

2017 CSOs REPORT

on Irregular Migration for South-Eastern Europe



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2017 CSOs 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. 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 nine² of the south eastern European countries that were affected by the mass migration since 2015. This report aims to provide analysis based on non-governmental sources of information and to help identify the areas where improvement is most needed. The period covered is 1 January – 31 December, 2017, and all country reports follow the same methodology template. As the first regional irregular migration report, it also includes an overview of the national legal framework in each country for various areas relevant to irregular migration. The focus will be more on sharing information on unlawful practices when dealing with irregular migrants and the consequent human rights violations, according to NGO records.

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

² Greece, Macedonia, Albania, Kosovo, Serbia, Montenegro, Bosnia and Herzegovina, Croatia, and Slovenia

Main Migration Trends

In 2017, the number of refugees and persons transiting the so-called Balkan Route significantly decreased. Even along the most frequently route used by migrants through Macedonia, Serbia, Croatia, and Hungary and further on to Austria and Germany, Frontex³ noted that in 2017 the illegal border-crossings dropped to the lowest aggregate number since 2013. 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 2017, with continuous – though less intense – movement.

The most significant migration trends and changes in 2017, are as follows:

- In Greece, sea arrivals decreased significantly compared to 2016, from over 173,000 to just over 29,700⁴.
- The route from Greece into Macedonia remains the same, with a reduction in the number of persons. Macedonia is still mainly used as a transit country. Refugees and migrants enter 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.
- Serbia introduced visa liberalization for Chinese, Indian and Iranian citizens in September 2017. According to Frontex, the number of migrants detected claiming to be citizens of these countries, attempting illegal border-crossing and fraudulent use of documents at the EU's external borders, is on the rise. A new migratory trend identified during the last four months of the year showed an increase in the number of people from Iran. From September to December 2017⁵, 551 migrants were identified originating from Iran, compared to 357 over the previous eight months, which is a monthly average increase by more than 200%.
- Due to stricter controls at the Hungarian border, the most recent data shows that a new exit route from Serbia into Bosnia and Herzegovina has been established.
- 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. They move northwest towards the border with Croatia.

³ Frontex risk analysis for 2018, page 16 https://reliefweb.int/sites/reliefweb.int/files/resources/Risk_Analysis_for_2018.pdf

⁴ Desperate Journeys - January 2017 to March 2018 <https://data2.unhcr.org/en/documents/download/63039>

⁵ Data from Save the Children report, 2017 https://reliefweb.int/sites/reliefweb.int/files/resources/SC%20BMDH%20DATA%20Regional%20Overview_%20September%20-%20December%202017.pdf



GREECE

In 2017, the number of sea arrivals decreased from previous years, while at the Evros land border a sharp rise in arrivals was noticed. In April, 3,232 people arrived, marking more arrivals from Turkey to the land border than sea arrivals, for the first time since the summer of 2015, with the most common nationalities being Syrian, Turkish, Afghan, Iraqi and Pakistani.

1. Introduction

Over the last three years (March 2015 – May 2018) the situation in the Middle East (esp. Syria, Iraq and neighbouring countries) has triggered an emergency situation resulting in high refugee and migrant flows entering through Greece towards Europe. The number of the asylum seekers increased, with over one million displaced persons entering Europe, mainly through Greece. These numbers were added to the already significant population of displaced persons from past decades, mainly the 1990s and 2000s. In that context, Greece was called on to implement the “Hotspot approach⁶” at the sea entry points and to set up procedures for the implementation of the Relocation Scheme foreseen for Greece and Italy. During 2015 and early 2016, the interests of the significant number of people in need of international protection remained focused on the onward movement into Europe, while interest in family reunification or in a relocation scheme remained significantly low. In February-March 2016, the borders of the Balkan route closed with approximately 12,000 people stranded at the informal crossing point to the Former Yugoslav Republic of Macedonia (Eidomeni). Afterwards, on 18 March 2016, the EU/Turkey Statement⁷ was adopted setting the political parameters for the immediate return of Syrian refugees and other third country nationals to Turkey. At the same time, a new law (L. 4375/2016)⁸ introduced accelerated border procedures, anticipating the establishment of Reception and Identification Centres (RICs) at border locations and open accommodation sites for persons found in Greece⁹. Following the EU-TUR Statement and strict border controls applied by countries along the so-called ‘Balkan route’ the number of refugees and migrants arriving in Greece by sea decreased significantly in 2016, while a significant number of third country nationals were stranded in Greece and other frontline member-states. In 2017, the numbers of sea arrivals further decreased, while at the Evros land border arrivals continued at the same pace. Syrians continue to be the predominant incoming population, while the number of other nationalities (from Pakistan, Algeria and DR Congo) has proportionally increased, although not in absolute numbers. The refugee environment in Greece continues to change in early 2018 with the situation on the Evros land border showing a sharp rise in arrivals. In April, 3,232 people arrived marking more arrivals from Turkey at the land border than sea arrivals for the first time since the summer of 2015, with the most common nationalities identified as Syrian, Turkish, Afghan, Iraqi and Pakistani.

With regard to alleged pushbacks from Greece to Turkey, there are several documented reports^{10/11} on frequent unlawful deportations of refugees and migrants. According to the preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in Greece¹² there are

⁶ European Agenda for Migration, 13 May 2015.

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

⁸ Law No. 4375 of 2016 on the organization and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception, the transposition into Greek legislation of the provisions of Directive 2013/32/EC “on common procedures for granting and withdrawing the status of international protection (recast) (L. 180/29.06.2013), provisions on the employment of international protection and other provisions, 3 April 2016

⁹ Some 50,000 people were found in mainland Greece after the border closure with FYROM.

¹⁰ Report on push backs of Hellenic League for Human Rights <http://www.hlhr.gr/en/refoulements-turkish-asylum-seekers-evros/>, <http://www.hlhr.gr/en/coordinated-refoulements-turkey/>

¹¹ Report on push backs of the Greek Council for Refugees, <https://www.gcr.gr/index.php/en/news/press-releases-announcements/item/790-anafores-gia-systimatikes-epanaprothiseis-ston-evro-apo-eksypiretoyomenous-tou-esp>

¹² Preliminary Observations of the delegation of CPT after visit in Greece <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-publishes-preliminary-observations-after-its-visit-to-immigration-detention-and-psychiatric-establishments-1>

credible allegations of informal forcible removals (pushbacks) of foreign nationals by boat from Greece to Turkey at the Evros River border by masked Greek police and border guards or (para-) military commandos. In a number of these cases, the persons concerned alleged that they had been ill-treated and, in particular, subjected to baton blows after they had been made to kneel face-down on the boat during the pushback operations. These allegations, which were obtained through private individual interviews with 15 foreign nationals, all displayed a similar pattern and mainly referred to incidents that had taken place between January and early March 2018, whereas some dated back to 2017. The persons 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.

