to detecting potential victims of trafficking among migrants and asylum seekers and securing access to interpretation services to facilitate the process. One of the priorities of the Resolution on Migration Policy and Action Plan (2015-2020) is the improved efficiency of competent institutions in detecting and preventing illegal migration, and respect for the rights and protection of vulnerable categories of migrants when dealing with them. However, the problem of regular smuggling activities at the northern border needs to be further addressed⁹².

⁸⁸ EU progress report for North Macedonia, 2019 <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-north-macedonia-report.pdf>

⁸⁹ MYLA data for 2018

⁹⁰ Response of the MoI received upon MYLA request for free access of information of public character;

⁹¹ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-north-macedonia-report.pdf?fbclid=IwAR3N3SGNAvo088MEy-K3JaSxn_-e9Oxtnejrh8wOjpeeaBRtNopofw99GxM

⁹² EU progress report for North Macedonia, 2019 <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-north-macedonia-report.pdf>

⁹² EU progress report for North Macedonia, 2019 <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-north-macedonia-report.pdf>

To improve the protection of the victims of human trafficking, the border police needs to receive training in communication, interaction and treatment of migrants. The country needs to establish a compensation scheme accessible to victims of human trafficking, regardless of their nationality and immigration status. In addition, victims of human trafficking should have effective access to legal aid and protection.





ALBANIA

A growing number of migrants and refugees used the new Balkan route through Albania, Montenegro and Bosnia to reach European countries. Around 5,730 persons have passed through the country which is 446% higher than the total number of persons intercepted during the entire year of 2017 (1049).

1. Introduction

Albania is a parliamentary republic with three independent branches - the legislative (Parliament), the executive (Government) and the judiciary (courts). The territory of Albania is divided into 12 regions, with Tirana as the capital city.

At the governmental level there is no coordinating or leading structure for migration, and the administrative competencies in the area of migration are intertwined and distributed among the governmental structures and other state bodies, whose rights and obligations are stated in the Albanian Constitution and various legal and sub-legal acts.

The Ministry of the Interior is the main institution responsible for migration and asylum. The most important authorities, under the supervision of the Ministry of the Interior, are: the Border and Migration Department in the General Directorate of the State Police, the Asylum and Citizenship Directorate, and the Anti-trafficking and Migration Directorate.

The responsibilities of the authorities in charge of treatment of aliens are stated in the law 108/2013 "On Aliens" (amended). The Ministry of Finance and Economy, through its central and local structures (Directorate of Employment and Vocational Training Policies, National Employment Service) covers the aspects of migration for employment purposes and integration of aliens. Relations with the Albanian communities abroad are the focus of the Minister of State for Diaspora and Ministry for Europe and Foreign Affairs through the consular service and the diaspora sector.

Migration, as a critical global, European, regional and national problem, is a very important aspect of relations of the Republic of Albania with the neighbouring countries, EU Member States, and other countries. It is a serious challenge in view of Albania's efforts for European Union membership. Generally, Albania is still considered a country of origin for economic emigrants, a transit and a destination country for economic immigrants, asylum-seekers and refugees. Migration in the Albanian context is characterised more by international emigration of the local population and less by immigration of aliens to the country. With the start of the new millennium, migration patterns, and the attitudes of Albanians towards them, have changed because of stringent policies of the host countries and intensification by Albania of the fight against irregular migration.⁹³

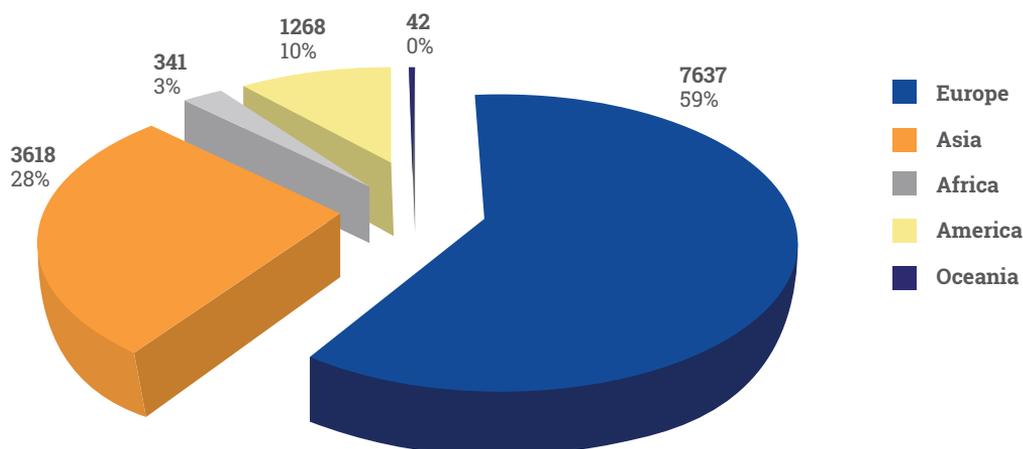
The government cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern. Police allowed UNHCR to monitor the processing, detention, and deportation of some migrants.

On 1 January 2018, the number of aliens residing in Albania was 12 906 or around 0.4 % of the population. In 2017, 59% of aliens came from European countries, 10 % came from America

⁹³ Albania – Migration Profile 2017. Ministry of Interior.

(North & South), 28 % from Asia, 3% from Africa, and the number of immigrants from other states was insignificant⁹⁴.

Figure 1. Aliens with residence permit in Albania by continent of origin on 1 January 2018



2. Statistical Data on Irregular Migration in 2018 Compared with Statistics¹ for 2017

The number of persons who have passed through the country during 2018, including those intercepted at the border areas and in land territories, and those approaching the border authorities on their own, has reached 5,730 persons which is 446% higher than the total number of persons intercepted during the entire year of 2017 (1049).

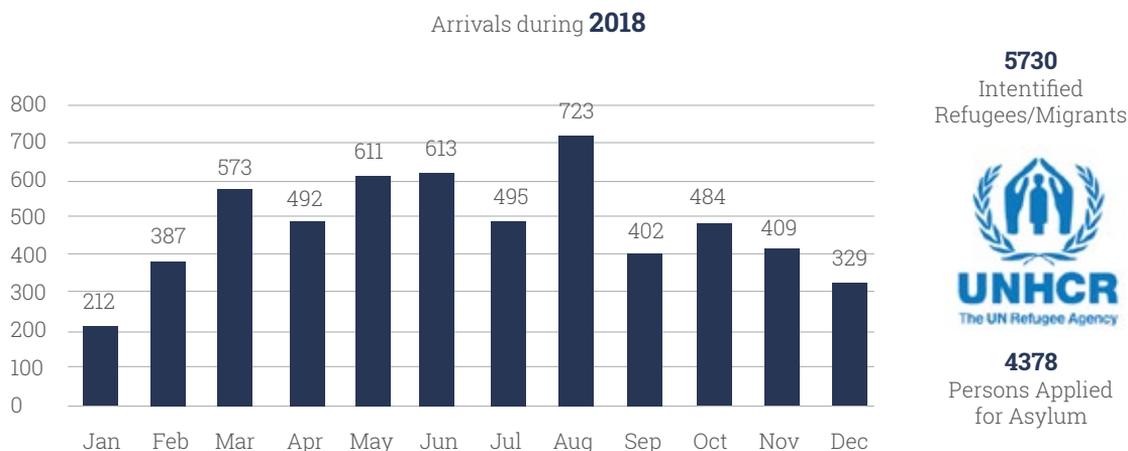
Irregular onward movements include routes from Greece to Albania and onward through other states in the Western Balkan countries to a final destination. Therefore, the number of asylum requests for the reporting period reached 4,378, an increase of 1,317% compared to the total number of asylum requests in 2017 (309). The mixed movements continue to remain transitory in nature, as the majority of the new arrivals primarily try to regularise their status in the country and then move on after a few days.

Among those arriving in Albania during 2018 were people fleeing war, conflict, insecurity and human rights violations in countries like Syria (2552), Pakistan (839), Iraq (565), Palestine (346), Algeria (314), Morocco (271), Afghanistan (72), Yemen (64), Iran (58) etc. The majority of new arrivals are male adults.

⁹⁴ Source: FER-TIMS System in the General Directorate of the State Police, Tirana, 2018

There were only three rejected cases of TCN in the first instance and their cases were appealed to further instances through the legal representatives of UNHCR partners.⁹⁵

Table 1. Irregular Refugee/Migrants Passing through Albania in 2018



3. Legal Framework on Irregular Migration and Asylum

The Albanian migration policy is: stated in the Constitution (as a framework guaranteeing rights and freedoms of aliens), regulated by the legislation in force, subordinate legal acts, and respective orders and instructions.

In the spirit of EU legislation, the amendments to the legal framework on migration over the past few years aim at building a new platform of migration policies for more partnerships in global migration management. Thus, the Albanian legal framework (Law 108/2013 “On Aliens”, amended, together with the normative acts implementing the law) has gone through several improvements with regard to procedures for travel documents, visas, employment, stay, family reunification, etc.

In addition to the Decision of the Council of Ministers no. 510 dated 13 September 2017 “On definition of the areas of state responsibility of the Minister of State for Diaspora”, the Parliament of Albania, through Decision no. 98/2017 set up the subcommittee “On Diaspora and Migration” within the Foreign Affairs Committee. The object and scope of responsibility of this sub-committee are the issues of the diaspora and the migration phenomenon in Albania.

Migration management is handled in a special section of the National Strategy for Development and Integration 2025 (NSDI). The NSDI observes that despite the progress made

⁹⁵ Source: <https://www.unhcr.org/albania.html>

in the effective management of migration in Albania, after the implementation of the first National Strategy on Migration (2005-2010) and the Strategy on Reintegration of Albanian Returnees (2010-2015), several challenges need to be addressed: (i) prevention of irregular migration from the country and abuse of the visa-free regime in the EU Schengen area; (ii) sustainable return of Albanians through provision of support for reintegration; (iii) impact of migration development must be strengthened, inter alia, through promotion of human and financial investment from Albanians living abroad; (iv) strengthening the structures of migration management and immigration policy and its implementation based on solid facts, and in line with international standards, including the securing of human rights of all the emigrants.

On 5 October 2018, the European Union signed an agreement with Albania on cooperation for border management between Albania and the European Border and Coast Guard Agency (Frontex).⁹⁶

This agreement allows the European Border and Coast Guard Agency to coordinate operational cooperation between EU member states and Albania on the management of the EU's external borders. Frontex will be able to take action at the external border involving one or more neighbouring member states and Albania. This can include intervention on Albanian territory, subject to Albania's agreement.

The activities included by the agreement are aimed at tackling irregular migration, in particular sudden changes in migratory flows, and cross-border crime, and can involve the provision of increased technical and operational assistance at the border. For each operation, a plan has to be agreed between the European Border and Coast Guard Agency and Albania.

4. Policies and Practices of Immigration Detention of Irregular Migrants and Vulnerable

Authorities often detain irregular migrants who enter the country. As of November 2017 authorities had detained approximately 744 migrants, mostly at the country's southern border with Greece; those who did not request asylum were generally deported to Greece within 24 hours. Migrants detained further inland could spend several weeks at the Karrec closed migrant detention facility awaiting deportation. As of November 2017 the government reported four persons detained in the Karrec facility.

UNHCR reported that approximately 30 percent of migrants requested asylum. Some NGOs and UNHCR maintain that some of the migrants who requested asylum were deported as well. UNHCR made formal complaints to the government, but authorities were generally slow to address them. UNHCR reported that conditions at the Karrec centre were unsuitable,

⁹⁶ www.consilium.europa.eu

particularly for children. As of September, the government had referred fewer migrants to Karrec than in 2016, and only one minor--a 17-year-old boy travelling in a group--spent time there.⁹⁷

The government did not have updated information regarding the total number of persons at risk of statelessness. Using data from the cases that were resolved from 2011 to 2016 with the support of the NGO Tirana Legal Aid Society, UNHCR estimated the number to be 4,871, down from the 7,443 persons who declared themselves as unregistered during the 2011 census. Most of these were children from Romani or Balkan-Egyptian communities. The risk of statelessness continued to exist for unregistered children born abroad to returning migrant families, although the law affords the opportunity for such cases to obtain Albanian nationality.

5. Return Policy

The Ministry of the Interior, through the Border and Migration Department in the State Police, and the Ministry for Europe and Foreign Affairs, through the consular structure, are the main responsible authorities for the drafting of the return/readmission policy in relation to aliens who stay illegally in Albania. These bodies are also responsible for implementing the bilateral and multilateral legal instruments (i.e. Readmission Agreement) in order to follow and perform the return/readmission procedures of citizens, as well as voluntary returns, which is assisted by the International Organisation for Migration (IOM) in Albania.

The purpose of the Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorisation is to strengthen mutual cooperation in order to combat illegal immigration more effectively, desiring to establish, by means of this Agreement and on the basis of reciprocity, rapid and effective procedures for the identification and safe and orderly return of persons who do not, or no longer, fulfil the conditions for entry to, presence in, or residence on the territory of Albania or one of the member states of the European Union, and to facilitate the transit of such persons in the spirit of cooperation.

According to the Readmission Agreement, Albania shall readmit, upon application by a member state and without further formalities other than those provided for in this Agreement, all third-country nationals or stateless persons who do not, or who no longer, fulfil the conditions for entry into, presence in, or residence on the territory of the requesting member state, provided that it is proved, or may be validly assumed on the basis of furnished prima facie evidence.⁹⁸

Implementation of return/readmission is supported by the liaison officers and the Albanian consular staff abroad who participate in the practices of cooperation with the authorities of the respective countries in order to support the return of persons. Because of refusal of the

⁹⁷ <https://www.justice.gov/eoir/country/albania-contents>

⁹⁸ Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorization – Declarations



Albanian asylum-seekers in some EU member states, the returns, once the asylum-seeking process is over, are converted from returns of a 'deportation nature' into 'voluntary returns'. Bilateral talks anticipated the phenomenon of voluntary returns mainly through special flights from EU member states, including Germany, France, Great Britain, Sweden etc. Many flights of this nature are coordinated by Frontex (European Border Management and Coast Guard Agency).

The re-integration process includes many institutions at the central and local level dealing with implementation of policies for re-integration of repatriated persons. The central institutions involved in the implementation of reintegration policies are: the Ministry of Health and Social Protection, the Ministry of Education, Sports and Youth, the Ministry of Agriculture and Rural Development, the Ministry of Infrastructure and Energy, the Ministry of Finance and Economy, the Ministry for Europe and Foreign Affairs, and the Ministry of Interior.

Voluntary returns continue to be a priority of Albania when it comes to addressing irregular migration by ensuring effective and sustainable return. In accordance with the Return Directive, the return policy in Albania supports voluntary return of persons who are subjects of the removal order from the territory of Albania.

Additionally, a migration policy is also included in the National Strategy for Employment and Skills 2014-2020.

The Ministry for Europe and Foreign Affairs coordinates actions with the structures of the Ministry of Internal Affairs for implementation of bilateral and multilateral readmission agreements.

In 2017, out of a total of 1,049 aliens apprehended or found staying irregularly, 683 persons were removed through readmission procedures, mainly to Greece. The returned/readmitted citizens were from Syria, Afghanistan, Pakistan, etc. Mostly the procedure of voluntary removal of third-country nationals inland was applied at the border, but sometimes the persons concerned were placed in the Closed Centre in Karreç, followed by return procedures based on bilateral agreements between Albania and countries of origin/transit. Out of 74 aliens treated in the Closed Centre for Aliens, 58 were males, 9 were females and 7 were children (4 males and 3 females).

Official data on returned/admitted citizens for 2018 are not yet published by the Ministry of Interior which is the responsible authority for official statistical data.

6. Cases of Human Trafficking and Smuggling of Irregular Migrants

Identification of victims/potential victims of trafficking was made based on Standard Operating Procedures for the Protection of Victims of Trafficking and Potential Victims of Trafficking approved with DCM No. 499, dated 29 August 2018.

Their main purpose is the protection of victims/potential victims of trafficking, including identification at the appropriate time and manner, whether adults or children, Albanian or foreigner citizens or stateless persons, for all kinds of exploitation, domestic or international trafficking, related or not to organized crime.

Based on this procedure, the protection of trafficked persons includes:

- Initial identification and response
- Formal identification
- Planning and support for reintegration
- Planning and support for assisted voluntary return
- Reception of trafficked persons of Albanian citizenship
- Assisted voluntary return for foreign citizens
- Support for investigation and punishment of traffickers

"Initial identification and response" includes the entirety of actions undertaken by state and non-state institutions responsible for the protection of trafficked persons at the border and in the territory of the Republic of Albania, as well as local and central government institutions, which make it possible to determine that a child or adult is a potential victim of trafficking in human beings.

"Formal identification" is the identification of a person as a victim of trafficking, conducted only by the Group/Structure Responsible for Formal Identification (G/SRFI) on the basis of the formal interview format included in this document. The only means of formal identification is formal/official interview.

Assistance to victims of trafficking/potential victims of trafficking has been provided in residential centres and community as well. There are four trafficking victims' shelters in Albania, three shelters are run by NGOs, and the fourth is a state-run shelter. The three NGO centres provide long-term reintegration services (residential and community services) for victims of trafficking.

Foreign victims of trafficking/potential victims of trafficking have been treated by the same services as Albanian victims, specifying also the assisted return in cooperation with the relevant Embassies and the responsible authority according to the Standard Operating Procedures (SOPs).

Other services offered to foreign victims are: their application for, and provision of, a temporary residence permit; provision of documents and access to other facilities for their return in their country of origin in case they voluntarily do so; provision of interpretation services; registration of their children in the Registrar's Office when the birth has taken place in Albania, enrolment in the Albanian education system for children in cases of parents with a long term resident permit.

The Anti-trafficking and Migration Directorate in the Ministry of the Interior is the responsible body to perform the monitoring, coordination, promotion and orientation of the activity of central/local structures in issues of prevention and fight against trafficking in persons in the

framework of implementation of the recently approved National Strategy of the Fight Against Trafficking in Human Beings 2018-2020 approved with DCM No. 770, dated 26 December 2018 which is based on four pillars: Prosecution; Protection; Prevention and Consentaneity.

Between January and September 2017, 77 victims of trafficking were brought to the attention of the authorities; however, different sources told the Home Office fact-finding team (HO FFT) that not all cases were identified, and not all cases were recorded correctly. Data was not separated between labour trafficking exploitation and sexual trafficking exploitation.

The women are from all backgrounds, but typically aged 18 to 25, although there are younger victims. People from the Romani and Balkan Egyptian communities are particularly vulnerable to trafficking for forced labour.

Different and Equal, an NGO working with victims of trafficking, told the HO FFT in 2017 that the figure is now 4 to 5%. Re-trafficking has become a less common occurrence, with a very small percentage of women willingly leaving the security of shelters or re-integration assistance and being re-trafficked.

The government has made significant efforts to improve its response to trafficking in recent years and is, in general, both willing and able to protect victims or potential victims of trafficking. However, this protection may not be sufficient in every case, and each case must therefore be considered on an individual basis, with the burden on the person to demonstrate that protection would not be available.

Referring to data administered by the Anti-Trafficking and Migration Directorate in the Ministry of Interior, a total of 105 victims/potential victims of trafficking were identified in 2017 (see table below).

Table 2. Victims of trafficking/potential victims of trafficking (2016-2017)⁹⁹

	YEAR	2016	2017
Status	Victims of Trafficking	33	26
	Potential victims of Trafficking	62	79
Age	Adults	51	49
	Children	44	56
Sex	M	11	25
	F	84	80
Citizenship	Albanian	87	96
	Aliens	8	9

NB. With regard to data on victims of trafficking in 2018 the Ministry of Interior has not yet published the official report since it is launched on a yearly basis by mid-year of the following year (by June 2019).

⁹⁹ Source: Anti-trafficking and Migration Directorate, Tirana, 2018

7. Lessons Learned and Challenges

With regards to migration governance policy (strategy and action plan), Albania is currently in the process of reformulation since the previous National Strategy on Migration and Action Plan was developed in 2005 and ended in 2010.

Referring to the asylum system in the country, there is an effort to create a general data base of all asylum seekers from the moment of their entry in Albania by the Ministry of Interior in collaboration with UNHCR branch office in Tirana. This system is not effective yet, but it is a positive step that may be further improved upon.

Regarding the current law on asylum there are some gaps to be filled in the law with different by-laws, especially on the integration process which is often a challenge for those who are issued refugee status. Also documentation of persons who have been granted refugee status, including travel documents and ID documents, is a long and difficult process that needs to be properly addressed.

Even though data collection has been reported as a well-developed area, it is important that Albania continues to collect and analyse data in order to prepare migration forecasts as well as to understand the impact of migration trends on its labour market.

There is a lack of strategy for addressing migratory movements caused by the adverse effects of environmental, and climate change.

The National Strategy for Development and Integration 2015–2020 does not include specific provisions regarding migration-related issues in post-crisis recovery strategies. Neither does it address displacement.

Moreover, the migration policy does not explicitly address the potential return of migrants who fled the country during a period of crisis, although the rights of immigrants are protected by the Constitution of Albania and the Civil Code.

Albanian authorities will face challenges trying to implement the law that exempts victims from penalties for unlawful acts committed as a direct result of being subjected to trafficking, particularly sex trafficking victims exploited in prostitution.





KOSOVO

During 2018 there were 501 persons who irregularly crossed into the country, which marks a significant increase of 282% in the number of irregular migrants, compared to the previous year when the number was 131. This number may rise in the upcoming years, considering that high numbers of migrants are on the move in neighbouring countries.

1. Introduction

The Criminal Code of the Republic of Kosovo¹⁰⁰ has defined illegal entry in Article 170, paragraph 8.2 as: "crossing a border or a boundary of the Republic of Kosovo without complying with the necessary requirements for legal entry into the Republic of Kosovo or crossing the borders of a State without complying with the necessary requirements for legal entry into such State."¹⁰¹

During 2018 there were 501 persons who irregularly crossed into the country, which marks a significant increase of 282% in the number of irregular migrants, compared to the previous year when the number was 131. This number may rise in the upcoming years, considering that high numbers of migrants are on the move in neighbouring countries. CRP/K started border monitoring activities in January 2018 and is expected to continue through 2019, based on the project with UNHCR.

Moreover, the current route most used by migrants is Turkey/Greece/Albania/Kosovo/Serbia/EU member states. There are indicators that the geographic position of Kosovo favours irregular migration. A considerable number of unauthorised roads for border crossing exist near the border crossing points, but also along the green border with Albania and North Macedonia when entering, and Serbia and Montenegro on exiting, especially where there are villages near the borders. This facilitates irregular movement and makes the country attractive for both migrants and smugglers. So far, according to state authorities, there was no noted effect on the internal security of the country, but these are factors which might fuel an increase in the number of smugglers.

100 OFFICIAL GAZETTE OF THE REPUBLIC OF KOSOVA / No. 19 / 13 JULY 2012, PRISTINA, CRIMINAL CODE OF THE REPUBLIC OF KOSOVO, CODE NO. 04/L-082, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2834>

101 Article 170, subparagraph 8.2 of CRIMINAL CODE OF THE REPUBLIC OF KOSOVO NO. 04/L-082,

2. Statistical Data on Irregular Migration in 2018 Compared with Statistics for 2017

Statistics on Irregular Migration in 2018	Persons	Comments
Number of third country nationals illegally present in the country in accordance with national legislation on migration	47	Caught by Kosovo Police Border Department, staying illegally in Kosovo in 2018
Third country nationals who have passed through the country during the reporting period	501	/
Third country nationals refused entry	2016	77% European, 21% Asian, 1.5% African and 0.5% from USA / Canada / Australia
Third country nationals with orders of departure	247	148 additional requests were submitted to Ministry of Internal Affairs, Department for Citizenship, Asylum and Migration
Third-country nationals found illegally in the country and for which an administrative/ judicial decision or act has been issued that establishes or declares that the stay is illegal and imposes an obligation to leave the country	25	This number also contains persons who by judicial decision were imposed to leave the country.
Third country nationals whose asylum applications have been rejected in the final instance	2	/
Statistics on Irregular Migration in 2017	Persons	Comments
Number of third country nationals illegally present in the country in accordance with national legislation on migration	0	All left Kosovo within 2017
Third country nationals who have passed through the country during the reporting period	131	/
Third country nationals refused entry	2813	83% EU countries, 15% Asian, 1.5% Africa, 0.5% USA/Canada/Australia
Third country nationals with orders of departure	237	/
Third-country nationals found illegally in the country and for which an administrative/ judicial decision or act has been issued that establishes or declares that the stay is illegal and imposes an obligation to leave the country	16	This number also contains persons who by judicial decision were imposed to leave the country.
Third country nationals whose asylum applications have been rejected in the final instance	3	/

3. Legal Framework on Irregular Migration and Asylum

The legal framework both on legal and irregular migration in Kosovo is Law no. 04/L-219 on Foreigners¹⁰² and the number of sub-legal acts deriving from the Law. The legal framework is considered largely to be in line with the *acquis communautaire*. At the end of March 2018, the amendments to the Law on Foreigners were adopted by the Kosovo Assembly and entered into force in May 2018. As such, the Law is aligned with the latest EU Directives on the employment of nationals from non-EU countries, and aligned with the Visa Information System Regulation (VIS Regulation) on the exchange of data on short-stay visas. Changes in the primary legislation also pose the need to review the secondary legislation. In this vein, the Regulation on Operation of the Detention Centre for Foreigners has been revised and approved by the Ministry of Internal Affairs, while other pieces of secondary legislation, such as the procedure for issuing residence and work permits for foreigners as well as returning foreigners with illegal residence to the Republic of Kosovo, are still under review. In 2018, the Ministry of Internal Affairs also intensified the process of drafting the Regulation on Integration of Foreigners in the Republic of Kosovo. The drafting process by the ministerial working group is still ongoing and the Regulation is expected to be approved by the Government latest by April 2019.

The Department of Citizenship, Asylum and Migration in the Ministry of Internal Affairs is in charge of implementation of the migration policy. The strategy and action plan on migration for 2013-2018 is in place¹⁰³. The 2016 migration profile was adopted in November 2017. It contains an extensive analysis of migration data and of 'push' and 'pull' factors, together with recommendations and policy guidance.

On the other hand, the legal framework on asylum related matters is regulated by Law no. 06/L-026 on Asylum¹⁰⁴. This Law has been revised to further align it with the *acquis* on asylum procedures and reception conditions. Same as with the amendments to the Law on Foreigners, the new Law on Asylum was adopted by the Kosovo Assembly at the end of March 2018 and entered into force in May 2018. The secondary legislation for this law has been also revised, such as it relates to the standards of functioning of the Asylum Centre, the work of the National Commission for Refugees, as well as the Procedures and Standards of Reception and Initial Treatment of Applicants for International Protection, and Procedures and Standards of Review and Ruling on Application for International Protection.

The competent authorities are regularly updating their contingency plans in case of an influx of migrants/refugees to Kosovo.

Currently, Kosovo has neither an agreement, nor any sort of cooperation with, FRONTEX.

102 OFFICIAL GAZETTE OF THE REPUBLIC OF KOSOVA / No. 35 / 5 SEPTEMBER 2013, PRISTINA, LAW NO. 04/L-219 ON FOREIGNERS, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=8876>

103 Available at: <https://mpb.rks-gov.net/Documents/anglisht-2.pdf>

104 OFFICIAL GAZETTE OF THE REPUBLIC OF KOSOVA / No. 8 / 15 May 2018, PRISTINA, LAW NO. 06/L-026 ON ASYLUM, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=8869>



4. Policies and Practices of Immigration Detention of Irregular Migrants and Vulnerable Groups

The Directorate for Migration and Foreigners within the Kosovo Border Police deals with irregular migrants. Kosovo has a detention centre for irregular migrants in Vranidoll, which can host 70 persons, and provide appropriate accommodation for vulnerable groups. The centre serves to fight against illegal migration and human trafficking. It is divided in several blocks, where different parts of it are established to accommodate/detain males, females, human trafficking victims, families and unaccompanied children. The Detention Centre for Foreigners (DCF) functions under the Department for Citizenship Asylum and Migration of the Ministry of Internal Affairs. The centre started its work in June 2015.

In 2018, CRP/K conducted around forty (40) visits to the detention centre. Although legal provisions¹⁰⁵ ensuring the fundamental rights of irregular migrants or foreigners in the Detention Centre for Foreigners are in place, the centre is lacking adequate and specialised staff to ensure basic rights and needs.

Law no.04/L-219 on Foreigners outlines the use of administrative detention for irregular migrants, alternatives for detention, and stipulates the rights of irregular migrants or foreigners hosted in the centre. Article 108 of the Law prescribes that detention is a last resort administrative measure which is issued and executed by the Border Police against a foreigner, for whom a forced removal or removal order has been issued, based on the case-by-case assessment, when all possible alternative measures are implemented, or when based on an assessment such measures are considered inapplicable to a foreigner, or to a foreigner who is under readmission procedures according to readmission agreements in force. In addition, paragraph 2 of Article 108 prescribes that a foreigner shall remain detained in the detention centre for the shortest period of time until legal proceedings are carried out, to enable his/her removal from the Republic of Kosovo within the period of time specified by law. The border police may detain a foreigner in the detention centre for reasons of public security, identity verification, or other reasons. According to the Law, a foreigner may be held at the centre for a period of up to one year (6+6 months).

There are also effective legal remedies against detention in place. A foreigner has the right to appeal the detaining order to the Basic Court, within thirty (30) days of receipt of the detaining order, or extension of detainment. Any party unsatisfied with the decision of the court may lodge an appeal to the Court of Appeals.

Moreover, the Law on Foreigners pays particular attention to vulnerable groups. It prescribes that a child may be kept in the detention centre, only in the case of his/her or his/her family's best interest, and in special facilities separate from those for adults. Before a child is detained in the detention centre, the authorities shall request the opinion of a social worker

¹⁰⁵ OFFICIAL GAZETTE OF THE REPUBLIC OF KOSOVA / 28 December 2018 / PRISTINA, Regulation (MIA) no.04/2018 on Operation of the Detention Centre for Foreigners, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18342>

or psychologist. Despite the guarantees provided by legislation in force, providing proper care for the most vulnerable groups of irregular migrants remains a challenge in Kosovo.

The Law on Foreigners also outlines temporary measures to be taken as alternatives in the detention centre for foreigners who are subject to removal by force, based on a case-by-case review, without affecting the execution of the removal order by force. The temporary alternatives for detention consist of the obligation to appear before the authorities, temporary confiscation of the ticket or travel document, confiscation of financial means or imposing a guarantee, and restrictions on freedom of movement. However in practice, Kosovo authorities mainly tend to detain foreigners in the detention centre, rather than resort to the alternatives for detention.

On 2 May 2018, Kosovo's Ombudsman issued a report with recommendations after a visit to the Detention Centre for Foreigners in Vranidoll¹⁰⁶. Based on the findings, the report recommended that the DCF must have at least one nurse available who would carry out the medical checks of the newly accommodated detainees, distribute therapy, and take care of the medical files of the foreigners within the DCF, as well as one psychologist as stipulated by the Regulation. Furthermore, the report recommended that the centre should establish protocols as follows: protocols for loneliness, bodily injury, self-harm, attempted suicide, sexual abuse and death.

Detained foreigners shall be provided with free legal aid in accordance with regulations, while foreigners shall be notified of all their rights and obligations through a special document in a language they understand, and in which they can prove that they have understood their rights and obligations.

5. Return Policy

Law no. 04/L-219 on Foreigners prescribes the return and removal procedures of foreigners. Moreover, the amendments to the Law on Foreigners determine and clarify the role and responsibilities of Kosovo authorities towards returns as well as the removal process. Assisted voluntary return, and the key actors in this regard, have been explicitly established by the Law¹⁰⁷. The Ministry of Internal Affairs is in the process of revising secondary legislation related to the return of foreigners with illegal residence in the Republic of Kosovo. The new Administrative Instruction aims at regulating the standards and procedures for the return of foreign nationals and stateless persons who do not meet or no longer meet the legal requirements for staying in the territory of the Republic of Kosovo in accordance with the applicable law on foreigners and asylum, as well as facilitating voluntary return.

Based on the 2018 European Commission Report on Kosovo, there are 24 readmission agreements signed between Kosovo and foreign countries, 20 of which are EU Member States

¹⁰⁶ http://www.ombudspersonkosovo.org/repository/docs/ANG-Raport_i_nga_vizita_ne_Qendren_e_Mbajtjes_ne_Vranidoll_25.4.2018_113983.pdf

¹⁰⁷ OFFICIAL GAZETTE OF THE REPUBLIC OF KOSOVA / No.6 / 3 May 2018/ PRISTINA/ Law no.06/L-036 on Amending and Supplementing the Law no.04/L-219 on Foreigners, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=16333>

and countries of the Schengen area. Most recently, an agreement with North Macedonia was signed in December 2017. The readmission agreements with EU Member States and Schengen Associated countries are being implemented smoothly.

In 2018, the Kosovo Police Border Department executed 247 return and removal decisions, while 147 other requests for voluntary return were sent to the Ministry of Internal Affairs.

During the same period, CRP/K registered 109 pushback incidents involving 374 individuals. At the international airport in Prishtina, 88 pushback incidents were recorded towards 275 Turkish citizens, and 14 incidents were recorded at the green border zone with Albania, affecting Iraqi, Algerian, Moroccan, Libyan, Palestinian, Syrian and Pakistani nationals.

6. Cases of Human Trafficking and Smuggling of Irregular Migrants

The Anti-Trafficking Unit of the Kosovo Police Directorate of Investigations on Trafficking in Human Beings (DITHB) is the competent authority for referral and registration of a person who is suspected to be trafficked, once a presumed trafficked person is found and accepts to be referred. Several actors, who may come into contact with a presumed trafficked person and who may refer such persons to the Police, include, but are not limited to: Law enforcement officers (anti-trafficking police officers, border police officers, community police officers, front-line officers, police investigators, custom officers), public prosecutors, NGOs workers, outreach workers, Anti-trafficking and Domestic Violence Helpline operators, the presumed trafficked persons themselves, other trafficked persons, family members, private citizens, health care professionals, labour inspectors, immigration service officers, detention centre personnel, transportation personnel, embassy or consular officials, foreign NGO workers, foreign law enforcement officers, foreign public prosecutors, and others.

Once identification is made, a team is convened within two hours. This team is composed of a police officer of the Anti-trafficking Unit, the victim's advocate from the Regional Office, a social worker from the Municipal Centre for Social Work (if the trafficking victim is a child), and an interpreter if the victim is a foreigner.

The initial screening is based on questions regarding personal data, living conditions, working conditions, and the trafficking process. The initial screening is carried out by the police officer of the Anti-Trafficking Unit after the informed consent of the presumed trafficked person, the consent of the parent/caregiver or social worker/legal guardian if it is a minor, with the support of an interpreter.

Victims of trafficking may be voluntarily repatriated or provided with temporary residence permits in Kosovo while benefiting from shelter provision, health care, financial support, education and employment.

The Kosovo Criminal Code on Article 170 has foreseen that *"1. Whoever engages in the smuggling of migrants shall be punished by fine and imprisonment of two (2) to ten (10) years. 2. Whoever with the intent to obtain, directly or indirectly, a financial or other material benefit, produces, supplies, provides or possesses a fraudulent travel or identity document in order to enable the smuggling of migrants shall be punished by a fine and imprisonment of up to five (5) years. 3. Whoever enables a person who is not a national of the Republic of Kosovo to remain in the Republic of Kosovo or a person who is not a national or a permanent resident to remain in the State concerned, without complying with the necessary legal requirements to remain by the means provided for in paragraph 2 of this Article or by any other illegal means shall be punished by a fine and imprisonment of up to one (1) year."*

The same Article stipulates that *"9. A person is not criminally liable under this Article if he or she is a migrant who is the object of the offense provided for in this Article."*The consent of the victim of trafficking is irrelevant when it's given after use of force, threat or bribery.

During the reporting period, 16 smuggling incidents, involving 50 individuals, were reported by CRP/K officers. In all cases, legal action was taken against the smugglers who were caught smuggling migrants coming from Pakistan, Afghanistan, Iraq and Syria. Smugglers are placed in detention while court procedures are ongoing.

Based on the law on preventing and combating trafficking in human beings and protecting victims of trafficking, a commission is established and serves as a panel for receiving, reviewing and deciding on the application for compensation of victims of trafficking in human beings.

Furthermore, Law No. 05/L-036 on Crime Victim Compensation¹⁰⁸ entered into force in June 2015. The purpose of this law is the establishment and the functioning of the Crime Victim Compensation Program. This law sets forth the basics of the compensation procedure while Administrative Instruction (grk) no. 01/2017 on the Manner of Compensation Including the Calculation of the Compensation for Multiple Damages¹⁰⁹ determines the manner of compensation, including the procedure of receiving, handling and reviewing applications, calculation and decision making regarding the compensation of crime victims.

Administrative Instruction no. 02/2017 on Registers for Applicants and Decisions Issued on Compensations¹¹⁰ entered into force on January 2017. This AI determines the form and manner of maintaining records of applicants and decisions issued on victims' compensations. However CRP/K was unable to obtain information on the number of trafficking victims who were subject to compensation during 2017.

108 OFFICIAL GAZETTE OF THE REPUBLIC OF KOSOVA / No. 17 / 30 JUNE 2015, PRISTINA, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10936>

109 ADMINISTRATIVE INSTRUCTION (GRK) NO 01/2017 ON THE MANNER OF COMPENSATION INCLUDING THE CALCULATION OF THE COMPENSATION FOR MULTIPLE DAMAGES², available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10936>

110 ADMINISTRATIVE INSTRUCTION (GRK) NO 02/2017 ON REGISTERS FOR APPLICANTS AND DECISIONS ISSUED ON COMPENSATIONS, available at: http://www.kryeministri-ks.net/repository/docs/UDHEZIM_ADMINISTRATIV_PER_REGJISTRAT_PER_PARASHTRUESIT_E_KERKESES_DHE_PER_VENDIMET_E_LESHUARA_RRETH_KOMPENS.pdf

7. Lessons Learned and Challenges

CRP/K took part in the drafting and amendment of the legislation in the relevant field, and considers it to be in line with the aquis, but there are few identified challenges when it comes to implementation in practice.

The Law on Foreigners provides temporary measures to be taken as alternative detaining measures in the Detention Centre for Foreigners who are subject to removal by force. However, Kosovo authorities mainly detain foreigners in the detention centre, and rarely seek alternatives to detention.

Furthermore, the 2018 European Commission Report on Kosovo recommends that Kosovo needs to put in place a return mechanism for irregular migrants in line with EU standards and practices.

Although legal provisions ensuring the fundamental rights of irregular migrants or foreigners in the Detention Centre for Foreigners are in place, the centre is lacking adequate and specialised staff to ensure basic rights and needs.

Despite the guarantees provided by the Law on Foreigners, providing proper care for the most vulnerable groups of irregular migrants remains a challenge in Kosovo. Even after the adoption of the 2015-2019 strategy and action plan against trafficking in human beings which gives priority to preventing trafficking in persons, protecting and supporting victims and witnesses, investigating and prosecuting trafficking crimes and protecting children, Kosovo is still struggling to find sustainable funding to ensure shelters for victims of gender-based violence and trafficking in human beings as well as reintegration of victims.

Border staff need proper training on issues related to migration, and asylum in particular. Also, refresher sessions on early identification of victims of trafficking and smuggling for the relevant institutions would be welcomed in order to keep them up to date with the latest trends and information.



SERBIA

The vast majority of refugees and migrants enter Serbia from Bulgaria and North Macedonia. Exit routes from Serbia go through Croatia, Hungary and Romania. During 2018, a new exit route from Serbia towards Bosnia and Herzegovina has been established. The available data shows that, in the course of 2018, there were at least 16,185 newly arrived refugees and migrants, whereas there were only 8,436 persons who expressed their intention to seek asylum in Serbia by the end of the year. Serbia abolished Iran's visa-free status which influenced the reduction of the number of Iranians who were coming to Serbia with direct flights from Tehran and were moving toward Western Europe or sought asylum rather than return home.

1. Introduction

Right at the beginning of refugee crisis in 2015 that triggered the mixed migration flow through Europe, the Republic of Serbia (hereinafter: RS) adopted a primarily humanitarian approach towards the ever increasing number of refugees and migrants on its territory, despite the fact that the majority of refugees and migrants did not perceive RS as a destination country. The majority of refugees and migrants had non-restricted access to governmental facilities deemed to accommodate asylum seekers, regardless of their legal status which in many cases was not regulated whatsoever. Persons who chose not to seek asylum in RS were de facto tolerated whereas the authorities failed to address this issue through legislation.

Up until 2017, refugees and migrants entering RS remained in its territory only for several days and they did not perceive the lack of legal status and associated rights as an issue. However, in a protracted stay situation caused by the restrictive migration policies of neighbouring countries, many refugees and migrants found themselves living as irregular migrants in RS for an extended period of time which has led to the lack of access to many rights.