2. Definitions, Legal Framework and Policy Measures on Irregular Migration

The developments of the past 3 years have significantly affected the legal, institutional and operational framework of Greece's asylum procedures, corresponding to three processes, namely: border procedures; the relocation scheme; and pre-registration on the mainland (following the reinstated controls at the borders of the so-called "Balkan route" in February-March 2016). This has affected access to relevant procedures, timely processing, quality of procedures and treatment of vulnerable persons, particularly unaccompanied and separated children (UASC). Shortly after the EU-Turkey Statement, which had a significant impact on asylum procedures in Greece, Law 4375/2016 for border procedures (Art. 60 par. 4) was implemented on the Greek Aegean islands (Lesvos, Chios, Samos, Leros, Kos and Rhodes), with provisions for accelerated checks and the detainment of all third-country nationals via irregular arrivals on the islands. During this time, a large number of registered asylum seekers were eligible for relocation to EU member states while other asylum seekers were eligible for family reunification (Dublin Regulation procedures). The examination of the claims of Syrians under an admissibility procedure (assessing if Turkey is a safe third country for applicants) and for applications from nationalities with average recognitions rates in the EU under 25% (mostly Pakistanis and North Africans) was prioritized.

The European Asylum Support Office (EASO) has been called on to increase its presence on the islands to support the processing of applications within the frame of border procedures. Another legislative provision applied in conjunction with the border procedures is that vulnerable individuals and family reunification cases are still exempted and referred to the mainland for examination under the regular procedure. Currently, those who wish to apply for asylum on the mainland have the sole option of using the Skype system in order to be pre-registered, a system with a small capacity. Examination time presents another shortcoming. The 'fast-track' process for Syrians is continued with regard to first instance. The current pending caseload of the Asylum Service (AS) is large, that is to say, persons who currently submit their applications through the regular procedure may get an interview appointment for as late as autumn 2019. At the second instance level, the Independent Appeals Committees, operational since late July 2016, have not yet acquired a stable pace of examination, although

Law 4399/2016 has reduced the examination time limit for issuing a decision for appeals submissions to 3 months through the regular procedure. Legal aid, according to Law 4375/2016 is now available free of charge at second instance but not at first instance, where there are increased needs and only a limited number of services is provided through some specialized NGOs. Regarding UASC, the lack of a proper guardianship system and the limited legal aid, as well as procedural delays, all result in reduced protection. At the appeal stage, the law provides for an administrative (quasi-judicial) appeal against the decisions of the AS with an automatic suspensive effect. The newly established Independent Appeals Committees consist of two judges from the Administrative Courts and one Greek citizen designated by UNHCR. The quality of the work of the Independent Appeals Committees is substantially affected by the pressure to accelerate the pace of productivity, and by the fact that at the same time the judges have their regular judicial duties in their respective courts.

Overall, the changes in the asylum procedures in Greece, whether concerning legislation or the implementation of new procedures (border procedure, relocation), or the increase in caseloads in existing procedures (Dublin, family reunification, regular procedures), present a challenge to access and quality of procedures as well the timely processing.

Asylum seekers whose asylum claim is rejected fall under the category of “undocumented migrants” and the return process is then instigated (Law 3907/2011). Most of them receive a police note that orders them to leave the country within 30 days, and if arrested after this note has expired, they are usually detained in pre-removal detention facilities on the mainland. In general, the practice of indiscriminate detention has reappeared since 2016; according to the last available statistics report, 3,661 persons were detained in a facility with an overall capacity for 2,661 persons¹³. This number should include the generally unknown number of third country nationals who are administratively detained in police stations: according to a recent estimate, 1,300 third country nationals are detained in police stations¹⁴.

3. Relevant Institutions Addressing the Issue of Irregular Migration

Migration policy in Greece is implemented through multi-levelled legal, institutional and operational actors, namely the competent authorities of the state, international organizations, local authorities, and NGOs. However, each actor’s role has not always been clearly stipulated in law or in practice. In particular, competent authorities to receive and examine applications for international protection are the Regional Asylum Offices (RAOs), the Autonomous Asylum Units (AAUs) of the Asylum Service as well as the Mobile Asylum Units under the Ministry for Migration Policy while the competent authority for the reception and identification procedures, including the identification and referral of vulnerable individuals, is the Reception and Identification Service (RIS) or the Asylum Seekers Protection Division under the General Secretariat for Migration Policy of the Ministry for Migration Policy. RIS are also the competent

¹³ <http://mindigital.gr/index.php/%CF%80%CF%81%CE%BF%CF%83%CF%86%CF%85%CE%B3%CE%B9%CE%BA%CF%8C-%CE%B6%CE%AE%CF%84%CE%B7%CE%BC%CE%B1-refugee-crisis/1494-18-07-2018>

¹⁴ <http://www.avgi.gr/article/10836/8654254/kratese-e-nea-tase-ste-diacheirise-tou-prosphygikou>



authority for the restriction of liberty with regards to reception. For the first time, in April 2016, new legislation on asylum in Greece allowed the involvement of EASO personnel in the accelerated procedure applied at the border. The public prosecutor of the Supreme Court is responsible for the guardianship of UASC and the order for the protective custody of UASC. The detention process (arrest, issuance and implementation of detention order, provision of services and proper detention conditions to the detainees) is implemented by the police, while the Foreigners' Police Directorate is responsible for arrest, issuance of deportation/return decisions and execution of the removal procedure, while removal procedures are subject to a monitoring system that operates under the office of the Ombudsman. Voluntary returns are implemented by IOM through an AVRR program. UNHCR, in close coordination with the state, implements an accommodation scheme through its partner NGOs, and works to enhance the quality of asylum procedures through capacity building and operational support.

4. Statistical Data Collection on Irregular Migration in 2017

In 2017, a total of 35,200 refugees and migrants arrived in Greece by land and sea¹⁵. It is estimated that 49,927¹⁶ refugees and migrants were present in Greece in 2017 among which 37,118 were located on the mainland and 12,809 on the islands. In 2017, 11,032¹⁷ children arrived to Greece by sea, including 1,458 UASC. An estimated 21,000 children were present in Greece as of 31 December 2017. In total, 438 unaccompanied children were in RICs and 54 were in protective custody/detention. A total of 1,101 unaccompanied minors were in UASC shelters, with an additional 2,290 waiting to be sheltered. During 2017, a total of 58,660 persons of concern applied for international protection, of whom 22,496 were rejected on merits and 22,480 on admissibility procedures. At the appeal stage where the law provides for an administrative (quasi-judicial) appeal against the decisions of the AS with automatic suspensive effect, 18,336 applicants filed an appeal from July 2016 – March 2017 of whom 6,033 were rejected on merits and 441 were found inadmissible through the safe third country procedure¹⁸, while 8,878 are pending. As per 30 March 2018, 21,999¹⁹ persons were transferred through the relocation scheme to MS and 4,793²⁰ persons have been transferred through family reunification programs to other MS. Finally, 19,096²¹ persons in total were returned (forced removals, deportations, readmissions and voluntary departures) among which 9,089²² were voluntary returns (from June 2016 to December 2017). With regard to returns from Greece to Turkey in the framework of the EU-TUR Statement, from April 2016 to the end of December 2017 the total returns were 1,484²³ of whom 91% were men, 4% women, and 5% children. The vast majority of those returned to Turkey are nationals from countries other than Syria. The

15 UNHCR, FACT SHEET, Greece / 1-31 December 2017, <https://data2.unhcr.org/en/documents/download/61705>

16 UNHCR estimates as of 31 December 2017 of those who arrived and remained since the 2015-2016 mass flow

17 UNHCR, UNICEF and IOM, Refugee and Migrant Children in Europe Overview of Trends 2017

18 Unofficial data.

19 Asylum service statistics, http://asylo.gov.gr/wp-content/uploads/2018/04/Relocation-procedures-up-to-30-3-2018_gr.pdf

20 Asylum service statistics, http://asylo.gov.gr/wp-content/uploads/2018/04/Dublin-stats_march18GR.pdf

21 http://www.astynomia.gr/index.php?option=ozo_content&lang=%27.%27&perform=view&id=70776&Itemid=1240&lang=

22 THE IMPLEMENTATION OF ASSISTED VOLUNTARY RETURNS INCLUDING REINTEGRATION MEASURES (AVRR) IOM-Office in Greece https://greece.iom.int/sites/default/files/AVRR%20MONTHLY%20NEWSLETTER_DECEMBER%202017.pdf

majority are Pakistani nationals (42% of the total). Syrians constitute 15% of the total number of those returned, followed by Algerians, Bangladeshis and Afghans. In total, 228 Syrians have been returned to Turkey to date, while five of them have been returned on the basis that their asylum claims were found inadmissible at second instance. Of all those returned, 49% either did not express intention to apply for asylum, withdrew their intention to apply for asylum, or withdrew their asylum claims in Greece.

The number of TCNs without legal documentation can only be estimated, as no official statistics exist. Improvements regarding access to the asylum process, combined with the decreasing demand for residence permits for legally residing TCNs²⁴ over the past years, and the fact that a considerable number of non-documented migrants have left the country through the western Balkan route in 2015-2016, all verify the assumption stated in the Greek Ombudsman's report that the number of TCNs with no legal documentation in the country is probably the lowest in past decades²⁵.

5. Laws, Policies and Practices of Immigration Detention of Irregular Migrants and Vulnerable Groups

Following the closure of the borders along the western Balkan route, the use of administrative detention resumed mainly for newly arriving third-country nationals arriving on the islands. Shortly after the implementation of the EU-Turkey Statement all new irregularly arriving third-country nationals were initially detained in the RICs on the islands. The geographical restriction of the islands has been applied as an alternative measure to detention. Nevertheless, the poor reception conditions, the fact that the restriction is enforced for a long period (with the exception of those referred to the regular procedure) and the practice of the state to detain asylum seekers from countries with a low recognition asylum rate as well as those displaying delinquent behavior, all point to the fact that detention continues to be applied. In addition, a new pre-removal detention centre started operating in early 2017 on the island of Kos, and the detention facility in Moria has officially started operating as a pre-removal detention centre (PROKEKA). During 2017, detention in police stations (highly inappropriate for detention of immigrants) has continued both on the mainland and the islands. None of the pre-removal detention centres provide psychosocial support services, medical care or legal assistance due to funding problems, and the information provided is not being offered in languages used by the detainees. Detention continues to be used for: new arrivals (non- vulnerable single men) who come from countries with a low recognition rate or from Syria; persons considered to have delinquent behavior/constitute a risk to public safety; persons having violated the geographical restriction of the island; and persons having been arrested on the mainland after having breached the geographical restriction of the islands

²³ UNHCR, Returns from Greece to Turkey, in the frame of the EU-TUR Statement. Source: Press Releases, Greek Ministry of Citizen Protection; <https://data2.unhcr.org/en/documents/download/61473>

²⁴ 513.709 according to February 2018 data: <http://www.immigration.gov.gr/miniaia-statistika-stoixeia>

²⁵ <http://online.fliphtml5.com/hmpf/pczs/>

and irregularly travelled to the mainland (they also may be prosecuted and convicted under Article 182 of the Penal Code).

Law 4375/2016 sets a maximum detention time limit for all applicants for international protection, irrespective of the ground on which they are detained. According to the provisions of the law, the time limit for detention does not exceed three months, as long as the person is still an asylum applicant. Nevertheless, the time limit begins, in practice, from the day that the asylum application is filed at the Asylum Service, and not from the day of expression of their intention to seek international protection.

Unaccompanied and separated children (UASC) from third countries may be found in detention: awaiting removal (art. 30 l. 3907/2011); throughout asylum procedures (art. 46-47 l. 4375/2016); and under protective custody (Art. 118 P.D.141/1991). In practice, children are normally detained while awaiting arrangements to be made for their care, in particular for placement in shelters, or until they are reunited with persons that can take responsibility for them (this does not include UASC from neighbouring countries that are awaiting return procedures). UASC should only be kept in police cells if there is no other way to prevent the risk of harm to themselves or to others (art. 118 (4) P.D. 141/1991), although they may also be detained in pre-removal detention facilities. Children have also been placed under protective custody in hospitals, when necessary. It is to be noted that no maximum time limit for detention of minors is provided by the law.