There is no comprehensive statistical data on the number of refugees and migrants on the territory of RS. The data can, however, be extracted from several different sources, such as the Ministry of Interior on the number of asylum seekers, or UNHCR data on the number of newly arrived persons observed during the field work of its partner organisations. The available data shows that, in the course of 2018, there were at least 16,185 newly arrived refugees and migrants¹¹¹, whereas there were only 8,436 persons who expressed their intention to seek asylum in Serbia by the end of the year¹¹². Among persons who applied for international protection in RS in 2018, the most numerous were Afghanis (31,1%), Pakistanis (21,8%), Iranians (19,2%), Iraqis (9,5%) and Syrians (5,5%).

Since the Croatian border with Serbia remained highly protected, and taking into account the problematic conduct of the Croatian police forces¹¹³, a number of migrants and refugees who resided in RS redirected their route towards Bosnia and Herzegovina¹¹⁴. During 2018, the mixed migration flow through RS was influenced by the decision of the Government of Serbia to abolish visa requirements for nationals of the Islamic Republic of Iran¹¹⁵ which was enacted in September 2017. An increased influx of nationals from the Islamic Republic of Iran continued in the first three quarters of 2018. The nationals of Iran were issued 1,891 certificates upon expressing intention to seek asylum/registration certificates in the period September 2017 – October 2018. An average of 150–200 newly arrived Iranians were registered per month, compared to 5–30 per month in the pre-September 2017 period¹¹⁶. The majority of

111 UNHCR, Quantitative Snapshot of the UNHCR Serbia 2018 Programme, 2019. Available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/67961.pdf>.

112 Statistical data was obtained by the Asylum Office through the UNHCR Office in Belgrade.

113 See more in: Pushed to the edge: Violence and abuse against refugees and migrants along Balkan Route, Amnesty International, London, 2019. Available at: <https://www.amnesty.org/en/documents/eur05/9964/2019/en/>.

114 New Balkan migration route through Bosnia, Médecins Sans Frontières, 2018. Available at: <https://www.msf.org/push-backs-violence-and-inadequate-conditions-balkan-routes-new-frontier?component=image-217501>.

115 Decision published in Službeni glasnik Republike Srbije, no. 79/18, of 25 August 2018.

116 See more in: Right to Asylum in the Republic of Serbia 2018, Belgrade Centre for Human Rights, Belgrade, 2019, pp. 10-11. Available at: <http://azil.rs/en/wp-content/uploads/2019/02/Right-to-Asylum-2018.pdf>.

Iranians accessed the territory of RS through Serbia's main airport in Belgrade, Nikola Tesla. It is estimated that around 12,000 Iranians failed to return home from RS¹¹⁷.

2. Statistical Data on Irregular Migration in 2018 Compared with Statistics for 2017

The following statistical data was obtained through different sources, namely, the Ministry of Interior and the Commissariat for Refugees and Migration. As of 2018, the Ministry of Interior is refusing to honor the freedom of information requests for statistical data (i.e. officials wait for a period after receiving the requests, then state that they would not release the data). This includes data which is collected under Article 115 of the Law on Foreigners, such as the number of third-country nationals refused entry or third-country nationals imposed with an obligation to leave the country. Between January and July 2018, 5,308 persons were apprehended while trying to enter RS, out of which 3,059 were prevented from entering RS and 1,520 were caught in the attempt. In the same period, 55 criminal charges were filed for illegal border crossing and smuggling persons, against 97 perpetrators for attempting to smuggle 486 persons¹¹⁸. The statistical data for 2017 is available through the Annual Migration Profile compiled by the Commissariat for Refugees and Migration, while the 2018 migration profile will be available in the course of 2019¹¹⁹. Statistical data on asylum procedures has been obtained through the UNHCR office and it reflects the situation both in 2017 and 2018.

Asylum Statistics

	2017	2018
Total number of expressed intentions to seek asylum	6,199	8,436
Asylum applications submitted	236	327
ID cards issued	217	225
Interviews conducted	106	176
Suspended cases (persons)	158	178
Rejected applications (persons)	11	25
Refused applications (persons)	53	45
Subsidiary protection granted	11	14
Refugee status granted	3	11

¹¹⁷ Why are Iranians crossing the Channel in dinghies?, BBC, 26 November 2018. Available at: <https://www.bbc.com/news/uk-england-kent-46296249>.

¹¹⁸ Available at: http://www.mei.gov.rs/upload/documents/eu_dokumenta/non_paper_23_24/Non-paper_%D0%BE_%D1%82%D1%80%D0%B5%D0%BD%D1%83%D1%82%D0%BD%D0%BE%D0%BC_%D1%81%D1%82%D0%B0%D1%9A%D1%83_%D1%83_%D0%BF%D0%BE%D0%B3%D0%BB%D0%B0%D0%B2-%D1%99%D0%B8%D0%BC%D0%B0_23_%D0%B8_24_%D0%B7%D0%B0_%D0%A1%D1%80%D0%B1%D0%B8%D1%98%D1%83.pdf.

¹¹⁹ Available at: http://www.kirs.gov.rs/docs/migracije/Migration_profile_of_the_Republic_of_Serbia_for_2017.pdf.

3. Legal Framework on Irregular Migration and Asylum

The legal framework in RS significantly changed in 2018 with the adoption of several new laws - Law on Asylum and Temporary Protection¹²⁰, the Law on Foreigners¹²¹, and the Law on Border Control¹²² - together with complementary subordinate legislation. The adoption of these laws has been pending for the last two years.

The Law on Asylum and Temporary Protection entered into force on 3 June 2018, while the Rulebook on the Content and Form of the Asylum Application Template and Templates of Documents Issued to Successful Asylum and Temporary Protection Seekers and Asylum Seekers¹²³ and the Rulebook on the Registration Procedure and the Form and Content of the Certificate of Registration of Foreigners who had Expressed the Intention to Apply for Asylum¹²⁴ entered into force on 9 June 2018. The beginning of implementation of the Law on Asylum and Temporary Protection was followed by a change of the Decree on the Inclusion of Foreigners Granted the Right to Refugee Status into Social, Cultural and Economic Life¹²⁵, implemented since 2017. The changed version entitled Decree on the Inclusion of Foreigners Granted the Right to Asylum into Social, Cultural and Economic Life, entered into effect in late July 2018, now also applies to persons who have been granted subsidiary protection.

The Law on Asylum and Temporary Protection introduced new procedural guarantees, detailed provisions on the application of the safe third country concept, clear differentiation between the rights and obligations of asylum-seekers and those of the persons granted protection, as well as equalisation of the rights of persons granted subsidiary protection and those granted refugee status, etc. Among the most important reforms are those related to the procedure of granting asylum - certain steps in the procedure have been merged, and the possibility of submission of written asylum applications has been introduced. Furthermore, the Law on Asylum and Temporary Protection stipulates an accelerated asylum procedure and the possibility for the entire asylum procedure to be conducted at border crossings or in transit zones of airports or inland ports¹²⁶.

The enactment of the new Law on Asylum and Temporary Protection also resulted in changes vis-à-vis the integration-related rights and obligations of the persons granted asylum. The most significant change introduced by the Law on Asylum and Temporary Protection is the equalisation of rights and obligations of persons granted refugee status with those of persons granted subsidiary protection.

The new Law on Foreigners has been implemented since 3 October 2018. Alongside the

¹²⁰ Sl. glasnik RS, no. 24/18.

¹²¹ Sl. glasnik, RS, no. 24/18.

¹²² Sl. glasnik RS, no. 24/18.

¹²³ Sl. glasnik RS, 42/18.

¹²⁴ Ibid.

¹²⁵ Sl. glasnik RS, no. 101/16, 56/2018.

¹²⁶ See more in: Right to Asylum in the Republic of Serbia 2018, Belgrade Centre for Human Rights, Belgrade, 2019, pp.9-10. Available at: <http://azil.rs/en/wp-content/uploads/2019/02/Right-to-Asylum-2018.pdf>.

adoption of the new Law on Foreigners, a Rulebook on Detailed Requirements for the Approval of Temporary Stay was also adopted.

A number of new additions have been adopted with an aim to harmonize the legal system with the EU *acquis* including temporary residence, based on humanitarian grounds that intends to enable vulnerable categories to legalise their stay in RS when they are unable to legalize their status, but have created a significant connection with RS in the form of integration or family links. In this way, it is possible to regulate the stay for persons who are most often in a rather hopeless situation. This includes, for example, situations in which an asylum application has been dismissed in the final instance, but has no possibility to return to either a third safe country or country of origin. Tolerated stay as a form of legal status has also been introduced as a possibility by the new Law on Foreigners, however this has not been further defined by the required subordinate legislation.

The Law on Foreigners in Article 43 defines the general conditions for issuing an approval for temporary residence¹²⁷. Special circumstances¹²⁸ for granting temporary stay on humanitarian grounds stipulated by the law are: family, cultural or social ties with RS, ie. the degree of integration of a foreigner into the social life of RS in the previous period, especially with regard to his/her education, work activities or language skills; a delay in the involuntary removal of a foreigner for a period of one year or more; victims of serious crimes; abandoned children and other serious and justified personal reasons of humanitarian nature, the interests of the state, or internationally accepted obligations. A temporary stay on humanitarian grounds exists alongside temporary stay of a foreigner for whom there is a reason to believe that he/she may be a victim of trafficking in human beings, as well as temporary stay for victims of trafficking in human beings. The Ministry of Internal Affairs has already approved several temporary residences for humanitarian reasons since the beginning of the implementation of the new law.

In mid-September, the RS Minister of Internal Affairs, and the European Commissioner for Migration, Home Affairs and Citizenship initialled an agreement between RS and the European Union (hereafter: EU) on the activities that the European Agency for Border and Coast Guard Agency (Frontex) will conduct in the territory of Serbia¹²⁹. They noted that the agreement aimed to facilitate control of EU's external borders and improve migration management. However, neither the RS Minister of Interior Affairs nor RS Prime Minister outlined the details of the agreement submitted for ratification to the RS Assembly. The scarce information provided at the news conference after the agreement was, initially, the only information on changes in managing RS's borders the general public had heard¹³⁰.

¹²⁷ This includes the possession of a valid passport, evidence of means of subsistence and health insurance. The most common grounds for granting temporary residence are based on employment, education and family reunification.

¹²⁸ Article 61, Law on Foreigners, Sl. glasnik RS, no. 24/18.

¹²⁹ See more at: <https://beta.rs/en/97463-serbia-initials-agreement-with-frontex-on-better-migration-management>.

¹³⁰ Right to Asylum in the Republic of Serbia 2018 Periodic Report for July-September 2018, Belgrade Centre for Human Rights, Belgrade, 2019. Available at: <http://azil.rs/en/wp-content/uploads/2018/11/periodic-report-july-september-2018.pdf>.

4. Policies and Practices of Immigration Detention of Irregular Migrants and Vulnerable Groups

According to Article 3 para 1 point 28 of the Law on Foreigners, Shelter for Foreigners is a facility for accommodation of foreigners who are not allowed to enter the country or who are to be expelled or deported from the country but cannot be expelled and who, in conformity with the law, are determined to stay under enhanced police supervision¹³¹.

One of the measures of restriction of movement of asylum-seekers provided under Article 78 of the Law on Asylum and Temporary Protection prescribes the detainment of asylum-seekers in the Shelter for Foreigners as per order of the Asylum Office. This measure may last a maximum of three months and may only be extended for an additional three months. An appeal against the decision on restriction of movement may be submitted to the competent higher court no later than eight days of it being served¹³². However, this does not defer its enforcement. Though the Asylum Office rarely applied this measure, ordering accommodation in the Shelter for Foreigners may be considered deprivation of liberty -considering the level of limitation of the rights of asylum-seekers accommodated there.¹³³ Consequently, the procedure of ordering this measure should be aligned with the provisions of the Constitution of the Republic of Serbia and the European Convention for the Protection of Human Rights and Fundamental Freedoms that refer to the right to freedom and security¹³⁴. According to BCHR, the abovementioned provisions of the Law on Asylum and Temporary Protection do not fulfil the constitutional and international guarantees to freedom and security as they do not provide for mandatory and urgent judicial review of the decision rendered by the administrative authority (Ministry of Interior) on deprivation of liberty of asylum-seekers¹³⁵.

However, the official statistics on detention of vulnerable groups is not available. Based on information collected through visits by the BCHR legal officers, who provided legal counselling in the Shelter for Foreigners, the practice of detaining minors was conducted with the purpose of preserving family unity. Cases of detention of single women were rare.

The BCHR's lawyers had unimpeded access to all foreigners detained in the Shelter for Foreigners who were in need of legal aid and access to the asylum procedure was enabled. Once the person expressed intention to seek asylum and was issued with the certificate of expressed intention to seek asylum, he/she was released to go to the accommodation facility for asylum seekers. From the information the BCHR collected through the provision of legal counselling in the Shelter for Foreigners, if it is not possible to conduct deportation due

¹³¹ Sl. glasnik RS, no. 24/18.

¹³² Article 78, Law on Asylum and Temporary Protection.

¹³³ Lack of possibility of arbitrary exit from the dormitory or a small area, limited contact with the outside world, duration of the measure, etc.

¹³⁴ Right to Asylum in the Republic of Serbia-Periodic report for January-March 2018, Belgrade Centre for Human Rights, 2018.

¹³⁵ „The above provisions are deficient for at least two more reasons. First, they do not specify the deadline in which the police officers must serve the decision to the person whose accommodation in the Shelter for Foreigners was ordered in a language he/she understands. And second, these provisions do not stipulate the obligation of the decision-maker to review this decision periodically, pass a decision on whether to extend or cancel it and inform the person in question thereof. Consequently, the asylum-seekers are unjustifiably put into a more unfavourable position than the persons whose detention is ordered during investigation or the criminal procedure”. Right to Asylum in the Republic of Serbia-Periodic report for January-March 2018, Belgrade Centre for Human Rights, 2018, pp.28-29.

to the lack of readmission agreements or dysfunction of existing readmission agreements, irregular migrants are released from the Shelter for Foreigners and expected to leave the country by themselves.

5. Return Policy

Serbia has signed multiple bilateral agreements on readmission with other countries, the most important one being the agreement with the EU. Agreement between the RS and the European Community on the Readmission of Persons Residing without Authorization was concluded in 2007 and came into force on 1 January 2008¹³⁶. Similar agreements were also signed with other countries – Canada in 2006, Bosnia and Herzegovina in 2007, Norway and Switzerland in 2010¹³⁷, North Macedonia and Albania in 2011^{138,139}, Moldova in 2012,¹⁴⁰ Montenegro in 2014,¹⁴¹ Russian Federation in 2015¹⁴². Relevant bilateral protocols on implementation of readmission have been in force with 21 EU member states. Before the agreement between the EU and RS was signed, separate bilateral agreements were concluded with Bulgaria, Croatia, Denmark, France, Germany, Hungary, Italy, Slovakia, Slovenia and Sweden respectively. The lack of interest by Iran to sign a readmission agreement was cited as one of the main reasons for reintroduction of visa regime for its citizens.

The RS Government has also adopted strategic documents governing the readmission and reintegration of returnees. In 2009, the Strategy of Reintegration of the Returnees, based on the Readmission Agreement, was adopted, while its implementation is defined by annual action plans¹⁴³. Implementation of these bylaws is overseen by the Council for Returnees Reintegration and the team for the Monitoring of the Strategy Implementation. The RS Commissariat for Refugees and Migration is the body charged with implementation of activities on an operational level. It works on admission of returnees and their reintegration, on preventing secondary migration and human trafficking, and also on providing information and support to returnees. The Commissariat for Refugees and Migration operates the readmission office at Belgrade Airport and three emergency admission centres for vulnerable returnees in Bela Palanka, Šabac and Zaječar.

¹³⁶ Available at: <http://www.mup.gov.rs/wps/wcm/connect/7a5c4001-f14a-4fbf-8e6b-79212c0000e7/Zakon+o+ratifikaciji+Sporazuma+o+r eadmisiji+lica+koja+nezakonito+borave+izmedu+EU+i+R+Srbije-lat.pdf?MOD=AJPERES&CVID=mtrtvEb>.

¹³⁷ Available at: <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2010/19/9/reg> and <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2010/19/6/reg>.

¹³⁸ Agreement between the Government of the Republic of Serbia and the Council of Ministers of the Republic of Albania on the readmission of persons who are staying illegally. Available at: <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/mu/skupstina/zakon/2011/7/4/reg>.

¹³⁹ Agreement between the Government of the Republic of Serbia and the Government of the Republic of Macedonia on Handover and Acceptance of Persons whose Entry or Stay is Illegal. Available at: <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/mu/skupstina/zakon/2011/1/7/reg>.

¹⁴⁰ Agreement between the Government of the Republic of Serbia and the Government of the Republic of Moldova on the readmission of persons who are staying illegally. Available at: <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/mu/skupstina/zakon/2012/2/4/reg>.

¹⁴¹ Agreement between the Government of the Republic of Serbia and the Government of Montenegro on readmission (return and acceptance) of persons whose entry or stay is illegal. Available at: <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/mu/skupstina/zakon/2013/13/6/reg>.

¹⁴² Agreement between the Government of the Republic of Serbia and the Government of the Russian Federation on readmission. Available at: <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/mu/skupstina/zakon/2015/3/1/reg>

¹⁴³ Strategy of Reintegration of the Returnees based on the Readmission Agreement. Available at: http://www.kirs.gov.rs/docs/Strategija_reintegracije_povratnika.pdf.



During 2017 there were 3,458 readmission requests received in 2017, out of which 2,725 requests were approved, whereas 3,933 citizens of the RS returned. Out of the total number of received requests for readmission in 2017, 67.6% of applications were submitted by Germany. Outside the EU, 64 requests were approved from Bosnia and Herzegovina, 62 from Switzerland, 11 from Norway and 1 from North Macedonia. Out of the total number of returnees in 2017, 58% were men and 42% women, whereas 59% were adults while 41% were children.

Out of the total number of returnees, 1,891 registered with the Readmission Office during 2017, while in 2018 1,189 returnees were registered^{144 145}.

Ethnic background of registered returnees	2017	2018
Roma	1,434	839
Serb	285	165
Bosniak	81	2
Muslim	0	116
Albanian	49	42
Ashkali	28	4
Hungarian	3	4
Romanian	3	2
Montenegrin	0	2
Macedonian	4	0
German	1	1
Croat	1	1
Vlach	0	6
Egyptian	0	1
Others	3	4

Readmission origin of registered returnees	2017	2018
Germany	1,755	1,095
Sweden	33	36
Switzerland	11	16
Belgium	11	0
Denmark	2	0
France	16	12
Austria	24	22
Spain	2	2
Netherlands	24	5
Luxembourg	13	0
Slovakia	0	1

144 Report of the Readmission Office for 2018.

145 Report of the Readmission Office for 2017.

In addition to regular readmission procedures, RS has also experienced informal push-backs of persons from neighboring countries to its territory. Most of the documented cases of abuse refer to Croatia. The reason for a large number of cases from the Republic of Croatia lies in the fact that the Hungarian border has been physically closed by a wire fence and guarded by the mixed military-police patrols, as well as organized groups of civilian populations living in the area bordering RS. Thus, the migratory flow is largely directed towards Croatia.

The BCHR team, investigating the incidents occurring during such push-backs, documented violations that take place during interviews and medical examinations. It has been made known that the Croatian border police deprived persons of liberty placing them in vans that transported them to the border. Lines of 7-10 police officers would run a gauntlet in front of the van. When an individual exited the van, they would start beating him with fists and rubber batons, and/or kicking and beating him with wooden clubs. Each beating session was described as lasting for several minutes and there were always an additional three to four police officers, at a distance of several meters, who would watch, lest the foreigner escaped, until the beating was over. The refugees and migrants from one of the groups interviewed by the team members said that two female police officers stood in the background recording the physical violence on their mobile phones. In addition to physical violence, all the respondents stressed that the police officers had shouted at them, laughed and made jeering faces.

UNHCR and its partners recorded incidents of collective expulsions throughout 2018¹⁴⁶. The majority of these reports alleged denial of access to asylum procedures by authorities of these neighboring countries.

Collective expulsion from	Number of recorded incidents in 2018	Number of recorded incidents in 2017
Croatia	10,432	8,772
Hungary	1,055	4,147
Romania	835	1,383
Bosnia	2,001	N/A
Total	10,432	8,772

¹⁴⁶ UNHCR Serbia Quantitative Snapshot 2018. Available at: <https://data2.unhcr.org/en/documents/download/67961>.

6. Cases of Human Trafficking and Smuggling of Irregular Migrants

On 4 August 2017, the Serbian Government adopted the Strategy for Prevention and Suppression of Trafficking in Humans, Especially Women and Children, and Protection of the Victims from 2017 to 2022, as well as the respective Action Plan for 2017 and 2018, six years after the previous one had expired¹⁴⁷.

According to the 2018 Trafficking in Persons Report for Serbia, by the State Department Office to Monitor and Combat Trafficking in Persons¹⁴⁸, Serbia remains a source, transit, and destination country for men, women, and children subjected to sex trafficking and forced labor, including domestic servitude and forced begging. According to the Report, the RS Government demonstrated increased efforts compared to the previous reporting period and upgraded its status to Tier 2, after two years with Tier 2 Watchlist status¹⁴⁹. Main arguments for upgrading the status of Serbia were, based on the abovementioned report, the consolidation of jurisdiction for trafficking crimes under one authority of Criminal Police Directorate and the creation of the stand-alone Office of the National Coordinator. Issues remain with the formal victim identification procedures and the national referral mechanism, which lacks established roles and responsibilities for referring victims to support services. According to the report, the urgent reception centre remains non-functional for the fifth consecutive year. The report also outlines issues with assignment of “especially vulnerable witness” status by courts and a non-uniform practice of non-penalization for trafficking victims. The overall trafficking convictions fell for the fifth consecutive year.

The Centre for Protection of Trafficking Victims (CPTV) carries out identification in two steps. The first step is an initial assessment of data from the report which concludes the case as being either endorsed or rejected. The second step is the identification procedure for victims of trafficking in human beings. Identification is done through the process of assessing the status and needs of victims who are identified as the presumed victims in the first step. The procedure ends with a decision that is made to either formally identify a victim of trafficking, or not, or to stop or suspend the procedure. Victims may be identified in several stages – recruitment, transport, prior to exploitation, during exploitation or post exploitation. The number of alleged victims represents the total number of victims in the second step of the procedure. During 2018, there were 190 reports (181 new reports

¹⁴⁷ ASTRA's comment on the Strategy for Prevention and Suppression of Trafficking in Humans, Especially Women and Children, and Protection of the Victims from 2017 to 2022. Available at: <https://www.astra.rs/en/astras-comment-on-the-strategy-for-prevention-and-suppression-of-trafficking-in-humans-especially-women-and-children-and-protection-of-the-victims-from-2017-to-2022/>.

¹⁴⁸ United States Department of State, 2018 Trafficking in Persons Report - Serbia, available at: <https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282740.htm>.

¹⁴⁹ Tier 2 refers to the countries whose governments do not fully comply with minimum standards set out in the Trafficking Victims Protection Act (TVPA) of 2000, but are making significant efforts to bring themselves into compliance with those standards while the Tier 2 Watchlist refers to the countries whose governments do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards and the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing or there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year or the determination that a country is making significant efforts to bring themselves into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year.

and 9 reports carried from 2017) and 25 cases of identification from 2017. In 159 cases, the initial assessment showed that the persons were indeed potential trafficking victims, and identification procedures were initiated (24 reports were dismissed and 7 are ongoing). Most reports came from the Ministry of Interior (37%), social protection services (24%) and NGOs (13%).

Out of the total number, 76 persons were formally identified as trafficking victims, while 108 victims were presumed trafficking victims. 75 persons were declared as non-victims, 27 procedures were stopped or suspended, whereas in 6 cases identification is ongoing.

When it comes to types of exploitation, in 34 cases sexual exploitation was identified, work exploitation in 18 cases and 13 cases had multiple elements. There were also 8 cases of forced marriage, 2 cases of begging and 1 case of compulsion to commit crimes. Most victims were female (57), while 32 victims were under the age of 18. Most victims that were identified were citizens of Serbia (93%)¹⁵⁰. By comparison to 2017, CPTV worked on 142 cases, out of which 99 were identified as potential trafficking victims. In 43 cases, trafficking victims were formally identified as such. Out of the total number of formally identified trafficking victims, 39 were female and 4 were male, while 21 were under the age of 18 and 22 were adults. In most cases there was sexual exploitation taking place (21 cases) with multiple exploitation identified in 10 cases.¹⁵¹

According to the Office for Coordination of Activities for Combating Trafficking in Human Beings Report for 2017¹⁵², 10 criminal charges were brought, 17 criminal acts were uncovered, 24 perpetrators were prosecuted as well as 20 victims identified. All identified victims were female, out of which 13 were under the age of 18 and 7 under the age of 14. According to the State Department, 13 traffickers were convicted in 2017¹⁵³.

The analysis of judicial practice and the position of trafficked persons in court proceedings in 2017, by , the Anti-Trafficking Action (ASTRA)¹⁵⁴ NGO, shows that the average length of the proceedings was 3 years and 5 months, with 50% of the proceedings completed in less than one year. Convictions were made for all crimes in 73% of the cases and the average imprisonment sentence was 3 years and 5 months. In all cases, perpetrators were male citizens of Serbia and victims were all Serbian citizens with 71% of them female. Out of 7 victims, 5 were referred, by the first-instance criminal court decision, to seek compensation in civil proceedings and 6 had to testify, once or several times, at the main hearing, in addition to statements given during investigation. In 2017, for the second time ever for a trafficking victim's case, a final judgment was made awarding victim compensation.

¹⁵⁰ Basic statistical report on the identification of human trafficking victims for 2018. Centre for Protection of Trafficking Victims.

¹⁵¹ Basic statistical report on the identification of human trafficking victims for 2017. Centre for Protection of Trafficking Victims.

¹⁵² Available at: http://www.mup.gov.rs/wps/wcm/connect/8580ccfe-600a-4deb-931e-c00703038563/1-12+2017+Trgovina+Ijudima+_2_LAT.pdf?MOD=AJPERES&CVID=mfUgTMY.

¹⁵³ United States Department of State, 2018 Trafficking in Persons Report - Serbia, available at: <https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282740.htm>.

¹⁵⁴ Analysis of Judicial Practice for 2017. Available at: <https://www.astra.rs/en/position-of-human-trafficking-victims-in-court-proceedings/> and <https://drive.google.com/file/d/1XA7YsbD4tuBn4wY-fuTEAWgzeW15Hbbz/view>.

¹⁵⁵ Serbia 2018 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2018 Communication on EU Enlargement Policy. Available at: http://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/ee_progress_report_18.pdf.

According to the Serbia 2018 Report by the European Commission¹⁵⁵, the capacity of the CPTV, the lack of a support fund for victims, and shortcomings of the compensation mechanism in civil proceedings, continue to be the main issues. The report points out that, due to mixed migration flows, new opportunities for traffickers arise, and that unaccompanied children are at particular risk. Only a limited number of low-profile cases have been successfully investigated, although the investigative capacity was significantly increased when jurisdiction was transferred from the Border Police to the Criminal Police Directorate, which encompasses a task force on human smuggling.

When it comes to relevant non-governmental activities aimed at improving the protection of victims of trafficking, the International Rescue Committee and NGO Atina, with the support of the US Department of State Office to Monitor and Combat Trafficking in Persons, provide support to the RS Government in creating an action plan for the implementation of the National Strategy. They also work on capacity building for identification and adequate support for victims of trafficking, especially children, and on the strengthening of local anti-trafficking teams and mechanisms for local coordination for prevention and response to cases of trafficking. These activities are particularly relevant as they take into account the especially vulnerable individuals within populations of refugees and migrants¹⁵⁶.

7. Lessons Learned and Challenges

The Republic of Serbia continued to provide accommodation and protection to migrants regardless of their status. Though assessment is not made on individual status in each case, they are de facto tolerated even if they do not submit an application for asylum or residence. One of the main challenges that persisted in 2018 were limited capacities for adequate and child-friendly accommodation of unaccompanied and separated children.

One of the reasons why migrants do not consider RS as a destination country is the lack of an efficient and fair asylum system. This remains one of the main challenges for Serbian authorities for the establishment of a fair migration management system and harmonization with EU standards under the Chapter 24 negotiations for EU accession.

The newly introduced possibility of conducting an asylum procedure in the transit zone has yet to be seen in practice, while the expedited procedure was implemented only in several occasions.

The adoption of the new Law on Asylum and Temporary Protection in 2018 saw legislative improvements to the safe third country concept, yet it remains to be seen how this will be reflected in future decisions of the Asylum Office. In previous years, RS authorities did not properly examine the risks associated with returning the asylum seekers into their

¹⁵⁶ Available at: <https://rs.usembassy.gov/united-states-donates-750000-to-help-victims-of-human-trafficking/>.

countries of origin or third countries, though they are obliged to do so in line with the provisions of the ratified international treaties. Current return procedures are weak with regards to procedural guarantees and guarantees for respect of human rights.

During the previous year, a new Law on Foreigners was adopted introducing a new category of temporary residence permit based on humanitarian grounds. However, other laws have not been adjusted yet, putting this vulnerable category in the same group as other foreigners when it comes to access to labour market and no support services are made available to them by the state.



MONTENEGRO

In 2017 a new sub-route opened through Albania – Montenegro – Bosnia and Herzegovina – Croatia. Directly as a result of this, from the beginning of August 2017 and during 2018, Montenegro recorded a higher number of illegal crossings from Albania to Montenegro, as well as exits from Montenegro mostly towards Bosnia and Herzegovina but also towards Croatia. Irregular migrants were entering Montenegro across the green border area around the Božaj border crossing and to a smaller extent Sukobin on the border with the Republic of Albania, while in most cases they illegally try to leave Montenegro towards Bosnia and Herzegovina and in smaller numbers towards the Republic of Croatia.

1. Introduction

After the closure of the Western Balkans transit corridor in 2016 migrants within the Western Balkans region, as well as in neighboring regions, continued to search for travel alternatives along other sub-routes. In 2017 a new sub-route opened through Albania – Montenegro – Bosnia and Herzegovina – Croatia. Directly as a result of this, from the beginning of August 2017 and during 2018, Montenegro recorded a higher number of illegal crossings from Albania to Montenegro, as well as exits from Montenegro mostly towards Bosnia and Herzegovina but also towards Croatia.

Irregular migrants were entering Montenegro across the green border area around the Božaj border crossing and to a smaller extent Sukobin on the border with the Republic of Albania, while in most cases they illegally try to leave Montenegro towards Bosnia and Herzegovina and in smaller numbers towards the Republic of Croatia.

In most cases, after illegally entering Montenegro, migrants expressed intent for international protection or officially applied for international protection in accordance with the Law on International and Temporary Protection of Foreigners, with the aim of avoiding misdemeanor liability, realizing the possibility to move unhindered across the territory of Montenegro with certificates issued by the Directorate for Asylum or Police Directorate.

After expressing intention for international protection or officially submitting an application for international protection, most of the migrants did not wait for a decision on the application, and after a few days they tried to leave Montenegro illegally. The Government of Montenegro has established a Plan of Action in case of a mass influx of migrants and refugees in transit through the territory of Montenegro. The Montenegrin Government has also constituted an Operational Team consisting of representatives of different bodies competent to undertake activities in connection with migration. In accordance with the decision of the Defence and Security Council of Montenegro, members of the Army of Montenegro have been involved in border surveillance at the border with Albania since August 2018.

It can be concluded that Montenegro is not a destination country for irregular migrants, and migrations in Montenegro have a transitory character across the territory of Montenegro, towards EU countries.

2. Statistical Data on Irregular Migration in 2018 Compared with Statistics for 2017

	2017.	2018.
Registered traffic of passengers	18,515,709	19,494,734
Entry ban	2,360	1,358
Foreigners with illegal stay	733	881
Cancellation of stay	2,129	2,373
Decisions on return issued	732	766
Forced removal	235	133
Expulsion	No data	160

Prevented Illegal Border Crossings		
	at border crossing	outside of border crossings
2017	176	438
2018	293	301

In 2018 there were 4,753 registered migrants in Montenegro, most of them claiming to be from Syria, Pakistan, Iraq and Algeria.

In 2018, a total of 3,104 foreigners applied for international protection. Out of this number, 14 persons were granted protection in Montenegro, 17 requests were denied as unfounded, 3,021 requests were suspended, while the procedure for 52 requests was passed in 2019.

In 2017, a total of 849 foreigners applied for international protection. Out of this number, 8 persons were granted protection in Montenegro, 50 requests were denied as unfounded, 787 requests were suspended, while the procedure for 4 requests passed, in 2018.

3. Legal Framework on Irregular Migration and Asylum

The new Law on International and Temporary Protection of Foreigners ("Official Gazette of Montenegro" No. 2/2017) applies from 1 January 2018.

The Parliament of Montenegro, at its session held on 26 December 2018, adopted the Law on Amendments to the Law on International and Temporary Protection of Foreigners ("Official Gazette of Montenegro" No. 3/2019).

The amendments to the law transferred the responsibility, for accommodation issues and assistance in integration into Montenegrin society of persons with approved international protection in Montenegro, from the Ministry of Labor and Social Welfare to the Ministry of Internal Affairs. Thus, according to these amendments, these persons are now under the authority of the Ministry of Internal Affairs, which is obliged to provide them with accommodation for two years and to adopt an Integration Plan that provides persons with approved protection full inclusion in Montenegrin society.

The new Aliens Act ("Official Gazette of Montenegro" No. 12/2018 and 03/2019) applies from 3 March 2018. This law is harmonized with the relevant EU legislation and when it comes to irregular migrations the law is completely in line with Return Directive 115 from 2008. The law defines an entry ban, decision on return, voluntary return, expulsion, access to free legal aid, forced removal, postponement of forced removal, retention and conditions for detaining a foreigner, return and removal of unaccompanied minors, special protection of minors and other vulnerable categories, etc.

On 18 June 2009, the Police Directorate of Montenegro signed a Working Arrangement on establishing operational cooperation with the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX).

Activities related to the signing of a Status Agreement between Montenegro and the European Union, on actions implemented by the European Border and Coast Guard Agency (FRONTEX), are in progress.

4. Policies and Practices of Immigration Detention of Irregular Migrants and Vulnerable Groups

Montenegro has established a Detention Centre for Foreigners, which was put into function at the end of 2013. The Detention Centre for Foreigners was built with the funds provided through the IPA project "Support to Migration Management" and funds from the national budget. The capacity of the Detention Centre for Foreigners is 46 persons.

Foreigners who cannot be forcefully removed, or for whom a return cannot be secured by the use of alternative measures, will have their freedom of movement limited by the police at the Detention Centre for Foreigners, especially if there is a risk of avoiding the obligation to leave Montenegro, or if a foreigner resists execution of forced removal and return.

Detention can only take place for the amount of time necessary to execute forced removal and the activities in connection with forced removal, but it cannot be longer than six months. For detention in the Detention Centre for Foreigners by the European Agency for Border and

Coast Guard, the police shall issue a decision against which a complaint can be filed to the Administrative Court within five days from the date of delivery of the decision, where the procedure before the Administrative Court is urgent.

Detention in the Detention Centre for Foreigners may be shortened or extended for a maximum of 12 months, if an alien refuses to cooperate or is late in obtaining the necessary documents from another country. The decision on the shortening or extension of the detention in the Detention Centre for Foreigners is made by the police, and a complaint can be filed against the decision to the Administrative Court, within five days from the date of delivery of the decision, where the procedure before the Administrative Court is urgent.

A foreigner must not leave the Detention Centre without permission and is obliged to comply with the rules of stay at the Detention Centre. A foreigner in a Detention Centre has the right to health care in accordance with the health care regulations. A foreigner who considers that he is subjected to torture or other cruel, inhuman or degrading treatment, or punishment by staff or other detainees at the Detention Centre for Foreigners, may address the Protector of Human Rights and Freedoms.

A minor unaccompanied foreigner and a minor foreigner who is younger than 14 years of age may be placed in an appropriate institution only if forced removal cannot be provided in a different way. A minor foreigner older than 14 years of age, who is accompanied by a family member, may be detained in the Detention Centre for Foreigners only if forced removal cannot be provided in a different way. A minor foreigner is placed in rooms suitable for the accommodation of a minor. Members of the same family will be detained in the Detention Centre in a separate common room.

The Aliens Act from 2018, for the first time, defines "alternative measures" that are classified into four categories: deposit of travel documents and travel tickets; deposit of financial assets; prohibition of leaving the accommodation at a specific address; and reporting to the police at a certain time. The decision on the application of alternative measures is passed by the police, and complaints can be filed to the Administrative Court.

During the application of alternative measures, the police can provide accommodation and support to the foreigner, financial means and other material benefits, or, on the occasion of such measures, conclude agreements with international organizations or non-governmental organizations. In case of massive entry or illegal stay in Montenegro, the decision for provision of temporary accommodation of foreigners, under which alternative measures are applied, is passed by the Government.



6. Return Policy

The issue of return of migrants is regulated by the Aliens Act ("Official Gazette of Montenegro" No. 12/2018 and 03/2019), as well as readmission agreements.

Namely, the Aliens Act ("Official Gazette of Montenegro" No. 12/2018 and 03/2019) defines the following measures for securing the return of a foreigner: voluntary return, expulsion, prohibition of entry and stay, forced removal, restriction of freedom of movement, foreigners' obligations in the return process. Measures to ensure the return of foreigners are carried out by the police.

Readmission agreement with the European Community – Montenegro signed and has been implementing an Agreement with the European Community since January 2008, on the readmission of persons without residence permits, on the basis of which implementation protocols have been signed with the Republic of Slovenia, Malta, the Republic of Austria, Bulgaria, the Czech Republic, the Republic of Germany, the Benelux States, The Slovak Republic, the Republic of Estonia, Hungary and the Kingdom of Spain.

Given consent to accept Montenegrin citizens from EU Member States	2017 (01.01-20.12.2017)	2018 (01.01-21.12.2018)
	546 persons	402 persons
Given consent for acceptance of third-country nationals from EU Member States	2017 (01.01-20.12.2017)	2018 (01.01-21.12.2018)
	7 persons	13 persons

Readmission agreements with third countries – Montenegro has signed readmission agreements with: Albania, Bosnia and Herzegovina, Serbia, Kosovo, North Macedonia, Moldova, Turkey, Azerbaijan, the Kingdom of Norway and the Swiss Confederation. Activities on concluding readmission agreements with Georgia and Iceland are also underway.

Regular procedure - given consent for acceptance and hand over (by number of persons)

	2017 (01.01-20.12.2017)		2018 (01.01-21.12.2018)	
	acceptance	hand over	acceptance	hand over
Serbia	0	32	0	26
BIH	29	9	31	8
Croatia	10	0	7	2
Albania	0	0	0	17
Kosovo	1	11	0	5
N. Macedonia	0	1	0	1

Summary readmission procedure with neighbouring countries

	2017		2018	
	acceptance	hand over	acceptance	hand over
Albania	0	0	0	20
BiH	248	0	673	0
Croatia	186	1	12	0
Serbia	24	51	4	48
Kosovo	0	0	0	8

6. Cases of Human Trafficking and Smuggling of Irregular Migrants

In 2012, the Government of Montenegro adopted the Strategy for Combating Trafficking in Human Beings/Children for the period 2012-2018, focusing on six basic areas: prevention and education; identification of victims of trafficking; assistance, protection and reintegration of victims; effective prosecution; international cooperation; coordination and partnership. In order to implement the Strategy, the Action Plan for the Implementation of the Strategy for Combating Trafficking in Human Beings for 2017 - 2018 was developed.

The Supreme State Prosecutor's Office and the Police Directorate have established the Operational Team for Combating Trafficking in Human Beings in order to better detect, combat and prosecute trafficking in human beings and related crimes.

The Aliens Act ("Official Gazette of Montenegro" No. 12/2018 and 03/2019) stipulates, inter alia, that a temporary residence permit for humanitarian reasons may also be issued to a foreigner who is suspected of being a victim of a human trafficking offense, which grants him/her the right to accommodation, health care, education, employment and financial assistance.

During 2017, the State Prosecution Office in Podgorica filed an indictment against two persons, citizens of Montenegro, for the criminal offense of Trafficking in Human Beings. In this case, the criminal offence committed was the harm of a minor.

Also, in 2017, officers of the Police Directorate carried out two cases in the field of human smuggling:

1. Dardanelle – 5 persons deprived from liberty, due to the existence of a reasonable suspicion that during 2017, they committed the criminal offense of illegal crossing of the state border and smuggling of people in an organized manner.
2. Centre – 4 persons deprived of liberty due to the existence of reasonable suspicion that during 2016 and 2017, they committed the criminal offence of illegal crossing of the state border and smuggling of people in an organized manner.