6. Legislation on Human Trafficking and Smuggling of Irregular Migrants

The current legislation on human trafficking in Greece covers all forms of trafficking indicated in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, through three articles of the Criminal Code (Art. 351 – inducement to prostitution, art.349 – solicitation to prostitution, and art. 323a – trafficking in human beings). Law 3064/2002 and Presidential Decree 233/2003 prohibit both sex trafficking and forced labour.

According to Article 14(8) L 4375/2016, relating to the reception and identification procedures offered principally to newcomers, the following groups are considered vulnerable groups: unaccompanied minors; disabled persons or those suffering from an incurable or serious illness; the elderly; pregnant women or those having recently given birth; single parents with minor children; victims of torture, rape or other serious forms of psychological, physical or sexual violence or exploitation; persons with a post-traumatic disorder, in particular survivors and relatives of victims of ship-wrecks; victims of human trafficking.

Thus, victims of trafficking fall under the provisions for the protection of vulnerable people. Article 17 PD 220/2007 provides that “while applying the provisions... on reception conditions, the competent authorities and local administrations shall take care to provide special treatment to applicants belonging to vulnerable groups such as minors, in particular

unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence"²⁶. Upon arrival, the Head of the RIC "shall refer persons belonging to vulnerable groups to the competent social support and protection institutions"²⁷.

However, shortcomings in the vulnerability assessments²⁸, together with a critical lack of reception sites on the islands prevents vulnerable persons, including victims of trafficking, from enjoying special reception conditions. This is also the case on the mainland, due to the limited capacity of facilities, the lack of a clear referral system to access temporary camps, and the poor reception conditions reported in those camps.

Smuggling has been a rather controversial issue in Greece. According to the Glossary on Migration of the International Organization for Migration²⁹ (IOM): 'Smuggling, contrary to trafficking, does not require an element of exploitation, coercion, or violation of human rights.' In this regard, the legislation against smuggling has been criticized to be widely used in order to penalize humanitarian acts, such as rescue at sea or provision of shelter to people in need³⁰.

7. Cases of Human Trafficking and Smuggling of Irregular Migrants

According to the US Department of State country report for 2017³¹, police investigated 25 cases involving 97 suspected traffickers. Of these, 18 were sex trafficking cases and seven forced labour cases. The government prosecuted 32 defendants, 25 of these for sex trafficking and seven for forced labour, and convicted nine traffickers. Sentences ranged from 10 to 15 years' imprisonment, plus fines ranging from €10,000 to €100,000. The courts issued suspended sentences in 19 cases. Observers reported court proceedings could take years, which could have repercussions on cooperation from victims and key witnesses.

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 and organized crime related offences.

A very important ruling by the European Court of Human Rights was published during the reporting period; In March 2017, the ECHR ruled that Greece failed to protect 23 Bangladeshi labourers on a strawberry farm near the town of Manolada in a forced labour case in 2013. The court found Greece to be in violation of article 4 § 2 of the European Convention on Human Rights and ordered Greece to pay out more than €500,000 for neglecting their exploitation³².

²⁶ Article 18-10 PD 220/2007

²⁷ Article 14(8) L 4375/2016.

²⁸ <http://rsaegean.org/serious-gaps-in-the-care-of-refugees-in-greek-hotspots-vulnerability-assessment-system-is-breaking-down/>

²⁹ <https://www.iom.int/key-migration-terms>

³⁰ <http://eulawanalysis.blogspot.gr/2016/10/human-humanitarian-smugglers-europes.html>

³¹ <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271195.htm>

³² <https://www.theguardian.com/world/2017/mar/30/bangladeshi-strawberry-pickers-shot-at-by-greek-farmers-win-european-rights-case>

As described above, victims of trafficking fall under the provisions of “vulnerable people” and are treated as such. However, serious obstacles are also reported in terms of identification of trafficking victims. According to the AIDA report for 2017³³, only seven persons were actually registered as victims of trafficking by the Asylum Service, which underlines the serious gaps in the identification, and proper protection, of victims of trafficking.

Smuggling mostly concerns the enabling of irregular entry and thus people smuggled into Greece are not entitled to any special treatment; they undergo all the legal and administrative procedures regarding irregular entry in the country.

The act of smuggling is heavily penalised; for example, a court in northern Greece has recently sentenced 23 people to prison terms ranging from eight to 1,489 years for smuggling Iraqi and Syrian refugees into the country from the Turkish border in 2015 and 2016³⁴.

8. Protection of Irregular Migrant Children

As of 15 April 2018, it is estimated that there are 3,050 unaccompanied minors in the country³⁵. According to Greek legislation, the “competent authorities shall take the appropriate measures to ensure the minors’ necessary representation. For this purpose, they shall inform the Public Prosecutor for Minors or, in the absence thereof, the territorially competent first instance Public Prosecutor, who shall act as a provisional guardian and shall take the necessary steps in view of the appointment of a guardian for the minor.”³⁶

In practice there is a persistent lack of any effective system of guardianship. The large number of unaccompanied minors makes it impossible for the local public prosecutors to exercise the duties of temporary guardian. The absence of a guardianship system in Greece and the need to review relevant domestic law has been a pending discussion for years³⁷. According to Greek Legislation [Article 46(10)(c) L 4375/2016], unaccompanied children “as a rule should not be detained”, and their detention is permitted “only in very exceptional cases... as a last resort solution, only to ensure that they are safely referred to appropriate accommodation facilities for minors.” Nevertheless, due to the lack of accommodation facilities or transit facilities for children, detention of unaccompanied children is systematically imposed and may be implemented for prolonged periods ranging from a few days to more than two months, pending their transfer to an accommodation facility. Unaccompanied minors are detained in police stations and pre-removal facilities on the mainland (“protective custody”) or in RICs on the islands in unacceptable detention conditions³⁸.