In 2018, the Police Directorate filed a criminal complaint for the existence of reasonable suspicion of the criminal offense of Trafficking in Human Beings. In the Higher State Prosecutor's Office in Podgorica, an order was issued to carry out an investigation against one person for the criminal offense of Trafficking in Human Beings, which was committed against four minors.

Also, in 2018, for the criminal offense of Trafficking in Human Beings, a criminal proceeding was conducted before the Higher Court in Podgorica, which was launched in 2017. The procedure was conducted against two persons. The proceedings were in the main trial stage and a total of 14 main hearings were held.

In 2018, officers of the Police Directorate carried out two cases in the field of human smuggling:

1. Erica – filed a criminal complaint against one person on grounds of reasonable suspicion that he committed the criminal offense of illegal crossing of the state border and smuggling of people in an organized manner (18 asylum seekers in Montenegro).
2. Aurora – 3 persons deprived of liberty, on the ground of reasonable suspicion that they smuggled 19 citizens of Somalia on the route Montenegro - Serbia with the final goal of their entry into the countries of Western Europe.

7. Lessons Learned and Challenges

Montenegro has continued with normal activities aimed at aligning the national legislation with the EU's acquis. These activities primarily relate to the adoption of the new Aliens Act, as well as the adoption of bylaws for its implementation.

Since August 2017, when it was faced with an increase in the number of irregular migrants, Montenegro has taken a number of measures to more effectively manage the migration process. A Plan of Action in the case of mass influx of migrants and refugees in transit through the territory of Montenegro was prepared; members of the Army of Montenegro are involved in border surveillance on the border with Albania and the state implements readmission agreements with neighboring countries, although it is noticeable that very few irregular migrants were accepted by Albania.

Despite the measures taken, it can be concluded that there are areas that need to be improved in order to create an efficient migration management system in Montenegro related to the following:

- Strengthening capacities for the registration of irregular migrants transiting through Montenegro.
- Strengthening capacities for the ascertaining of identity of irregular migrants, through interviews after detection and contact with authorities of the countries of origin.
- Strengthening capacities for security screening in order to detect persons who may pose a threat to internal security.
- Strengthening capacities for the detention/accommodation of irregular migrants who transit through the territory of Montenegro
- Strengthening capacities for the effective return of irregular migrants in countries of origin or transit countries.
- Providing interpreters for languages that are mostly used by migrants in order to provide appropriate conditions for conducting interviews with the aim of collecting information.
- Strengthening capacities for the detection of migrants from the category of vulnerable persons.



BOSNIA AND HERZEGOVINA

The number of refugees and migrants using the route through Bosnia and Herzegovina is increasing. The majority arrive overland in an irregular manner (i.e. at non-official border crossings). Increasing numbers arrived from Greece via Albania and Montenegro. The authorities in Bosnia and Herzegovina (BiH) detected the arrival of 24,067 refugees and migrants to the country between 1 January 2018 and 31 December 2018; compared to 755 recorded arrivals in 2017. Of these, 22,130 expressed intention to seek asylum in BiH, but only 1,567 submitted requests for asylum. It is estimated that between 4,500 and 5,000 refugees and migrants remain in BiH in need of humanitarian assistance at various locations, in particular in Sarajevo and Una-Sana Canton (USC)

1. Introduction

When compared to 2017, the general situation in 2018 quickly changed. The authorities in Bosnia and Herzegovina (BiH) detected the arrival of 24,067 refugees and migrants to the country between 1 January 2018 and 31 December 2018; compared to 755 recorded arrivals in 2017. Of these, 22,130 expressed intention to seek asylum in BiH, but only 1,567 submitted requests for asylum. While a record high of 5,057 arrivals were detected in October 2018, the number of arrivals fell to 1,931 in November and 935 in December. The majority arrive overland in an irregular manner (i.e. at non-official border crossings). Increasing numbers now arrive from Greece via Albania and Montenegro. It is estimated that between 4,500 and 5,000 refugees and migrants remain in BiH in need of humanitarian assistance at various locations, in particular in Sarajevo and Una-Sana Canton (USC). The latter location is linked to attempts to enter Croatia and the European Union.

The most frequently declared countries of origin among new arrivals were Syria, Pakistan, Afghanistan, Iran, Iraq, Algeria, and the Occupied Palestinian Territories.

Establishing sufficient, safe and protection-sensitive accommodation continued to be the key focus areas of the response to increased number of arrivals. Currently there are seven locations throughout the country intended for accommodation. Only two centres are managed by the Ministry of Security of BiH and the Ministry of Human Rights and Refugees. Temporary Reception Centre (TRC) Ušivak, TRC Sedra, TRC Bira, TRC Miral and TRC Borići are managed by IOM. As of 31 December 2018, there were 4,529 spaces available across the above mention seven locations. An additional location in Sarajevo, called 'House of All' is managed by independent volunteers.

2. Statistical Data on Irregular Migration in 2018 Compared with Statistics for 2017

	2017	2018
The number of third country nationals illegally present in the territory in accordance with national legislation on migration	753	157
Third country nationals who passed through the country during the reporting period	776 (registered illegal border crossings)	4489 (registered illegal border crossings)
Third-country nationals refused entry	2313	1853
Third-country nationals found illegally in country territory and for which administrative or judicial decision has been issued or act that establishes or declares that the stay is illegal and imposing an obligation to leave the country;	927	1540
Third-country nationals whose asylum applications have been rejected in the final instance declares that the stay is illegal and imposing an obligation to leave the country;	24	46

3. Legal Framework on Irregular Migration and Asylum

There were no new legislative changes in the Legal Framework on Irregular Migration and Asylum in 2018. The Law on Foreigners is expecting amendments in 2019, and the Law on Asylum in 2020. BiH has not yet signed a working agreement with FRONTEX, although there were some indications that a draft agreement, which would allow deployment of officers from the EU border agency to Bosnia to help it curb migration and organized crime, will be signed.

4. Policies and Practices of Immigration Detention of Irregular Migrants and Vulnerable Groups

Law on Foreigners¹⁵⁸ prescribes that foreigners shall be placed under surveillance through detention in an Immigration Centre, if: a) there are reasonable grounds to believe that, after the decision on expulsion is rendered, free and unrestricted movement of a foreigner may endanger legal order, public order and peace or security or international relations of BiH or pose a threat to public health in BiH, that is if determined that he/she poses a threat to public order and peace or security of BiH; b) to ensure the execution of the decision on expulsion, or in other cases when he/she received the expulsion measure, if there are reasonable grounds to believe that a foreigner shall flee or otherwise prevent the execution of the decision; or c) when there is doubt as to the veracity of the allegations of a foreigner concerning his/her identity, and he/she is given the expulsion measure.

Foreigners are placed under surveillance for a period no longer than 90 days. In such cases where the reasons for imposing the surveillance have not changed following the expiration of the previous detention, surveillance may be extended each time up to a maximum 90 days so that total period in the Immigration Centre does not exceed 180 days. In case of foreigner's lack of cooperation in the process of removal or delays in obtaining the necessary documents from the country of return, the period of surveillance may be extended for more than 180 days. The total period of surveillance in the Immigration Centre cannot be longer than 18 months continuously. A foreigner under surveillance in the Immigration Centre has the possibility to submit an appeal against the decision on detention to the Ministry of Security within three days from the delivery of the decision. The appeal shall not stay its execution.¹⁵⁹

There is one detention facility for placing foreigners under surveillance in BiH – the Immigration Centre managed by the Service for Foreigners Affairs. The Immigration Centre became operational on 30 June 2008 with an initial capacity of 40 beds, and whose primary goal is to enable the implementation of the surveillance measure. It was replaced with the newly built facility of the Immigration Centre, which was opened on 23 November 2009, with a capacity of 80 beds. Following the opening of an additional facility, the accommodation capacity of the Immigration Centre was extended to 120 beds. Duties and responsibilities of detainees in the immigration facility are prescribed by the Rules of Procedure. The Immigration Centre has three sections- one for male detainees, second for females and third for families. No reports on detention conditions and possible allegations of ill-treatment are currently available. Conditions in the detention facilities are acceptable. Detainees mostly show their discontent with the length of stay, especially those who applied for asylum, having in mind that the asylum procedure does not affect the imposition or execution of surveillance. The average duration of detention is 90 days. All beneficiaries receive a decision imposing surveillance or in the case of asylum seekers, a decision restricting their

¹⁵⁸ Article 118 (3)

¹⁵⁹ Article 119 of the Law on Foreigners

movement, but decisions are issued in the official languages of BiH. Access to judicial review is enabled (where the Ministry of Security does not revoke a decision on surveillance in the Immigration Centre, or decision on extension of surveillance, or decision on extraordinary extension of surveillance in the Immigration Centre, within three days, or does not reach a decision upon the appeal, the foreigner may initiate an administrative dispute before the Court of Bosnia and Herzegovina)¹⁶⁰.

Access to legal aid is provided on personal request. VP can enter Immigration Centre only upon previous request for free legal aid submitted by interested beneficiary of the detention facility. Along with VP, access to Immigration Centre is enabled to UNHCR and BHWI (Bosnian Women Initiative) – an NGO providing psycho-social support.

An alternative to detention in the Immigration Centre is being placing under surveillance, with movement restricted to a specific area or location, with an obligation of reporting to an organizational unit of the Service for Foreigner's Affairs or police.

5. Return Policy

In accordance with the Law on Foreigners¹⁶¹ and the Law on Asylum¹⁶² a foreigner shall not be removed or returned to a country where his/her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion. A foreigner shall not be forcibly removed or returned to a country where he/she is not protected from being sent to such territory.

A foreigner, considered dangerous for the security of BiH or convicted of a serious crime that poses a threat to BiH for justifiable reasons, can be deported or returned to another country, unless he/she would be exposed to a real risk of being subjected to the death penalty or execution, torture, inhuman or degrading treatment or punishment.

Bosnia and Herzegovina signed a readmission agreement with the European Union in 2007 (entered into force on 1 January 2008). This agreement provides an obligation to sign protocols for implementation with every EU member state on defining technical issues, e.g. competence of relevant authorities, border crossings for readmission and acceptance of persons of concern, as well as fast track procedures. To date, BiH has signed implementation protocols with the following countries: Estonia, Malta, Austria, Bulgaria, Hungary, Czech Republic, Denmark, Romania, Germany, Belgium, Netherlands, Luxembourg and Ireland. BiH has also signed readmission agreements with other non-EU member states: Moldova, Switzerland, Liechtenstein, Norway, Serbia, Montenegro, North Macedonia, Turkey and Albania.

In total 927 return decisions were issued in 2017, and only one conclusion was issued to approve the execution of a decision on deportation. The largest number of return decisions

¹⁶⁰ Article 120 (6) of the Law on Foreigners

¹⁶¹ Article 109 of the Law on Foreigners

¹⁶² Article 6 of the Law on Asylum

were issued for nationals of Afghanistan, Pakistan, Kosovo, Serbia, Albania, Algeria and Iran. Data for 2018 is still not available.

Border management is rather strict for new refugee and migrant arrivals. Border police reported that it had prevented 15,221 attempts of illegal crossings of migrants in 2018¹⁶³. The Office of the United Nations High Commissioner for Refugees (UNHCR) reported in August 2018 that it had received reports that Croatia had summarily pushed back 2,500 migrants and asylum seekers to Serbia and Bosnia and Herzegovina since the beginning of the year, at times accompanied by violence and theft. Human Rights Watch reported that 20 people, including 11 heads of families and 1 unaccompanied boy who were interviewed, said that Croatian police deported them to BiH without due process after detaining them deep inside Croatian territory. Sixteen, including women and children, said police beat them with batons, kicked and punched them, stole their money, and either stole or destroyed their mobile phones¹⁶⁴. The Vaša prava BiH Association regularly collects information on push back incidents and provides legal counseling to those affected by police violence or any other form of human rights violation.

According to the Minister of Security of BiH, implementation of readmission agreements with Serbia, Montenegro and Croatia is largely affected by an increased number of arrivals to BiH, and that all three countries are trying to avoid their contractual obligations¹⁶⁵.

6. Cases of Human Trafficking and Smuggling of Irregular Migrants

The process of identification of foreign victims of trafficking (VoT) is prescribed by the Rulebook on Protection of Foreign Victims of Trafficking in Persons¹⁶⁶. In the process of identifying a victim of trafficking, the competent authorities are obliged to assess the following indicators: self-identification; place and conditions where the foreigner/potential victim of trafficking was found; the limitation of personal freedom; the psycho-physical condition of the person, his age, and especially cases of underage children; the manner and purpose of entry into Bosnia and Herzegovina; status, movement and residence of a person in Bosnia and Herzegovina; possession of a travel document; possession of financial means; and other circumstances relevant to proper identification. Formal identification of VoT is not disconnected from the initiation of criminal proceedings. The identification depends to a large extent on the case being qualified as human trafficking by the law enforcement agencies and prosecutors which detect the offence or receive reports about it. If trafficking cases are prosecuted as other offences, this results in a failure to identify victims of trafficking. Further, if a victim of trafficking does not co-operate with the investigation and prosecuting authorities, he/she is not identified as a victim. The involvement of social workers in the identification of victims of trafficking is very rare¹⁶⁷. The National Guidelines for Regional Monitoring Teams in Combating Trafficking in Human Beings were adopted in 2012 in

¹⁶⁶ Official Gazette no: 79/16

¹⁶⁷ GRETA report BiH 2017, available at: <https://rm.coe.int/greta-2017-15-fgr-bih-en/1680782ac1>



order to improve cooperation and to establish procedures for identification and referral mechanisms for both national and foreign victims of trafficking. The new Action Plan for Combating Trafficking in Human Beings¹⁶⁸ was adopted on 31 December 2016, replacing the former Strategy and Action Plan for 2013-2015.

Access to justice and the right to compensation of victims of trafficking is still, to a certain extent, limited. Even though in theory victims have a right to claim compensation, in practice only a few victims submit a claim for compensation. If such claims are awarded, they are rarely executed in practice. There is no specific law for compensation of victims, although VoT can request compensation in criminal or civil procedures. The prosecutor is obligated to inform the victim of the possibility to file a claim for compensation in criminal proceedings, but in practice victims are often discouraged to do so. In a previous case, the criminal court decided on a small amount of compensation to be paid to the victims and left it to the victim to bring a claim before a civil court for the rest of the compensation. VoT refrain from seeking claims before a civil court because the proceedings are lengthy and involve high costs.

According to the Border Police, there has been a significant increase in the number of detected criminal offences related to smuggling of people. Police officers recorded 66 cases of smuggling persons and 8 cases of organizing a group or association for the committing of the criminal offence of smuggling of migrants, for which 134 people were reported to the competent prosecutor's office in 71 official reports. In 2017 there were 21 criminal offences of smuggling of migrants recorded, for which 64 people were reported in 25 reports¹⁶⁹. Migrants who have been smuggled are not prevented from reporting the criminal offence of smuggling. There is no available data on the number of migrants trafficked.

The Court of BiH finalised a relatively low number of smuggling cases during the first half of 2018 – just 10 smugglers were convicted in nine cases over this period. Of those convicted, sentences were suspended for nine perpetrators, while one received an imprisonment sentence of 10 months. The lenient sentencing pronounced in these cases raises concerns for future deterrence of smuggling in BiH, should mixed migration flows continue to rise¹⁷⁰.

7. Lessons Learned and Challenges

In order to respond to the current situation and possible migration crisis, competent authorities must be proactive and efficient. Comprehensive planning, including effective implementation of planned activities and goals, is necessary. Sharing practices from other countries can also be beneficial. BiH must take over management of all temporary reception centres across the country and provide unhindered access to asylum procedures. The state

¹⁶⁸ Action plan is for period 2016-2019

¹⁶⁹ Border police report available at: <http://www.granpol.gov.ba/content/read/71>

¹⁷⁰ Migrant and Refugee situation in BiH, available at: <https://www.osce.org/mission-to-bosnia-and-herzegovina/397319?download=true>

should provide unified procedures for accessing guaranteed human rights (registration of birth, appointment of legal guardians....) to avoid practices that are not fully harmonized.

Facilities for accommodation of unaccompanied minors must be established by the state. More effective engagement of the Service for Social Welfare in situations of unaccompanied minors is needed, including more effective assessment of the best interests of the child.

Capacity building for officials (Border police, Service for Foreigners Affairs, Sector for Asylum) must be continuous.

Alternatives for detention should be applied, rather than detention, wherever possible. Safeguards and independent border monitoring for possible unlawful expulsions and deportations, as well as push backs across borders, must be established.



CROATIA

In Croatia, 2018 was marked with the criminalisation of the work of lawyers, NGOs and activists who provide help and support to refugees and migrants, and who speak publicly about illegal push-backs and violence at the borders, a persisting issue for the last couple of years. Numerous NGOs, international organizations and the media, as well as Croatia's Ombudswoman, reported the push backs from Croatia, to Serbia and Bosnia and Herzegovina, as resulting in the denial of access to asylum procedures and as often including alleged violence or theft by state authorities.

1. Introduction

2018 was marked with the criminalisation of the work of lawyers, NGOs and activists who provide help and support to refugees and migrants, and who speak publicly about illegal pushbacks and violence at the borders, a persisting issue for the last couple of years. Numerous NGOs, international organizations and the media, as well as Croatia's Ombudswoman, reported the pushbacks from Croatia, to Serbia and Bosnia and Herzegovina, as resulting in the denial of access to asylum procedures, and as often including alleged violence or theft by state authorities.

The Centre for Peace Studies (CPS) has often been in contact with individuals that have experienced the illegal practice of pushbacks. Contact was established both by telephone and in person. We received numerous testimonies, with pictures and GPS positions regarding the experienced events. In addition to this, CPS conducts regular visits in the towns close to the border area, in order to collect the testimonies of migrants that experience such illegal practices. Finally, CPS is in everyday contact with organizations on the field, that provide us with daily and monthly reports about push backs and violence perpetrated at the borders by police officers.

The most significant pushback case was the one of M.H. In December 2017 the family of a 6-year-old Afghani girl, who lost her life as she was hit by a train at the border between Croatia and Serbia, initiated criminal proceedings against Croatian police due to inhumane treatment, push-back and manslaughter. CPS staff went to visit the family in Serbia and acquire power of attorney for their lawyer, Sanja Bezbradica Jelavić, to start the case. The family decided to leave Serbia after a couple of months and on 8 March 2018 reached the territory of the Republic of Croatia. The family reported that, regardless of repeated applications to allow them to seek asylum, they were expelled once again to Serbia's territory. After that, they again reached Croatian territory in the night of 20/21 March 2018. After that, the police kept the family in detention for almost 3 months, not allowing CPS staff and their chosen lawyer, Sanja Bezbradica Jelavić, to visit them. The police went a step further and engaged the National Police Office for the Suppression of Corruption and Organized Crime (PN USKOK) to take investigative actions against Bezbradica Jelavić's law office regarding the circumstances of the signature for the power of attorney. Since the statutory parliamentary bodies for civilian police oversight had not been established in months, we requested the competent parliamentary committees to initiate the parliamentary investigative commission on intimidation of human rights organizations and attorneys by the police, as well as possible abuse of position and authority within the Ministry of Interior through abuse of police apparatus. In the meantime, the lawyer started the ECtHR application and there were several interim measures by the ECtHR which disabled the Croatian authorities to return the family to Serbia. The State attorney dismissed the investigation, even though the MoI clearly disabled the use of evidences. In July the ECtHR issued an interim measure of no expiry. During the summer the family left Croatia. However, we are keeping contact with them for the purposes of their case before the ECtHR.

The Centre for Peace Studies has also filed criminal charges against unidentified Croatian police officers for unlawful acts against refugees and migrants while guarding Croatia's

border with Bosnia and Herzegovina. The charges were filed after Border Violence Monitoring published video footage of unlawful expulsions of migrants including children. The released video confirms the allegations made by refugees and migrants over the past two years. International media like The Guardian reported the news, and the Minister of Security of Bosnia and Herzegovina declared how such behaviour is a shame for a European Member State.

The Bylaw on the Rules Regarding Detention in the Reception Centre for Foreigners to the Ministry of Interior was passed on 16 November 2018. New regulations regarding access to detainees are very restrictive for NGO representatives and lawyers and potentially Ombudsperson Office staff. Most problematic is that the lawyers are treated the same as any other visitor, which limits and imposes barriers to practising their obligations.