Despite the announcement by the Minister for Migration Policy that “not a single child would be kept in protective custody,” by the end of 2017, unaccompanied minors continue to be detained. Out of a total of 3,050 unaccompanied minors estimated in Greece, as many as 2,200

³³ <http://www.asylumineurope.org/reports/country/greece/asylum-procedure/guarantees-vulnerable-groups/identification>

³⁴ <https://www.irishtimes.com/news/world/europe/migrant-smuggler-54-jailed-for-1-489-years-in-greece-1.3331618>

³⁵ <https://data2.unhcr.org/en/documents/details/63153>

³⁶ Article 19 PD 220/2007.

³⁷ Ombudsman, Migration flows and refugee protection: Administrative challenges and human rights, Special Report 2017, 28-29 and 75.

³⁸ <http://www.asylumineurope.org/reports/country/greece/detention-asylum-seekers/legal-framework-detention/detention-vulnerable>

were on a waiting list for placement in a shelter. Of those, 103 were detained in “protective custody” (police stations and pre-removal centres on the mainland), while 186 were in closed facilities on the islands. Unaccompanied minors are detained either on the basis of the pre-removal or asylum detention provisions, or on the basis of the provisions concerning “protective custody”.

A significant number of children have been reported to declare themselves as adults to avoid prolonged detention while waiting to be placed in a reception facility with very limited spaces or to evade any administrative obstacles on their journeys through EU borders. Sexual exploitation of unaccompanied adolescents is increasingly reported and visible in public parks, squares, and bars in Athens, where teenaged boys are sexually abused by older men in exchange for payment³⁹.

9. Challenges and Lessons Learned

In 2017, Greece has significantly expanded the competence of the Asylum Service, as well as its reception capacities. However, access to asylum, and reception conditions as a whole, remains rather problematic. Capacity building and training of public officials seems to be the most pressing need.

What is most important to highlight is that the implementation of migration management policy in Greece is an EU channelled policy. Since 2015, Greece has found itself in the middle of a continuing process where the EU has been attempting – through its executive branch, namely the European Commission and its ad hoc “initiatives” – to intensify the externalization of migration management through bypassing formal institutions and accountability mechanisms. The implementation of the EU-Turkey Statement is the cornerstone of this policy.

All of this seems to suggest that the European leadership’s efforts to regain control of the EU’s external borders remains irrevocably trapped in the “border security first” logic, and this is most evident in the direction of the pending reform of the Common European Asylum System, which is generally focused on the externalization of migration management to third countries and the penalization of secondary movements within the EU.

In HumanRights360 we believe that the lessons learned and the challenges should be more European-focused than national. This most recent refugee crisis started in the spring of 2015, reaching its climax in autumn of the same year, and has been gradually fading out ever since. Yet the crisis is just temporarily contained; the dominant crisis narrative has obscured the very real humanitarian crisis, which continues unabated at Europe’s Mediterranean borders.

If EU countries continue to trade legal obligations under international law with voluntary humanitarian gestures, and people in need of international protection remain without serious legal pathways towards the EU, the already long list of tens of thousands of deaths in the Mediterranean Sea will only grow longer⁴⁰.

³⁹ <http://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1002438>

⁴⁰ <https://www.humanrights360.org/the-implementation-of-the-hotspot-approach-and-the-eu-turkey-statement-in-greece-a-crisis-contained-but-not-over/>



MACEDONIA

The route from Greece to Macedonia remains the same, but the number of persons reduced. Macedonia is still mainly used as a transit country. Refugees and migrants enter Macedonia from Greece, with most of them trying to cross the border with Serbia from the local villages in the north. There is some backward movement, as there are refugees and migrants who have decided to move back to Greece and explore their options for applying to the relocation program.

1. Introduction

As a country along the so-called “Balkan route,” Macedonia was faced with the huge influx of refugees who were transiting through the country towards EU member states. From July 2015 to March 2016, a period when the migration movement was at its peak, 778,768 refugees and migrants are reported to have transited through the country⁴¹. It was estimated by UNHCR in 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 Macedonia into Serbia. After the western Balkan countries officially closed their borders to the refugees and migrants, 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 Macedonia in 2017⁴³. Approximately 17,000⁴⁴ refugees and migrants passed through Macedonia that year. According to EU progress reports there were around 70 detected irregular arrivals per week in January 2018, down from an average of 100 per week in the autumn of 2017. 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 %). A total of 4,129 attempted irregular border crossings were prevented, the vast majority at the border with Greece⁴⁵. Although the numbers are smaller, refugees and migrants still remained at both Macedonian transit centres, Tabanovce and Vinojug, consisting of those left behind with the border closings and some who attempted to cross borders on their own and were pushed back. A new trend of irregular backward movement of a significant number of refugees and migrants departing Serbia for Macedonia, and subsequently to Greece, has been noticed. Their movements were mostly voluntary, with the majority’s intention to return to Greece. Due to continuing movements, the state of emergency at the southern and northern border was extended until 30 June 2018.

2. Definitions, Legal Framework and Policy Measures on Irregular Migration

Macedonia’s constitution allows foreigners to enjoy freedoms and rights guaranteed therein, under conditions regulated by law and international agreements. Entry, movement, residence, departure and the rights and obligations of foreigners in the Republic of Macedonia are regulated by the Law on Foreigners⁴⁶. According to this law, a foreigner is a person who is not a citizen of the Republic of Macedonia, or is a person who is not regarded by any country as a citizen under its laws⁴⁷. The Law on Foreigners specifies: what it considers unauthorized

41 UNHCR, *Regional Refugee and Migrants Response Plan for Europe, Eastern Mediterranean and Western Balkans Route*, January-December 2016, p.73

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

43 MYLA statistics on recorded push backs

44 Report of the Red Cross for 2017

45 EU progress report for Macedonia, 2017

46 Law on Foreigners, Official Gazette of R. Macedonia, 35/06

47 Law on Foreigners, Official Gazette of R. Macedonia, 35/06, Article 2

entry in the country; the repercussions of not crossing the country's borders at the appropriate place, time and manner; what will happen to those who avoid or attempt to avoid border control at entry and who present falsified or invalid travel or other identification documents; and the repercussions to those who present false data to representatives of the Ministry of the Interior. According to the law⁴⁸, a foreigner can be expelled from the Republic of Macedonia if he/she is illegally staying in the Republic of Macedonia, and the Ministry of the Interior is the competent body for issuing a decision on expulsion⁴⁹. The Law on Foreigners guarantees the principle of non-refoulement⁵⁰, i.e. that no foreign person shall be compulsively deported to a country where his/her life or freedom may be threatened because of race, religious beliefs, his/her language or nationality, membership in a particular social group, for having a different political conviction or where he/she might be exposed to torture, inhuman or degrading treatment. A foreigner's expulsion is also prohibited if it contradicts the European Convention on Human Rights and Fundamental Freedoms (ECHR), the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), and the UN Convention on the Rights of the Child (CRC). The law regulates the conditions and procedures for voluntary or forcible returns to the country of origin, country of transit, or a third country⁵¹. Amendments to the Law on Foreigners are ongoing and a new version of the law is expected to be adopted in 2018.