An issue that also concerned us, in 2018, is the practice of detaining vulnerable groups in transit centres like Tovarnik. Besides the H. family, at least two more families were detained, and some of the family members had severe medical issues, while others included small children.

We believe there have been deaths on borders and along the Balkan route which are still unknown (the Ministry of Interior has less registered deaths in their official statistics), as well as deaths that have not been properly investigated.

2. Statistical Data on Irregular Migration in 2018 Compared with Statistics for 2017

The official statistical report of the Ministry of Interior for 2018 indicates there were 8,207 cases of illegal entries of third country nationals (1,669 Afghans, 428 Albanians, 255 Bangladeshis, 92 Bosnians, 356 Iraqis, 900 Iranians, 501 Kosovars, 132 Moroccans, 11 Nigerians, 1,186 Pakistanis, 416 Syrians, 79 Serbs, 83 Tunisians, 942 Turks, and 872 others) into Croatia, compared to 4,808 in 2017. The same report indicates that 616 persons tried to illegally enter a neighbouring country after illegally entering Croatia (489 towards Slovenia, 1 towards Hungary, 1 towards Serbia, 119 towards Bosnia and Herzegovina, and 6 through maritime and air traffic). In 2018, 12,633 third country nationals were refused entry (2,440 Albanians, 3,775 Bosnians, 148 Montenegrins, 441 Macedonians, 318 Russians, 427 Kosovars, 1,142 Serbians, 751 Turks, and 3,122 others).

A total of 536 third country nationals were detained at the Reception Centre for Foreigners Ježevo, out of which there were 388 cases of forced removal/departures, 70 releases, 55 persons moved to the Porin Reception Centre (altogether 534 persons). Out of the total 1,068 asylum applicants in 2018, 217 applications have been rejected in the final instance¹⁷¹.

¹⁷¹ Ministry of Interior, January 2019, Statistical review of basic safety indicators and results of work in 2018: <https://mup.gov.hr/UserDocsImages/statistika/2018/Statisticki%20pregled%20temeljnih%20sigurnosnih%20pokazatelja%20i%20rezultata%20rada%20u%202018.%20godini.pdf>

3. Legal Framework on Irregular Migration and Asylum

On 3 May, there was a Parliament Plenary debate on the draft law on Changes and amendments to the Aliens Act (rasprava o Prijedlogu zakona o izmjenama i dopunama Zakona o strancima). Apart from the fact that the Parliamentary Committee for Human Rights and the Rights of National Minorities did not voice their concerns on that, the conducted e-counseling finally resulted in the rejection of all proposals for amendments made by the public concerned. The changes not only sought to address the inability of foreigners to discover the reasons why the Republic of Croatia deemed him/her as a security threat, but also sought to address the putting of foreigners in unequal positions from which they must defend themselves against the charges. These gaps open up opportunities for arbitrariness when assessing whether someone is a threat to national security. The possibility of misuse is also found in the amendments to the provisions, which prescribe the risk factors for which a foreigner should have their freedom of movement limited or restricted, for example, lack of financial means and accommodation are described as such risk factors.

However, it is not clear why these reasons would point to the risk of avoidance, and there is no clear direct link between these reasons and the purpose they want to achieve. CPS' Amendments Proposals can be found here.

In July 2018, a Frontex surveillance airplane started monitoring the EU's external borders in the Western Balkans area as part of Frontex Multipurpose Aerial Surveillance (MAS), but in September 2018 the Croatian Prime Minister said, in Salzburg, that the Croatian police are capable of controlling the Croatian border on their own and do not need additional help from the European Border and Coast Guard Agency. In November 2018, Frontex had a small operational presence in Croatia, with 8 officers deployed at border checkpoints. Still, in December 2018, European Commissioner - Vytenis Povilas Andriukaitis announced that Teams of the European Border and Coast Guard Agency would be arriving at the Croatia-Bosnia border because of migrant pressure.

4. Policies and Practices of Immigration Detention of Irregular Migrants and Vulnerable Groups

As of 2017, Croatia has three detention facilities, one dedicated immigration detention centre officially called the Reception Centre for Foreigners Ježevo (total capacity: 95 places) and two transit detention centres, located in Trilj (at the border with Bosnia) and Tovarnik (at the border with Serbia). Those transit centres confine undocumented non-citizens in the process of deportation (each of them can accommodate 62 persons) and have a separate wing for vulnerable groups. Special detention premises also exist at the airport in Zagreb (14 places)

and at the airport in Dubrovnik (6 places), while at other airports space for international departure is in use for these purposes.

In 2018, 536 third country nationals were detained at the Reception Centre for Foreigners Ježevo, while the total number of persons whose entry was refused at the airports was 468¹⁷².

Article 131 of the Foreigners Act¹⁷³ states that third country nationals may be placed in the Reception Centre for Foreigners in order to restrict their freedom of movement and ensure forceful removal and return, if the same purpose cannot be achieved using lesser measures (deposit of travel documents and travel tickets, deposit of certain financial means, prohibition to leave a specific place of accommodation, reporting to a police station at specified times). This shows that the possibility of detention arises only after applying the aforementioned lesser measures. Detention is defined as a deprivation of liberty in migration-related proceedings and it differs from detention on grounds of criminal offences or misdemeanors¹⁷⁴, with explicit emphasis that it equally includes prisons, camps, detention centres, airports and other places where an individual's freedom of movement is restricted¹⁷⁵. Person can be detained for 3¹⁷⁶ or 6¹⁷⁷ months. In special circumstances, detention can be prolonged for 12 more months¹⁷⁸. According to both the Law on Foreigners and LITP, an appeal against a detention decision is not permissible but detainees may lodge a complaint to an administrative court. The court must decide on the complaint after an oral hearing and within 15 days. Under the Law on Foreigners an administrative court is also involved in the process for extension of the period of detention after the expiration of a detention term of 3 months. The administration of the detention centre adopts a decision extending detention and provides it to administrative court. The court has 15 days to annul or confirm the extension¹⁷⁹.

The Republic of Croatia does not yet have any model developed as an alternative to detention, even though such a possibility is mentioned in the legislative framework in Article 132 of the Foreigners Act¹⁸⁰ in the form of a lesser measure than detention: deposit of travel documents and travel tickets, deposit of certain financial means, prohibition to leave a specific place of accommodation and reporting to a police station at specified times. According to regular FRA reports there are no alternatives to detention in Croatia and access to detention centres for NGOs and lawyers remains limited¹⁸¹.

The Bylaw on the Rules Regarding Detention in the Reception Centre for Foreigners to the Ministry of Interior was passed on 16 November 2018. New regulations regarding access to

172 Ministry of Interior, January 2019, Statistical review of basic safety indicators and results of work in 2018, available at: <https://mup.gov.hr/UserDocsImages/statistika/2018/Statisticki%20pregled%20temeljnih%20sigurnosnih%20pokazatelja%20i%20rezultata%20rada%20u%202018.%20godini.pdf>

173 Official Gazette "Narodne novine", Foreigners Act, 130/11, 74/13, 69/17, Article 2

174 International Detention Coalition (2016.) What is immigration detention? And other frequently asked questions.

175 UNHCR (1999.) UNHCR's Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers.

176 Official Gazette "Narodne novine", Foreigners Act, 130/11, 74/13, 69/17, Article 124

177 Official Gazette "Narodne novine", Foreigners Act, 130/11, 74/13, 69/17, Article 125

178 Official Gazette "Narodne novine", Foreigners Act, 130/11, 74/13, 69/17, Article 126

179 Official Gazette "Narodne novine", Foreigners Act, 130/11, 74/13, 69/17, Article 127

180 Official Gazette "Narodne novine", Foreigners Act, 130/11, 74/13, 69/17, Article 132.

181 FRA, Migration: Key fundamental rights concerns - Quarterly bulletin 1 2019, available at: <https://fra.europa.eu/en/publication/2019/migration-key-fundamental-rights-concerns-quarterly-bulletin-1>

detainees are very restricted for NGO representatives, lawyers, and potentially Ombudsperson Office staff. Most problematic is that the lawyers are treated the same as any other visitor, which limits and imposes barriers in practicing their obligations. Also, it is not in accordance to the Constitution of Croatia as it stipulates that the Bar, as an autonomous and independent service, shall provide everyone with legal aid. Several complaints by lawyers were filed to the Ombudsman Office stating limited or no access to clients in the Reception Centre for Foreigners Ježevo. The controversial measure, of obliging detainees to pay for their detention, remains.

A special wing for vulnerable groups in Ježevo was finalized at the end of 2015, with a total capacity of 27 places. Furthermore, vulnerable persons, including victims of trafficking and unaccompanied minors, have been detained at the Reception Centre for Foreigners Ježevo, contrary to previous practice. In 2018, the Ombudsperson's Office continued to monitor cases of detained asylum seekers in the Tovarnik Transit Detention Centre and to make recommendations to the Ministry of Interior, such as that they should not detain vulnerable persons. In the well-known case of the detained Hosseini family, whose six-year-old daughter died after being hit by a train at the Croatian Serbian border, they succeeded in meeting their lawyer after 50 days, while the European Court of Human Rights (ECHR) issued a third interim measure, explicitly requesting the Croatian Government to relocate the family to facilities that are in line with Article 3 of the ECHR¹⁸².

NGOs had only limited access to the detention centres in Croatia, mainly for the purpose of assisting applicants for international protection.

5. Return Policy

Public data or information on return decisions and carried out removals is not available from Ministry of Interior sources. For 2017, Eurostat provides the information that 2,125 third-country nationals have been returned: 1,040 voluntary return, 1,085 enforced return.

Safe return of a third country national, according to the Foreigners Act, is carried out by the Ministry of Interior, taking into account the victim's rights, safety and dignity. Minors, who are victims, will not be returned to any country if, following the assessment of risks and safety, there are indicators that such return would not be in his/her best interest (Art. 68). A third country national who is illegally residing, and a third country national whose legal residence ceased, will be issued with a return decision (Art. 103). The Foreigners Act also provides for conditions on expelling a third country national (Art. 108 and 109), entry ban (Art. 111) and immigration detention (Art. 130 – 133). There are various by-laws further regulating these issues. In regards to children, the Foreigners Act envisages that the best interest of the child, including his/her family life and health situation, should be taken into account. Further

¹⁸² FRA, Migration: Key fundamental rights concerns - Quarterly bulletin 1 2019, available at: <https://fra.europa.eu/en/publication/2018/migration-overviews-july-2018>



to this, prior to forced return of the unaccompanied child, it should be established whether he/she will be given to a family member, guardian or institution. Children victims of human trafficking and human smuggling are entitled to free representation and confidentiality, alongside guarantees provided for adult victims (The Criminal Procedures Act).

The Readmission Agreement initially calls for respect of the Geneva Convention and the Protocol, and, in respect of third-country nationals, it states that each Contracting Party, at the request of the other Contracting Party, will accept on its territory a national of a third state who does not fulfill or no longer meets the conditions for entry or stay applicable in the state territory of the Requesting Contracting Party, if it is established that the person entered the territory of that Requesting Contracting Party directly after having resided or crossed over state area of the receiving Contracting Party. Croatia has bilateral readmission agreements with Estonia, Italy, Germany, Greece, Latvia, and Sweden, according to documented research by EMN. Moreover, bilateral readmission agreements are in place with the neighboring countries: Slovenia, Serbia, Bosnia and Herzegovina.

The Croatian Foreigners Act transposes Directive 2008/115/EC on common standards and procedures in member states for returning illegally staying third-country nationals. Article 13 of the Directive prescribes the obligation to have access to legal remedies, specifically, that a third-country national has the right to an effective remedy of complaint, or review of a return decision, before a competent judicial or administrative body. Thus, it is clear that European law, as well as Croatian national law, clearly and unequivocally prescribe the standards and obligations of the state in dealing with irregular third-country nationals. It is clearly indicated when and why the return process is conducted and how. Also, the Directive explicitly refers to the Charter of Fundamental Rights and its prohibition of collective expulsion. So, in situations in which the Ministry of Interior wants to return people who have illegally crossed the border, and in a situation where there indeed aren't refugees who would seek international protection in Croatia, they are obliged to conduct an individual procedure for each person, in accordance with the Foreigners Act, and specific return measures in accordance with the Rules on the treatment of third-country nationals, as well as the Readmission Agreement (for example, the Law on the Confirmation of the Agreement between the Government of the Republic of Croatia and the Council of Ministers of Bosnia and Herzegovina on the acceptance of persons whose entry or stay is illegal).

Mr. Ničeno, Assistant Chief of Police Director and Chief of Border Management, gave a statement about the number of readmissions to Bosnia: he stated that around 600 persons have been returned to Bosnia in the first 11 months of 2018. But, in the short period from September 29th to October 10th, this video, recorded by hidden camera and sent by an anonymous source to the Border Violence Network, shows the expulsion of at least 350 people by police, which leads to the conclusion that the number of readmissions is not real, thus indicating that the procedure is not carried out in each individual case in accordance with the regulations. No Name Kitchen detected 1,503 pushbacks from Croatia to Bosnia from June 2018 to January 2019. Looking at the situation at the Croatian-Serbian border, UNHCR and its partners reported 5,537 cases of reported pushbacks and collective expulsions during 2018.

As stated in the Ombudsman's report, there are two controversial police decrees, the exercise of which is consistent with the pushback trends recorded in the last two years. According to the order of the Illegal Migration Service, that is, the Police Directorate of 25 November 2016, all irregular migrants who entered Croatia illegally from Serbia, and were detained in the Police Administration of Zagreb (PUZ), are to be handed over to the Chief Officer at the Tovarnik Police Station for further procedure. That order was further supplemented by the Police Directorate's order of 15 February 2017 on the treatment of irregular migrants found within Croatia's territory when all police administrations were ordered to transfer all irregular migrants to the police at the state border, with prior written notice, which is then responsible for determining the details and the circumstances of their entry and stay in Croatia. In addition, data that was presented by the Ministry of Interior to the Ombudsman's office was inconsistent and contradictory. This was therefore presented to the office of the State Attorney General in order for them to conduct an effective criminal investigation. The data that the Ombudsman received from the Ministry of the Interior report concerned 1,116 persons who were sent back to Serbia via the so-called "accelerated" procedure in the period from February to November 2017. This figure differs from the UNHCR figures because the police do not track all pushbacks, like those directly at the border when people are pushed back to Serbia without conducting the necessary procedures.

6. Cases of Human Trafficking and Smuggling of Irregular Migrants

Since 2002, the Republic of Croatia has started building a system for the suppression of trafficking in human beings and for this purpose has ratified the most important international documents in this field, such as:

*United Nations Convention against Transnational Organized Crime; Protocol for the Prevention, Suppression and Punishment of Trafficking in Persons, especially Women and Children; Protocol against smuggling of migrants by land, sea and air; The Convention on the Rights of the Child; Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography; Council of Europe Convention on the Suppression of Trafficking in Human Beings.*¹⁸³

In 2017, there were 15 reported acts of human trafficking and 15 solved cases. In 2018, there were 12 reported acts of human trafficking, and 14 solved cases. There were 26 perpetrators, out of which 22 were men and 4 women. There were altogether 77 victims of trafficking in 2018, out of which 50 were men and 27 women. 61 of them were foreigners. In 2018, there were 12 reported criminal acts of human trafficking, 8 unknown, 14 solved, and 10 subsequently discovered. In 2017 there were 2 criminal acts of human trafficking in which minors (14-18yo) were perpetrators, and none in 2018.

¹⁸³ 2018, National plan to combat human trafficking 2018-2022, Governmental Office for Human Rights and Rights of National Minorities, available at: <https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Nacionalni%20plan%20za%20suzbijanje%20trgovanja%20judima%202018-2021.docx>

In 2017 there were 365 reported cases of smuggling, out of which 361 were solved. In 2018, there were 619 reported cases of smuggling, 612 solved, and 303 subsequently discovered. In 2018, there were 620 perpetrators of the criminal act of smuggling, compared to 321 in 2017, of whom 253 were arrested, and 310 were unknown.¹⁸⁴

7. Lessons Learned and Challenges

2018 brought many changes in migrant detention that are mostly perceived as negative, since the politics and practice are becoming more restrictive and less open to actors outside the institutional framework.

The only positive thing perceived is that Croatia (together with Greece, Italy and Cyprus) got an additional 305 million EUR in emergency assistance to support migration and border management from the European Commission¹⁸⁵. But while it would seem that those finances would be spent to upgrade the detention system and implement practices that can reform it and bring in more progressive standards (like different models of detention alternatives), practice shows that it has been downscaled to a level of isolation, with unjustified limitations and restrictions. To be more precise:

- NGOs¹⁸⁶ report refugee complaints of violence from the police towards refugees and migrants in the border area (Croatia-Bosnia, Croatia-Serbia)
- The Bylaw on the Rules Regarding Detention in the Reception Centre for Foreigners (that was passed on 16 November 2018) brings new regulations regarding access to detainees which are very restrictive for NGO representatives, lawyers and potentially Ombudsperson Office staff. The most problematic is that the lawyers are treated the same as any other visitors, which limits and imposes barriers in practicing their obligations. Also, it is not in accordance to the Constitution of Croatia which regulates that the Bar, as an autonomous and independent service, shall provide everyone with legal aid. Several complaints by lawyers were filed to the Ombudsman Office stating limited or no access to clients in the Reception Centre for Foreigners Ježevo¹⁸⁷.
- New Rules Regarding Detention in the Reception Centre for Foreigners do not provide enough guarantees that detainees are going to be adequately informed about their rights; as they provide translation in only two languages, and others according to needs;
- New Rules prescribe accommodation for unaccompanied minors.

¹⁸⁴ Ministry of Interior, January 2019, Statistical review of basic safety indicators and results of work in 2018: <https://mup.gov.hr/UserDocsImages/statistika/2018/Statisticki%20pregled%20temeljnih%20sigurnosnih%20pokazatelja%20i%20rezultata%20rada%20u%202018.%20godini.pdf>

¹⁸⁵ FRA Migration: Key fundamental rights concerns - Quarterly bulletin I

¹⁸⁶ Pushback reports - CMS, AYS, NNK

¹⁸⁷ FRA Migration: Key fundamental rights concerns - Quarterly bulletin I

- New Rules are largely grounded, in the sense that they do not provide specific procedural solutions and are open to arbitrary interpretation.

In this sense, **priority areas for improvement** are:

- The Republic of Croatia needs to improve the system of recording statistical information in the area of asylum and migration, as well as its approach to informing the public.
- Ensuring access to the international protection system within detention facilities and in the border area.
- Ensuring the implementation of transparent, clear, and legally-based regulations in the practice of deporting persons from the territory of the Republic of Croatia
- The external detention monitoring body should be more closely standardized and certain procedural guarantees should be prescribed.
- Unaccompanied minors should be placed in open centres with adequate and appropriate care.



SLOVENIA

A new sub-route have been developed through Albania, Montenegro, and Bosnia-Herzegovina towards Croatia and Slovenia. During 2018, 2875 asylum applications were submitted, which is app. 94% increase in comparison to 2017 (1476) and 102 persons were granted protection. In May 2018, media reported allegations of illegal police practices during the return procedures of individuals who expressed the intention to apply for international protection from Slovenia to Croatia, and their subsequent return to the Bosnia and Herzegovina.

1. Introduction

In early 2017, Slovenia adopted amendments to the Aliens Act which allow for future restrictions to asylum procedure accessibility. According to the amendments, the National Assembly (Parliament) can vote on suspending the right to asylum in cases where migration poses “a threat to public order and internal safety in the Republic of Slovenia”. If the parliamentary measure is adopted, the Police is instructed by law to reject all motions to apply for international protection as inadmissible, as long as the persons wishing to apply entered Slovenia from a neighboring EU Member State in which there are no systemic deficiencies of asylum procedure, and reception conditions which could lead to torture and inhuman or degrading treatment. The Police then deports the person back to said neighboring country. An appeal against the police order does not have a suspensive effect. The adopted amendments are currently under review by the Constitutional Court at the initiative of the Slovenian Human Rights Ombudsman, prepared with the support of the civil society organizations. The decision is pending at the time of writing.

In May 2018, media reported allegations of illegal police practices during the return procedures of individuals who expressed the intention to apply for international protection from Slovenia to Croatia, and their subsequent return to the Bosnia and Herzegovina. At the time of the reports of such practices, PIC observed a sharp decline in the number of newly lodged asylum applications. The change of practice in the processing of individuals in return procedures was also indicated by the statistical data obtained by the authorities. In June 2018, 885 illegal border crossings were recorded, while 652 persons were forcibly returned. According to official statistics, 267 asylum applications were lodged in June. However, it has to be noted that on 1 June 2018 there were 92 persons who had arrived in May who were accommodated in the reception area of the Asylum Home and in the reception centre in Logatec, waiting to lodge their asylum applications. Therefore, access to the asylum procedure in June was available to 175 individuals. Statistical data showed a four-to-fivefold increase in the number of forced returns in June compared to May, when 1,158 illegal crossings were recorded, 148 individuals were forcibly returned. There were 365 asylum applications lodged in May.

In June 2018, PIC conducted a field visit to Velika Kladuša and Bihać in the Bosnia and Herzegovina, with the aim of verifying the reports of illegal police practices during return procedures of individuals who expressed the intention for international protection and published a report of the field visit.

2. Statistical Data on irregular migration in 2018

In the first half of 2018, from 1 January to 30 June, the Police recorded a total of 3,427 persons irregularly crossing the state border of the Republic of Slovenia. This is a 354.5 per cent increase in comparison to 2017, when 754 irregular crossings were recorded in the same time

period. According to the official statistics the top five nationalities of persons apprehended for irregular entry were Pakistani (840), Algerian (515), Syrian (295), Afghanistani (276) and Moroccan (187). The official statistics state that the largest number of unauthorised border crossings were reported in the southern border region (border with Croatia, and the shortest way to Bosnia and Herzegovina) which is under the jurisdiction of the Novo mesto Police Directorate. They apprehended 1.444 persons for irregular entry, which represents 42 per cent of all unauthorised border crossings. The second most burdened area was the southwestern border region, under the jurisdiction of the Koper Police Directorate, which reported 1.374 or 40 percent of all unauthorised border crossings¹⁸⁸.

According to the official statistics, a total of 1.977 third-country nationals were refused entry into the territory on the grounds of non-compliance with the requirements to enter Slovenia or another Member State of the European Union, based on the Schengen Borders Code. The numbers increased by 3 per cent in comparison to the same time period in 2017¹⁸⁹. The official statistics state that the top five nationalities of persons refused entry into the territory were Albanian (533), Bosnian and Herzegovinian (445), Serbian (369), Macedonian (205) and Kosovans (87)¹⁹⁰.

In recent years, the number of irregularly staying migrants has also increased; irregularity is, in most cases, a consequence of the expiration of permission to stay (overstaying). Again, this is most common with citizens from the Western Balkans countries.

The trend in returning irregular migrants changed in 2014, and Slovene police have since issued more return decisions ordering forced removal compared to the period before 2014, when more decisions were issued allowing voluntary return. The number of returns, overall, has decreased over the past few years: in 2017, 250 people were expelled and 330 in 2016, compared to 840 in 2015. A considerable proportion of returnees leave as part of a "voluntary return" scheme, notably 150 in 2017 and 155 in 2016¹⁹¹.

2875 asylum applications were submitted in 2018, which is app. 94% increase in comparison to 2017 (1476). This all stands in contrast to the approximate 300 or 400 applications in previous years. In 2018, 102 persons were granted protection.

In November 2015, Slovenia started construction of a barrier consisting of razor wire (more than 160 km). The stated aim of the barrier was to control the flow of refugees and migrants, while the border would stay open. The 400 mile border between Slovenia and Croatia forms the southeastern border of the Schengen Area, the passport-free zone shared by member states of the European Union. Former Slovene minister of Interior, Ms. Gyorkos Žnidar, in June 2018, stated that because the external EU border controlled by Croatia "is still too porous and too many migrants are still coming into the Schengen area" the barbed wire and barriers will not yet be removed. More than 10 migrants died in 2018 attempting to access Slovenian territory through the river Kolpa in order to avoid the barbed wire.

188 Ministry of the Interior, Police statistical data available at: https://www.policija.si/images/stories/Statistika/MejnaProblematika/IlegalneMigracije/2018/Irregular_migration_EN/January-June_2018.pdf.

189 Ministry of the Interior, Police statistical data available at: https://www.policija.si/images/stories/Statistika/MejnaProblematika/IlegalneMigracije/2018/Irregular_migration_EN/January-June_2018.pdf

190 Ministry of the Interior, Police statistical data available at: https://www.policija.si/images/stories/Statistika/MejnaProblematika/IlegalneMigracije/2018/Irregular_migration_EN/January-June_2018.pdf

191 <https://www.globaldetentionproject.org/countries/europe/slovenia>

3. Legal framework on irregular migration and asylum

Slovene migration policy was first set with the Resolution on migration policy of the Republic of Slovenia¹⁹², in 2002. After EU accession (in 2004), Slovene migration policy is shaped through the European migration and asylum acquis. Provisions of EU directives, regulations and decisions in this area have been transposed into Slovene legislation; the act governing regular and irregular migration in the Republic of Slovenia is the Aliens Act. The Aliens Act sets out the conditions for, and methods of entry into, departure from, and residence of aliens in the Republic of Slovenia. The act also defines irregular (e.g. irregular) entry into the country: the entry of an alien into the Republic of Slovenia is deemed to be irregular if: the alien enters the Republic of Slovenia despite being refused entry; the alien evades border control; the alien uses a forged or modified travel document, or other documents, which are required upon entry, of another person; if the alien provides false information to border control authorities; the alien enters the Republic of Slovenia at the internal border in contravention of this act; or alien enters the county in spite the fact that an entry ban has been issued to him/her that has not yet expired.

An important part of the Slovene legal framework on irregular migration consists of bilateral or European agreements on readmission of third-country nationals or stateless persons who have irregularly entered the territory. Besides this, the legal framework on irregular migration also consists of the Temporary Protection of Displaced Persons Act¹⁹³ and the International Protection Act, both, in part, regulating or defining some aspects of irregular migration.

In February 2016, the Government of Slovenia issued the "Decree on a list of safe countries of origin of Republic of Slovenia." The decree contains the following list of countries: Albania, Algeria, Bangladesh, Bosnia and Herzegovina, Montenegro, Egypt, Kosovo, Macedonia, Morocco, Serbia, Tunisia and Turkey. This marks the first time the principle of a safe country of origin is being implemented in the Republic of Slovenia.

Slovenia does not have a specially designed return policy, legislation follows the principles and standards of the Directive (2008/115/) on common standards and procedures in Member States for returning irregularly staying third-country nationals (Return Directive). Return policy is also not high on the current political agenda, as the number of migrants ordered to leave, in spite of the increased migration flow, is not very high.

The Aliens Act regulates two types of return procedures; first is the formal return procedure in which the foreigners, staying irregularly in the RS, are issued a return decision. The second form of return procedures refers to cases when the alien is apprehended at the irregular border crossing, or in connection with the irregular border crossing, in which the return decision is not issued. In these cases, an informal return procedure is carried out based on the Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia (hereinafter: The Agreement). In the first paragraph of Article 2, the

¹⁹² Resolution on migration policy of the Republic of Slovenia (Resolucija o migracijski politiki Republike Slovenije, Uradni list RS, št. 106/02)

¹⁹³ Temporary Protection Act (Zakon o začasni zaščiti razseljenih oseb, Uradni list RS, št. 16/17 – uradno prečiščeno besedilo)



Agreement states that a State Party, upon the request of another State, shall accept a third-country national, or a stateless person who does not fulfil or no longer fulfils the requirements to enter or stay in its territory, if it is proved or presumed that the person entered in its territory by crossing the other State Party. The Agreement allows the State Parties to return and accept third-country nationals, or stateless persons, without formalities in a so called shortened procedure. A condition for return in the shortened procedure is that the State Party has to announce the return of the individual within 72 hours of the irregular border crossing taking place. The shortened procedure is applicable only if the competent authority provides information that enables the conclusion that the person irregularly crossed the common state border. If the admission of the individual per the shortened procedure, or the procedure based on the Agreement, is rejected by the State Party, the aliens' return can still be carried out per the Aliens Act. The State Party has to accept individuals returned via the shortened procedure immediately but not later than in 24 hours after receiving the return announcement.

The procedure applied on the basis of the Aliens Act, differs significantly from the shortened procedure regulated in the Agreement, as it is a formal return procedure in which an individual is issued a return decision. The alien has the right to appeal against the return decision within 3 days, the right to free legal counselling in the procedure, and the right to free legal representation before the Court. Thus, aliens whose return procedure is carried out under the Aliens Act have more procedural rights guaranteed in the process. Since the shortened procedure under the Agreement is informal, individuals are not issued a return decision and they do not have the right to appeal. Furthermore, the right to legal counselling and free legal aid is also not guaranteed under the procedure.

4. Policies and practices of immigration detention of irregular migrants in vulnerable groups

The current Aliens Act (AA, *Zakon o tujcih*) was adopted, transposing the EU Returns Directive and regulating the entry, stay, and departure of non-citizens. Procedures for asylum and international protection are provided for in the International Protection Act (IPA, *Zakon o mednarodni zaščiti*), which transposed the EU asylum acquis, including the Reception Conditions Directive. Both the AA and IPA provide for immigration detention.

According to AA, a non-citizen issued with a return decision may be detained if they cannot be deported immediately and display a risk of absconding, or fail to leave the country within the time period ordered in the return decision. In addition, it provides that non-citizens can be detained when their identity cannot be established.

Under provisions of the IPA, asylum seekers can be detained in order to establish their identity in cases of obvious doubt; to establish the facts on which an asylum application is

based (which could not be established without detention) and there is a well founded risk that the person will escape; when the person placed in pre-removal detention applies for international protection to hinder their removal; on account of the threat to state or public security; and during transfer proceedings based on the EU Dublin Regulation. Asylum seekers are rarely detained in regular procedures. Instead, most asylum seekers are detained pending a Dublin transfer.

The AA does not prohibit the detention of children. It provides that upon consultation with a special guardian assigned to them, unaccompanied children and families with children should be placed in facilities that are adequately equipped for accommodating minors. If this is not possible, children and families with children may be placed in the detention centre.

The detention centre has a specific unit for unaccompanied children. However, at times, when the occupancy rate is low, unaccompanied children may be held with other vulnerable people, to avoid their isolation. According to reports, this is always done with the children's consent, however the Committee on Prevention of Torture has expressed misgivings about this practice¹⁹⁴. Children are placed in elementary school and have permission to exit the centre in order to attend the school.[Under the AA, children in detention should have access to games and recreational activities appropriate for their age. Unaccompanied children in detention may not be subject to "strict police supervision" measures.

Children in asylum proceedings, however, cannot be detained in the detention centre, instead they are to be detained in the Asylum Home, which is considered an alternative to detention. Under the AA, women, families, children, elderly, seriously ill individuals, and other vulnerable people should be detained separately, ensuring adequate privacy. In turn, the IPA provides that vulnerable asylum seekers may be detained, but states that authorities should ensure health care, including mental health care, regular monitoring, and appropriate assistance, taking into account the specific individual circumstances.

5. Return policy

The Legal-informational centre for NGOs – PIC and Amnesty International Slovenia conducted a field visit to Velika Kladuša and Bihać (BIH) with the purposes of verifying the information regarding the alleged irregular police practices during the return procedures of individuals who express their intention to apply for international protection, from the Republic of Slovenia (RS) to the Republic of Croatia (RH), and their subsequent return in BIH.

Simultaneously, with the reports of alleged irregular police practices, a marked decline in the number of newly filed applications for international protection was observed. The trend started in the beginning of June and continued during the preparation of this report.

¹⁹⁴ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "Report to the Slovenian Government on the Visit to Slovenia Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 28 March to 4 April 2017, CPT/Inf (2017) 27," September 2017, <https://rm.coe.int/pdf/168074ad19>

Moreover, a change of practice in the processing of individuals during return procedures is also indicated by the obtained statistical data. In June, 885 irregular border crossings were recorded,¹⁹⁵ while 652 persons were forcibly returned. According to the official statistics, 267 applications for international protection were lodged in June¹⁹⁶, however, it has to be noted, that on 1 June 2018 there were 92 persons, who arrived in May, accommodated in the reception area of the asylum home and in the accommodation centre in Logatec, waiting to lodge their application for international protection. Therefore, access to the asylum procedure in June was available to 175 individuals. Statistical data therefore shows a 4,5 times increase in the number of forced returns in June compared to May, when 1158 irregular crossings were recorded¹⁹⁷ and 148 individuals were forcibly returned. At the same time there were 365 applications for international protection lodged in May.

Both organizations issued reports and presented findings and recommendations¹⁹⁸. The conclusions of the reports were that, in June 2018, the Republic of Slovenia has restricted access to the asylum procedure to persons that entered the country and subsequently hindered their right to asylum. Individuals who were returned in an informal return procedure, based on the Agreement between the Republic of Slovenia and the Republic of Croatia, were not appropriately informed about the possibility to apply for international protection and were not processed in the preliminary procedure that would enable them to lodge an application for international protection. During the procedure, the individuals were not aware of their rights or obligations, and got misleading information from the police that they would be able to apply for international protection. They were also fined for irregular entry onto the state's territory.¹⁹⁹

As a result of these activities, and also activities related to the protection of migrants who intend to seek asylum, the Minister of Interior attempted to publicly discredit the Legal-Informational Centre for NGOs and put pressure on human rights defenders working with migrants. The Police denies any disregard of migrant rights, however, testimonies of multiple unsuccessful attempts to enter the Slovene asylum system are increasing²⁰⁰.

An independent investigation of the alleged illegal police practices, in dealing with foreigners who irregularly crossed the Slovenian border, was also conducted by the Slovene Ombudsman. In August 2018 the Ombudsman issued the Interim report on activities and findings of the Ombudsman regarding the police enabling the possibility to apply for international protection²⁰¹. The report highlighted the lack of serious assessment of the personal circumstances of each individual, which could remove all doubt that the person, who was apprehended and detained by the police, didn't have the intention to apply for

195 Source: Policija; dostopno prek: https://www.policija.si/images/stories/Statistika/MejnaProblematika/IlegalneMigracije/2018/Januar-junij_2018.pdf.

196 Source: Ministrstvo za notranje zadeve; dostopno prek: http://www.mnz.gov.si/si/mnz_zasvas/tujci_vsloveniji/statistika/.

197 Source: Policija; dostopno prek: https://www.policija.si/images/stories/Statistika/MejnaProblematika/IlegalneMigracije/2018/Januar-junij_2018.pdf.

198 Reports are available at: <http://pic.si/wp-content/uploads/2018/07/1.-REPORT-ON-FINDINGS-AND-OBSERVATIONS-ON-THE-IMPLEMENTATION-OF-RETURN-PROCEDURES-IN-ACCORDANCE-WITH-THE-PRINCIPLE-OF-NON-1.pdf>
<https://www.amnesty.si/prisilna-vracanja>

199 The Aliens Act provides a fine of 500 to 1,200 EUR for unlawful entry and a fine of 800 to 1,200 EUR for unlawful stay.

200 Ombudsman yearly report 2018, page 206, http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018.pdf

201 Interim report of the Ombudsman, available at: <http://www.varuh-rs.si/medijsko-sredisce/sporocila-za-javnosti/novice/detajl/vmesnosporocilo-o-aktivnostih-in-ugotovitvah-varuha-glede-ocitkov-zavracanja-moznosti-podajanj/>.

international protection or had actually expressed the intention for international protection, but was possibly misheard. Additional visits were conducted in autumn 2018 and findings presented in early 2019. The Ministry of Interior is still denying any violations of the rights of migrants and stating that their access to the asylum procedure is not limited.

The statistics regarding returns and expressed intentions to apply for international protection are still hard to obtain. Because the statistics on return, under the readmission agreement with the Republic of Croatia (or any other country), are not aggregated by sex, age, nationality, vulnerability or other criteria, it is very difficult to follow the procedures and analyze the situation.

UNHCR, in its report *Desperate journeys*,²⁰² concludes that, throughout 2018, there were significant changes to the pattern of routes taken by refugees and migrants heading for Europe and consistent reports of people who had been pushed back to a neighboring country by police also from Slovenia were received.

6. Cases of human trafficking and smugglings of irregular migrants

The Slovenian Government approved the Manual on the Identification, Assistance and Protection of Victims of Trafficking in Human Beings (Manual)²⁰³, defining the role and tasks of different stakeholders in the identification, assistance and protection of victims of trafficking, regardless of their legal status in Slovenia.

Slovene Border police staff use the Frontex training manual for border guards and the Handbook on Risk Profiles on Trafficking in Human Beings, which provide indicators for the identification of victims. If a presumed victim of trafficking is detected by border police officers, the case has to be referred to the criminal police. Border police officers focus on vulnerable groups among migrants, such as unaccompanied children, women travelling alone with small children, and women and girls travelling alone. During individual interviews, the police try to identify migrants who were promised help by smugglers in seeking employment with third parties in the target country, as well as migrants who owe money to smugglers. Materials with information about trafficking in human beings and assistance possibilities are distributed.

The process of identifying child victims of trafficking is carried out in accordance with the Manual, which sets out the procedures for identifying child victims of THB in a separate chapter. Identification can be initiated by NGOs or the police, in co-operation with centres for social work and other organisations specialised in working with children. Regardless of their professional duty to safeguard confidential information, all professionals who come into contact with possible child victims of THB, in particular health-care staff, educators and

²⁰² <https://www.unhcr.org/desperatejourneys/>

²⁰³ Priročnik o identifikaciji, pomoči in zaščiti žrtev trgovine z ljudmi http://www.mnz.gov.si/fileadmin/mnz.gov.si/pageuploads/SOI/word/2016/Prirocnik_-_print_A4.pdf

carers, must report any suspicion of a child being a victim of trafficking to the police, the State Prosecutor's Office, or a social work centre. Child victims of THB are accommodated in the crisis shelters, together with adult victims.

A victim of a criminal offence (including THB) may seek damages from the perpetrator in the course of the criminal proceedings through a compensation claim²⁰⁴. The criminal court may grant compensation in full, or in part, and may refer the victim to claim the remaining part, or any other damages, through civil proceedings. The court may also refer the injured party to seek compensation through civil proceedings, altogether. Victims of THB may also claim compensation pursuant to the Crime Victims Compensation Act, however, the scope of application of the Crime Victim Compensation Act remains limited to victims of violent intentional crimes, who are EU citizens.

Pursuant to the Manual, the public bodies and NGOs involved in the identification procedure must inform victims of their right to legal assistance and free legal aid, and the requirements for claiming compensation. This information is provided during the initial identification interviews, first by NGOs, and then by the police. The courts decide, per the Free Legal Aid Act, whether to grant free legal aid to persons without sufficient means and select for them a lawyer from a roster.

In 2018 most of the cases of trafficking were identified as exploitative, in the form of prostitution and sexual abuse. In addition, cases of exploitation in the form of forcible execution of criminal offenses and forced begging, were also detected as a form of forced labor. In general, it is noted that individuals and criminal organizations recruit vulnerable persons from weak social and economic backgrounds, promising them employment and good earnings.

Slovenia remains, in particular, a destination country for third-country nationals from Eastern and South-Eastern Europe, who are exploited in the Republic of Slovenia via prostitution (Ukraine and Serbia); young women from the EU area (Romania) who are engaged in residential prostitution; for persons from the EU (Slovakia, Bulgaria, Romania, Croatia) and Serbia, Bosnia and Herzegovina and China, who are suspected of being involved, against their will, in organized begging and the organized execution of criminal offenses.

In 2018, the Slovene police dealt with 101 victims of trafficking. Per sex, women were the majority demographic. Citizens of China (32), Hungary (19) and Romania (18) were the most frequent nationalities. All the victims were adults.

²⁰⁴ Criminal procedure Act allows a victim to submit compensation claim within the criminal procedure, but the victims are most often referred to civil proceedings following the completed criminal procedure.