The Law on Asylum and Temporary Protection⁵² is complementary to the Law on Foreigners as *lex specialis*. From the day a request for recognition of the right to asylum is submitted until the date of the effective decision, the Law on Foreigners shall not be applied. Provisions for expulsion will be used only if the rejected asylum seeker does not leave the territory of Republic of Macedonia during the period specified in the decision issued by the Sector for Asylum.

The government has adopted the Resolution on Migration Policy and Action Plan (2015-2020)⁵³, which identifies the measures needed to improve existing data collection, and to further harmonize the legislation in the area of migration with the EU's Acquis along with its policies and practices. Special focus is given to illegal migration, migrant smuggling, human trafficking and asylum. The document highlights 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, as essential strategic priorities. Priority attention needs to be given to vulnerable categories of migrants, such as women, children and persons with disabilities, all of whom are more often subject to violence than men, and whose rights are less recognized than men's rights while in transit or in camps⁵⁴.

48 Law on Foreigners, Official Gazette of R. Macedonia, 35/06, Article 101

49 Law on Foreigners, Official Gazette of R. Macedonia, 35/06, Article 103, paragraph 1

50 Law on Foreigners, Official Gazette of R. Macedonia, 35/06, Article 107

51 Law on Foreigners, Official Gazette of R. Macedonia, 35/06, Article 103

52 Law on Asylum and Temporary Protection, Official Gazette of Republic of Macedonia number 49/2003, 66/2007, 142/2008, 146/2009, 166/12, 101/15, 152/15, 55/16 и 71/16)

53 Resolution on migration policy 2015-2020 published in Official Gazette no.08-290/1 on 16 January 2015 <http://www.slvesnik.com.mk/Issues/a6a5102d81704eb39305182674122cb8.pdf>

54 IPA II 2014-2020, Migration and asylum, border management and fight against terrorism and organized crime https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/ipa_2016_039618.2_mk_migration_and_asylum_border_management_and_fight_against_terrorism_and_organised_crime.pdf

As specified in the Stabilization and Association Agreement between the EU and the Republic of Macedonia in 2001, an agreement on the readmission of persons residing illegally in the EU was ratified by the Republic of Macedonia in 2007⁵⁵. The Republic of Macedonia has also signed readmission agreements with other countries, both EU member states and non-member states. Thus, to date, the Republic of 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.

3. Relevant Institutions Addressing the Issue of Irregular Migration

The central institution responsible for irregular migration is the Ministry of Internal Affairs (MoI), whose mandate also covers all issues related to the residence and movement of foreigners, border security, as well as investigations into smuggling operations. More specifically, the sectors and units that deal with cases of irregular migration and migrant smuggling within the MoI are:

Sector for Border Affairs and Migration (Unit for Foreigners and Readmission, and the Mobile Unit for Transnational Crime) According to the Law on Foreigners, the MoI is responsible for all issues related to the control of movement and residence of foreigners, including irregular migrants⁵⁶;

Sector for Combating Organized Crime (Unit for Combating Human Trafficking and Smuggling of Migrants). This Sector is primarily responsible for conducting investigations and initiating criminal charges related to migrant smuggling;

The Border Police is responsible for managing border security and preventing migrant smuggling. The enhanced border controls done by the border police in the recent period were intended to discourage individual migrant border crossings, however this has resulted in an increase in the number of organized smuggling operations;

Sector for Asylum is an administrative body within the MoI that processes and grants asylum applications;

Reception Centre for Foreigners: As a facility for accommodation of irregular migrants, it is a closed type institution. The RC is the place where, for example, a migrant who is a witness in a case against a smuggler would be housed for the duration of the case.

The Reception Centre for Asylum Seekers functions under the auspices of the Ministry of Labour and Social Policy, and provides accommodation and care for asylum seekers. This is an open type institution;

⁵⁵ 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]

⁵⁶ Law on Foreigners, Official Gazette of R. Macedonia, 35/06, Article 7

National Commission for Combating Human Trafficking and Illegal Migration is a body established by the government in 2001 as an inter-institutional body that brings together representatives from all key institutions: Ministry of Interior, Ministry of Labour and Social Policy, Ministry of Education and Science, Ministry of Health, Ministry of Foreign Affairs, Ministry of Justice, Customs Administration, Public Prosecution and the Primary Court Skopje⁵⁷. Additionally, the government named a National Rapporteur in 2007. The members of the National Commission are responsible for, among other things, monitoring the situation with irregular migration flows and migrant smuggling.

The National Referral Mechanism (NRM) was created for victims of human trafficking, and was institutionalized through the Ministry of Labour and Social Policy in 2009. It is responsible for coordinating the referral of identified victims to the relevant body, as well as their accommodation, protection, re-integration and re-socialization.

A special task force to fight illegal migration and human trafficking is planned to be established as a separate unit within the Ministry of the Interior. This unit will include representatives of relevant institutions such as the Public Prosecutor's Office and the border police. The establishment of such a unit arises from the implementation of Plan 3-6-9⁵⁸ for the period from 04 July 2017 to 17 April 2018.

National Preventive Mechanism is established as a separate unit within the office of the Ombudsman, and whose primary goal is to prevent torture and other cruel, inhumane and degrading treatments or punishments. The role of NPM is to conduct regular (announced or unannounced) visits to persons who are deprived of their liberty;

Furthermore, there are other national units created and considered successful in terms of strengthening and coordinating the institutional capacity to control migration flows, such as the National Commission for Integrated Border Management, the National Coordination Centre for Integrated Border Management and the Sector for Integration of Refugees and Foreigners. The migration policy of Macedonia and its complexity implies the need for the inclusion of a number of institutions, whose authority and responsibilities should clearly be defined and their activities coordinated.