7. Statistical Data Collection on irregular migration in 2018

	CATEGORY	2017	2018	
1	Third country nationals illegally present in the country in accordance with national legislation on migration	4.343	/	The number of third country nationals found to be staying irregularly in the country increased by almost 65% in comparison to the previous year.
2	Third country nationals who have passed through the country during the reporting period	925	/	This is the category of third country nationals who were detected to be staying without permission, or without other documents allowing them to transit the internal Schengen border or exit the external Schengen border.
3	Third-country nationals refused entry	3,814	1.977	
4	Third country nationals with orders of departure	600	/	
5	Third-country nationals found illegally in the country, to whom an administrative or judicial decision has been issued, or act enforced, that establishes or declares that the stay is illegal, imposing an obligation to leave the country	/	/	
6	Third-country nationals whose asylum applications have been rejected in the final instance;	275	135	
7	Third country nationals trying to enter the country irregularly	1,930	/	
8	Third country nationals returned to another state	928	/	
9	Third country nationals accepted from another state under readmission agreements	311	/	

6. Lessons learned and challenges

To ensure full fulfilment of Slovenia's obligations in the field of human rights law, international protection and non-refoulement, authorities need to provide relevant information to individuals about their rights, especially of their right to request international protection. These procedures need to be adequately recorded. Other remaining challenges are:

- Razor-wired fence on the border with Croatia should be removed in order to prevent casualties among migrants, more than 10 migrants drowned and many were injured in 2018;
- The implementation of Readmission agreements should be closely monitored and statistically followed (statistical data should be properly aggregated);
- Police procedures for dealing with migrants who irregularly enter Slovenia should be improved; recorded and administratively upgraded, in order to allow efficient monitoring.
- Lengthy asylum procedures should be immediately addressed, as this can constitute a violation of rights - asylum seekers can wait for up to 18 months for a first instance decision, including UAMs;
- Detention in the pre-reception area, due to overcrowding, is one of the main legal and practical issues. There is no legal ground for such detention, and the conditions in the pre-reception area may amount to inhumane and degrading treatment;
- Systemic solutions for the accommodation of unaccompanied minors should be adopted immediately, as unaccompanied children and families are still placed in detention;
- Longer period for appeal should be provided; detainees have only three days to appeal detention or its extension.

Many of these issues have been, or are regularly presented, to Slovene authorities. Cases have also been submitted to the Slovene ombudsman, therefore advocating for change is continuing, but is extremely difficult, as NGOs providing legal or humanitarian aid to migrants are being attacked and criticized by the authorities.



ABOUT THE CSOs



Greece: HumanRights360 is a newly founded civil society organization established in Greece. In HumanRights360, we believe that the cornerstone of integration is the access to basic rights and that, only by protecting the individual, political and social rights of the whole population and by ensuring access to rights and justice, can we achieve social cohesion. Thus, our mission is to protect and empower the rights of all, with no discrimination but with special focus on the most disadvantaged and vulnerable populations. We are part of the worldwide human rights movement that is struggling for a world where fundamental human rights are enjoyed by all. We give priority to addressing the most pressing human rights violations, both acute and chronic, as a prerequisite for maintaining the rule of law in our society. HumanRights360 is currently implementing projects on addressing hate crimes, by providing legal aid to victims and raising awareness on the issues of xenophobia and racism. HR360 also implements integration programs for refugees and migrants, and engages in relevant advocacy on all levels.



Macedonian Young Lawyers Association

North Macedonia: The Macedonian Young Lawyers Association (MYLA) is a professional organisation of lawyers established in 2003 with the objective to use the knowledge and dedication of its members in protecting human rights through provision of legal aid, strategic litigation, continuous legal education and legal research and advocacy. MYLA is also an authorized provider of legal aid. MYLA's pool of 25 individual attorneys from all regions in North Macedonia and 18 in-house lawyers provide legal aid and representation in areas related to access to justice; human rights, anti-discrimination, legal aid for persons in extreme poverty, asylum, migration and statelessness issues. A significant proportion of MYLA's work is directly related to protection of children's rights in areas such as legal protection of unaccompanied minors in asylum procedures, birth registration, social protection and integration of children with refugee status, or those under subsidiary protection, as well as strategic litigation on cases that relates to children's rights.



Albania: Refugee and Migrant Services in Albania (RMSA) is a local non-government, non-profit organization set up in 2001, under the auspices and the capacity building initiative of UNHCR. RMSA's 26 staff members are highly educated and specialize in social, legal, medical and psychological support. RMSA's projects are funded by UNHCR, which mainly cover provision of daily care facilities for refugees and asylum seekers who are minors, and most of whom are children of families headed by single mothers. RMSA staff is also intensively involved in another program, by offering community-based services to refugees and asylum seekers in Albania in facilities fully managed and supervised by RMSA staff.



Kosovo: The Civil Rights Program in Kosovo (CRP/K) was founded by The Norwegian Refugee Council in 1999. CRP/K continued with its activities under this framework until 1st December 2004 when it started functioning as an independent NGO. CRP/K conducts its activities as non-governmental human rights based organization, and it is an implementing partner of the United Nations High Commissioner for Refugees (UNHCR) in the implementation of projects related to free legal assistance in Kosovo. Free legal assistance and counseling is offered to asylum seekers, persons at risk of statelessness, children and vulnerable persons, in the realization of their civil rights. CRP/K's objective is to enhance the protection of human rights and freedoms, to address legal obstacles through representation of the interests of its beneficiaries, to facilitate access to gender- and diversity-sensitive information and necessary documentation, with the intent to promote equal access to services for all communities in Kosovo. CRP/K is member of WEBLAN, partner of ECAS and ally of ECRE. Furthermore, CRP/K is part of the Coalition of NGOs on Child Protection (KOMF), and is currently implementing a UNICEF project.



Serbia: The Belgrade Centre for Human Rights (BCHR) was founded in 1995 and is a non-partisan, non-political and non-profit association of citizens concerned with the advancement of human rights and humanitarian law in theory and practice, and the strengthening of the rule of law. It assembles persons of various professions and backgrounds – legal experts, attorneys, sociologists, economists, writers, teachers, students and entrepreneurs. They contribute to the mission of the Centre with their knowledge, experience and enthusiasm. The principal goals of the Centre are the advancement of knowledge in the field of human rights and humanitarian law, development of democracy, strengthening the rule of law and the civil society, in Serbia and other countries in transition, from authoritarianism to democracy. In the twenty years of its existence the Centre has endeavored to raise public awareness on the importance and dimensions of the idea of human rights and individual freedoms, and to establish a favourable climate so that they may be enjoyed. For its services and the advancement of human rights, in October 2000, the Centre received the prestigious Bruno Kreisky Award, and in recognition for its educational work, the Centre was admitted to the Associations of Human Rights Institutes.



Montenegro: Centre for Democracy and Human Rights (CEDEM) was established on 2 July 1997 and registered with the Ministry of Justice of the Republic of Montenegro on 15 July 1998, and it's one of the oldest NGOs in Montenegro. CEDEM's goal is to advance and raise awareness on the importance of a proper and successful democratic transition; to research, analyze and follow the process of transition; as well as to influence the transitional process in Montenegro and contribute to the strengthening of the civil society and democracy in general. To achieve this, CEDEM acts as a think-tank group by organizing numerous public hearings and implementing practical actions. CEDEM's main activities are:

- conducting research and analytical projects in the field of democratic transition and human rights in Montenegro
- organizing conferences, round tables, meetings, seminars, workshops and training sessions with the aim of encouraging the process of democratic transition
- influencing the legislative process in Montenegro
- informing the public about its activities and results through publications and media
- cooperating with other NGOs with similar areas of interest, in Montenegro, the region and abroad.

CEDEM conducts its work through 6 departments: rule of law, human rights, empirical research, social inclusion, security and defense, and Euro-Atlantic integration. In the latest research conducted under the University of Pennsylvania's Think Tanks and Civil Societies Program (TTCSP), CEDEM was ranked the 10th think tank organization in Central and Eastern Europe.



Bosnia and Herzegovina: The Vaša Prava BiH association is a local, non-governmental and non-profit organization with its headquarters in Sarajevo. The Association was originally founded in 1996 as a network of information and legal aid centres under the auspices of the United Nations High Commissioner for Refugees (UNHCR) with its mandate to ensure safe, legal, and dignified return of refugees and displaced persons to their pre-war homes. Registered at the state level in 2005, today Vaša Prava represents the largest free legal aid provider and one of the largest non-governmental organisations in the region. Since 1996 the Association has provided aid to some 450,000 refugees, returnees, displaced persons, minority groups, and vulnerable groups among the local population in legal matters such as: property repossession; social, economic and cultural rights; discrimination in access to employment, utilities, education, and social welfare; as well as other human rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and other international legal instruments.



Croatia: The Centre for Peace Studies (CPS) is a non-government and non-profit organization promoting non-violence and social change through education, research, advocacy and activism. CPS grew out of various forms of direct peace-building, grass-root activities in western Slavonia in the 90s. Today, 19 people work through 3 programs: Peace Education and Nonviolent Affirmation; Combating Inequalities; and Asylum, Integration and Human Security. CPS combines research, education, field work, activism, and evidence based advocacy and lobbying through its programs. The goals of CPS are developing a culture of dialogue and a culture of life based on non-violence, as well as stimulating creative exchange of theoretical and practical approaches to peace education, conflict transformation and the construction of social justice.



Slovenia: The Legal-Informational Centre for NGOs (Pravno-informacijski centre nevladnih organizacij – PIC) is a legal centre for the protection of human rights and the environment, established in 1998. It provides professional legal support to individuals, vulnerable groups and non-governmental organization in exercising and protecting their rights and strengthening their position in society. Besides providing legal assistance, it is active in advocacy, information sharing, training, encouraging civil dialogue, national and international projects, and is involved in policy-making and decision-making processes. PIC is a participant in working bodies, committees, networks and with the aim to advance the position of non-governmental organizations in Slovenia and increase their influence on decision-making. It endeavours towards strengthening integrity in the non-governmental sector and advocates transparent and responsible activity on all levels of the social system. PIC encourages socially responsible and active citizenship. One of the main areas of PIC's work is asylum and migration; in the frame of a project with the Asylum, Migration and Integration Fund and the Slovenian Ministry of Interior, PIC provides free legal representation to all asylum seekers arriving in Slovenia, at the first instance. PIC also provides free legal aid to foreigners in return procedures and in other asylum and migration related legal questions. PIC was an implementing partner of UNHCR and UNICEF until both agencies closed their representations in Slovenia in 2016/2017.

Summary of conclusions and recommendations:

For Greece:

- Greek Authorities to immediately cease the systematic pushback of refugees and migrants, including families and other persons belonging to vulnerable groups, into Turkey and to provide proper examination of their protection needs;
- EU's proposals for the CEAS's reform and for more efficient and Secure EU Visa policy are generally focused on the externalization of migration management and the penalization of secondary movement. There is a need for modification of the EU migration policy, and in particular the Dublin system, which was proven to be inconsistent with the effective protection of human rights as well as the principles of solidarity and burden-sharing among EU Member-States;
- Improving the detention conditions in the pre-removal centre of Moria and detention conditions prevailing in the Evros region, as well as improvements to the sub-standard conditions in the pre-removal centre of Fylakio. In addition, vulnerable persons should be immediately transferred to appropriate open reception facilities;
- In 2018, Greece was challenged by the fluctuating migration flows at various entry points, and the externalization of EU policy, which imposed a containment policy in the islands in order to prevent the secondary movement,
- In Greece the work of humanitarian groups and volunteers has been criminalized, these groups also face harassment when attempting to carry out work to help people on the move. There is also a lack of a migration strategy from Greek State in the field of integration;

For North Macedonia:

- Insufficient protection-sensitive screening mechanisms to identify and refer those who may be in need of protection, as well to respond to the needs of the most vulnerable;
- There should be an individual approach to each

deprivation of liberty, not systematic unlawful detention of the migrants detained as witnesses in criminal procedures against smugglers. The state should ensure that all operations to identify, apprehend, and detain irregular migrants are conducted in a manner consistent with Macedonia's national and international human rights obligations;

- The free legal aid is not accessible in practice, even for asylum seekers, due to a number of requirements which they are not able to fulfil according to the Law on free legal aid. The necessary legal aid should be made available for irregular migrant's kept in detention, returnees, and asylum seekers, especially to those who lack sufficient resources;
- There are still unlawful deportations reported at the southern border with Greece. The country should ensure that third country nationals have access to asylum procedure or are returned in a humane manner and with full respect for their fundamental rights and dignity. An independent border monitoring system has to be established, and introduced in the new Law on Foreigners as written in the Return Directive²⁰⁵.

For Albania:

- Considerably improve the treatment of irregular migrants and asylum seekers. The treatment of irregularly staying migrants and asylum seekers does not comply with basic human rights standards in Albania. Also, in light of a potential increase in the numbers of these migrants, the whole set of procedures to deal with this at-risk group of adults, children and families should be scrutinized in detail and considerably revised;
- Improve the human and financial resources of Migration Counters. The Migration Counters should be provided with staff and funds to autonomously provide support to their target groups. These institutions should have a proactive role in reaching out to individuals and families entitled to receive their support, based on recognized good practices in the area;

²⁰⁵ DIRECTIVE 2008/115/EC EU for returning illegally staying third-country nationals
<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:en:PDF>

- Offer support for living expenses. The local government should offer social assistance and housing in accordance with the full needs of the residents. Access to this support must be available to all;
- Offer assistance for employment and self-employment. The Migration Counters should file a register of skills of the migrants and a profile of jobs they are suitable for. The Labour Office should mediate with the business community and private employment agencies in order to find jobs that are decent and in conformity with the migrant's potential and skills. Employment of migrants should be a priority for the Labour Office;
- Enhancing effective national and regional cooperation among key stakeholders constitutes a crucial factor in better preventing and tackling human trafficking, migrant smuggling, organized crime, corruption and other cross-border crimes. Improvement of the infrastructure would also be advisable in order to enhance the capacities to refer migrants with different profiles to corresponding facilities, thus addressing each individual to the proper referral mechanism. Each facility should service a specific category of migrants and asylum seekers (victims of human trafficking, smuggled migrants, unaccompanied minors, and others), and the premises should be equipped in a guest-friendly manner, paying due respect to international standards and human rights, ensuring the protection and safety of the individuals hosted;
- Improve child protection laws, procedures, and institutions, and mandate them to handle cases of migrant children. The National Agency for Child Protection must take a leadership role in the coordination of the system of protection and assistance of children. The National Council must take the lead for building a child protection system and government coordination. In addition, the government needs to create budgets for support of migrant children's education and inclusion, especially for immigrant families and other families in need;

For Kosovo:

- Kosovo should continue to harmonize its legislation in the field of asylum and migration in line with the EU acquis, but there are lot of challenges when it comes to their implementation in practice;

- Law on Foreigners prescribes temporary measures to be taken as an alternative to detention of foreigners who are subject to removal by force. However, Kosovo authorities tend to detain foreigners in the detention centre rather than using alternatives to detention;
- Kosovo needs to establish a return mechanism for irregular migrants in line with EU standards and practices;
- Although legal provisions ensuring the fundamental rights of irregular migrants or foreigners in the Detention Centre for Foreigners are in place, the centre is lacking adequate and specialised staff to ensure basic rights and needs;
- Despite the guarantees provided by the Law on Foreigners, providing proper care for the most vulnerable groups of irregular migrants remains a challenge in Kosovo. Even after the adoption of the 2015-2019 strategy and action plan against human trafficking, which prioritizes preventing human trafficking, protecting and supporting victims and witnesses, investigating and prosecuting trafficking crimes, and protecting children, Kosovo is still struggling to find sustainable funding to ensure shelters for victims of gender-based violence and human trafficking, as well as reintegration of victims;
- Border staff need particular training on issues related to migration and asylum. Also, refresher sessions on early identification of victims of trafficking and smuggling for the relevant institutions are a good idea, in order to keep them up to date with the latest trends and information.

For Serbia:

- There is an absence of protection-sensitive mechanisms and an individual approach when assessing the needs of refugees and migrants in Serbia;
- Serbia has introduced visa liberalization allowing citizens of Iran to enter Serbia as tourists, with the right to stay up to 30 days (bilateral agreement between Iran and Serbia on 22 August 2017). Following this agreement, the number of asylum seekers originating from Iran has increased, and the need for their accommodation in the centres is growing;
- Repeated pushbacks and collective expulsions from, and to, the Republic of Serbia were registered

by many CSOs. Serbia should introduce effective monitoring and accountability mechanisms for border officers who violate their legal obligations and perform unlawful deportations of refugees and migrants;

- Serbia lacks an adequate procedure for forcibly removing foreigners found to have illegally entered or stayed in its territory. In other words, the existing procedure does not provide procedural guarantees against refoulement;
- There is a lack of facilities for accommodation of unaccompanied and separated children. Furthermore, it is of particular importance that the capacities of social workers and police officers who work with migrant children are enhanced, with special focus on officers who conduct the asylum procedure;
- Current return procedures are weak in regards to procedural guarantees and guarantees for respect of human rights – a proper return border monitoring system should be established;
- The work of the joint police-army patrols that operated in 2016 and 2017 should have been subjected to monitoring in order to prevent violations of migrants' rights. Joint border monitoring by the MOI, UNHCR and NGOs would raise the professional capacity of the border authorities and lessen risks of violations to the fundamental human rights of all categories of migrants;
- CSOs faced significant challenges when attempting to access public information related to irregular migration, especially the number of third country nationals illegally present in territory, third country nationals who have passed through the country, third-country nationals refused entry, third country nationals with orders of departure, and third-country nationals found in Serbia illegally and to whom an administrative or judicial decision has been issued.

For Montenegro

- To continue to improve its capacity to deal with sudden increases in mixed migration flows, in particular when it comes to human and material resources;
- Work on enhancing further cooperation with neighbouring countries on border management issues and establish burden sharing mechanisms

and international cooperation for countries in the Western Balkans;

- Work on establishing an effective civil border monitoring mechanism, in cooperation with UNHCR and IOM, and in collaboration with the Ombudsman's Office and relevant NGOs, in order to improve conditions for an effective independent border monitoring process that would lead to improved respect for the rights of migrants and asylum seekers at the borders, and that would strengthen the implementation of the non-refoulement principle;
- In cooperation with relevant stakeholders, including the civil society, conduct public awareness and information campaigns aimed at sensitizing the local population about the plight of refugees;
- Improve assisted voluntary return and reintegration, by establishing and operationalizing proper programs for voluntary return and reintegration of persons not in need of international protection;
- Vigorously investigate, prosecute, and convict traffickers, including complicit officials, for trafficking crimes under article 444 of the Criminal Code, by encouraging the trafficking victims' participation in prosecutions in a manner that protects victims, and increasing proactive screening of potential victims, especially for children engaged in begging and women in prostitution;
- Train first responders on victim identification and referral, and provide advanced training to judges, prosecutors, and law enforcement on trafficking investigations and prosecutions, in order to ensure that raids of prostitution establishments do not lead to the arrest of trafficking victims, as well as to minimize harm to potential victims, and include arrangements to segregate traffickers from such victims;
- Create a compensation fund, allocate adequate funds towards a compensation fund, and inform victims of their right to compensation;
- Open additional reception facilities that meet the required standards, especially for minors/unaccompanied minors, and strengthen the capacity of the staff in all relevant administrations.

For Bosnia and Herzegovina:

- In order to respond to the current situation and possible migration crisis, the competent authorities must be proactive and efficient. Comprehensive planning, including effective implementation of planned activities and goals, is necessary. Sharing practices with other countries can also be beneficial;
- A facility for accommodation of unaccompanied minors must be established by the state. More effective engagement of the Service for Social Welfare in situations of unaccompanied minors is needed, including more effective assessment of the best interest of the child;
- Capacity building for officials (border police, Service for Foreigners Affairs, Sector for Asylum) must be ongoing;
- Alternatives to detention must be applied in place of detention, where applicable;
- Safeguards and independent border monitoring for possible unlawful expulsions and deportations, as well as pushbacks across borders, must be established;

For Croatia:

- The Republic of Croatia needs to improve the system of recording statistical information in the area of asylum and migration, as well as its approach to informing the public;
- Ensuring access to the international protection system within detention facilities and in the border area;
- Ensuring the implementation of transparent, clear, and legally-based regulations in the practice of deporting persons from the territory of the Republic of Croatia;
- The external detention monitoring body should be more closely standardized and certain procedural guarantees should be prescribed;
- Unaccompanied minors should be placed in open centres with adequate and appropriate care;

For Slovenia:

- Razor-wired fence on the border with Croatia should be removed in order to prevent casualties among migrants, more than 10 migrants drowned and many were injured in 2018;
- The implementation of Readmission agreements should be closely monitored and statistically followed (statistical data should be properly aggregated);
- Police procedures for dealing with migrants who irregularly enter Slovenia should be improved; recorded and administratively upgraded, in order to allow efficient monitoring.
- Lengthy asylum procedures should be immediately addressed, as this can constitute violation of rights-asylum seekers can wait for up to 18 months for a first instance decision, including UAMs;
- Detention in the pre-reception area, due to overcrowding, is one of the main legal and practical issues. There is no legal ground for such detention, and the conditions in the pre-reception area may amount to inhumane and degrading treatment;
- Systemic solutions for the accommodation of unaccompanied minors should be adopted immediately, as unaccompanied children and families are still placed in detention;
- Longer period for appeal should be provided; detainees have only three days to appeal detention or its extension.

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