⁵⁷ Government decision, Official Gazette of R. Macedonia 18/2001.

⁵⁸ Plan 3-6-9 for Macedonia <http://vlada.mk/sites/default/files/programa/2017-2020/Plan%203-6-9%20MKD.pdf>

4. Statistical Data Collection on Irregular Migration in 2017

The number of migrants and refugees registered to have entered the territory of the Republic of Macedonia in 2017 is 17,000⁵⁹. The country remains one of the main transit routes for irregular mixed migratory movements. There were around 70 detected irregular arrivals per week in January 2018, down from an average of 100 per week in the autumn of 2017. In 2017, irregular migrants represented a significant portion of the overall migration flow through the country, with the majority of the migrants 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 advantage of the accommodation and services at the two transit centres in Macedonia – Vinojug and Tabanovce – with an average of 25 to 60 people present at the camps daily. During the reporting period, 2,530 foreigners were refused entry into the country and 549 were obligated to leave the country⁶⁰. The only readmission case in 2017 was the readmission arrangement between Macedonia and Greece, when 50 refugees from the Tabanovce Transit Centre were transferred by bus to Greece. According to MoI, in 2017 a total of 212 refugees and migrants were intercepted by smugglers, and 17 criminal offences related to smuggling migrants were registered. Criminal charges for smuggling migrants were submitted against 36 people, including 6 foreign nationals⁶¹. The majority of the intercepted refugees and migrants in this situation were transferred to the Reception Centre for Foreigners in Skopje and were detained as witnesses in the procedure against the smugglers. During 2017, 131 persons were present at the Reception Centre for Foreigners, nine of whom were minors.

The number of asylum applications has decreased by around 70% compared to the previous year. During 2017, a total of 147 applications were submitted for 162 persons⁶². Most of the applicants originated from Afghanistan, Pakistan and Syria, while most of the other applicants were from Iran, Iraq and Turkey. In 2017, only five persons were granted subsidiary protection, four of them Syrians and one Pakistani. During the year not a single asylum application was approved granting refugee status.

⁵⁹ The annual Report of the Macedonian Red Cross for 2017, for person provided with humanitarian assistance in the villages close to the Macedonian border with Serbia;

⁶⁰ Official information from the Ministry of Interior acquired through a request for free access to public information

⁶¹ Official information from the Ministry of Interior acquired through a request for free access to public information

⁶² MYLA data on asylum cases, 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
2017	17,000 ⁶³	2530	549	162	50	1	212



⁶³ The annual Report of the Macedonian Red Cross for 2017, and persons provided with humanitarian assistance in the villages close to the Macedonian border with Serbia.

5. Laws, Policies and Practices of Immigration Detention of Irregular Migrants and Vulnerable Groups

The legal framework of immigration detention in Macedonia is set forth in the Law on Border Control⁶⁴ and the Law on Foreigners⁶⁵. When it comes to the limitation of freedom of movement, the provisions of the Law on Criminal Procedure⁶⁶, 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 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 Macedonia cease to exist, but no longer than 12 months. Under article 132, 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 identity⁶⁷, 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 Procedure⁶⁸ 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 Protection⁶⁹ only contains provisions for the accommodation of asylum seekers in an open type facility. Nevertheless, the intention of the new asylum law is to introduce for the first time the possibility of detaining asylum seekers in special conditions, as prescribed by law.

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 about 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. The legal grounds for detention also could not be determined during immigration detention visits conducted by MYLA⁷⁰. 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

⁶⁴ Official Gazette of the Republic of Macedonia, No. 171/2010, last amendment: 31.08.2015

⁶⁵ Official Gazette of the Republic of Macedonia, No. 35/2006, last amendment: 31.08.2015

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

⁶⁷ Official Gazette of the Republic of Macedonia, no.150/2010, 100/2012 and 142/2016), Article 159

⁶⁸ Official Gazette of the Republic of Macedonia, no.150/2010, 100/2012 and 142/2016), Article 161 paragraph 3

⁶⁹ Official Gazette of the Republic of Macedonia, No. 49/2003, last amendment: 11.04.2016

⁷⁰ 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>

guaranteed by the Constitution: "No one can be restricted in freedom, except by a court decision and in conditions and procedures as prescribed by law"⁷¹.

There is only one official detention centre in 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 rules⁷². During the massive influx of refugees and migrants a lot of people were kept there in detention, in inhumane and degrading circumstances, including overcrowding, insufficient access to food and drinking water, and unsanitary conditions⁷³. In 2017, the conditions at the reception centre had improved, primarily due to the reduced number of refugees and migrants accommodated; there was no overcrowding of the immigration detention centre and the living space per detainee was sufficient. The number of detainees was low compared to the total capacity of the facility. In the reporting period, 4-15 detainees were being accommodated in one room⁷⁴. The National Preventive Mechanism, who has the authority to conduct unannounced visits to the centre in order to determine the conditions and the rights of the persons kept there, in their latest report⁷⁵ confirmed an improvement in the physical conditions for accommodation compared to previous years, considering that renovations are constantly being carried out. However, the general conclusion of the Ombudsman is that the centre does not meet appropriate detention standards. Construction of a new facility for reception and accommodation of foreigners with unregulated stay is planned for 2018-2020 with the support of the EU⁷⁶.

Still, 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 100 individuals were affected by immigration detention in Macedonia. The majority of them were males between the ages of 18-59, with the exception of three unaccompanied minors and one mother with two children. The majority of the detainees originated from Pakistan, Syria and Afghanistan. The average length of detention was 19.5 days, with the longest detention being 82 days⁷⁷, which is a decrease in the duration of detention compared with 2016 when average detention duration was 38 days⁷⁸. Access to legal counsel to irregular migrants is guaranteed under the Law on Foreigners⁷⁹. 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

⁷¹ Article 12, paragraph 2 of the Constitution of the Republic of Macedonia

⁷² Official Gazette of the Republic of Macedonia, No. 06/2007, amended 53/2009 and 75/2013

⁷³ As Though We Are Not Human Beings, Human Rights Watch Report, September 2015 https://www.hrw.org/sites/default/files/report_pdf/macedonia0915_4up.pdf

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 Special report of Ombudsman on the conditions in the Transit Centre for Foreigners <http://ombudsman.mk/upload/NPM-dokument/2017/Posebni%20izvestaj-Gazi%20Baba-26.12.2017.pdf>

⁷⁶ 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>

⁷⁷ 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>

⁷⁸ MYLA (2016): Annual Report on Immigration Detention in Macedonia. Online at: <http://myla.org.mk/wp-content/uploads/2016/09/MYLA-2016-Report-on-Immigration-Detention-inMacedonia.pdf>

⁷⁹ Law on Foreigners, Article 142 (legal aid), Article 141 (right to translation)

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 sign⁸⁰. 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 in the CPT report; the vast majority of detained persons their delegation had spoken to did not have access to legal aid at any stage of their proceedings⁸¹. Translations of detention orders and related documents were not available to detainees or anyone outside the detention centre⁸². In addition, the procedures at the detention centre are only displayed on some boards along the walls⁸³. 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 aid⁸⁴.

6. Legislation on Human Trafficking and Smuggling of Irregular Migrants

The national legal framework distinguishes between human trafficking and smuggling of migrants. The same article of the Criminal Code⁸⁵ specifies penalties for trafficking in human beings and smuggling migrants, but the two offences are, in effect, covered by separate sub-articles; thus the law distinguishes between them, but links them closely. In principle the former involves crimes against the person and the latter involves crimes against the state. Another sub-article specifies penalties for the organization of criminal groups to commit either of these crimes ("Organizing a group and instigation to commit acts of trafficking in human beings, smuggling of migrants and trafficking in children")⁸⁶, so effectively it treats the different offences as very similar.

The existing article on human trafficking was introduced through amendments to the Criminal Code of 2002, which were brought for the purpose of more effectively dealing with human traffickers as well as the harmonization of national legislation with the ratified UN Convention against Transnational Organized Crime with the two supplementing protocols. The article punishes anyone who recruits, transports, transfers, buys, sells, harbours or receives persons for the purpose of: exploitation through prostitution or other forms of

80 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>

81 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=0900001680_6974f0 pp.71, paragraph 130.

82 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)

83 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=0900001680_6974f0 pp. 71, paragraph 129

84 Law on Foreigners, Article 108

85 Official Gazette no. 226/2015, from 25 December 2015; Article 418

86 Ibid

sexual exploitation; forced labour or servitude, slavery or a similar relationship to slavery; inadmissible transplantation of human body parts by using force, serious threat or other forms of coercion or kidnapping; deceit and abuse of their own position or taking advantage of the position of weakness of another person by giving or receiving money and other benefits in order to secure the consent of, and control over, that person.

Macedonian criminal legislation foresees effective, dissuasive and proportionate punishment for human trafficking perpetrators, as the prison sentence for the basic crime of human trafficking is at least four years' imprisonment, which defines it as a felony. If the victim is a minor, there is separate article providing special protection for children who are victims of human trafficking and prescribes a minimum of eight years' imprisonment for the perpetrators.

The smuggling of migrants was first classified as a criminal offence in Macedonia's Criminal Code in 2004. According to this, a perpetrator could be a person who illegally transfers migrants over the state border, a person who produces, procures or possesses a fraudulent travel document for such purpose or a person who recruits, transports, buys, sells, harbours or receives migrants. When the health of the migrant is jeopardized during the perpetration of the crime (which is a frequent occurrence, since migrants are usually smuggled in very tight spaces in small vehicles), the penalties are stricter with imprisonment of a minimum of eight years.

There is also separate article on groups organized with the purpose of instigating and encouraging the perpetration of human trafficking in juveniles and migrants. Macedonia has introduced a number of penalty measures for migrant smuggling. Provisions in the Criminal Code do not differentiate between "smugglers" and "facilitators of smuggling" since any kind of involvement in smuggling operations is a criminal act. However, prison sentences are much harsher for the organisers of smuggling operations (at least eight years' imprisonment), than they are for members of an organized smuggling group (at least one year's imprisonment). Also considered particularly relevant when it comes to human trafficking and smuggling of migrants is the Law on Foreigners, which regulates: the rights and procedures for granting temporary residence on humanitarian grounds to victims of human trafficking; the rights of victims of trafficking during the period of recovery and reflection in safe accommodations; medical and psychosocial assistance; material assistance; translation and interpretation services for advice and information on the victims' legal rights; as well as legal assistance during criminal or other proceedings when the victim is eligible for compensation.

The Law on Social Protection Provisions⁸⁷ contains provisions for victims of human trafficking, as well as provisions for the establishment of a shelter for victims of human trafficking⁸⁸. The Family Law provides protection for children victims of human trafficking⁸⁹, with sixteen new articles introducing new measures for the protection of the rights and interests of the child as well as provisions regulating the procedure for the appointment of a guardian. The Law on the Protection of Children contains provisions that directly refer to the protection of children from the worst forms of exploitation⁹⁰. Victims of human trafficking are entitled to free legal aid, according to the Law on Free Legal Aid⁹¹.

⁸⁷ Official Gazette no. 79/09; Articles 26 and 31

⁸⁸ Ibid; Article 132

⁸⁹ Official Gazette no.84/08

⁹⁰ Official Gazette no 83/09

⁹¹ Law on Free Legal Aid, <http://www.refworld.org/pdfid/54edf00d4.pdf>

The national legal framework on human trafficking and smuggling of irregular migrants is also significantly improved by the adoption of the National Strategy for Combating Trafficking in Human Beings and Illegal Migration (2017-2020), which provides effective measures to be used by the relevant institutions, directed towards detecting smuggled migrants and prosecuting smugglers and human traffickers, as well as a complex approach to the trends of irregular migration in the country⁹². Additional important documents are the Standard Operating Procedures for the Treatment of Victims of Human Trafficking, Standard Operating Procedures for Treatment of Vulnerable Categories of Foreign Persons, and the Standard Operating Procedures for Dealing with Unaccompanied and Separated Children.

7. Cases of Human Trafficking and Smuggling of Irregular Migrants

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 government has trained first responders, labour inspectors, immigration officials, NGO workers, and social workers, on initial screening procedures for migrants, refugees, and unaccompanied children.

According to recent practice, in cases where the foreigner is a victim of human trafficking (or there are grounds for suspicion of this), there is a two-month period in which the foreigner is provided with protection and assistance in the process of recovery, while juvenile victims are offered a period of two months, with the possibility for extension⁹³. During this period, the victim can choose to either cooperate with the authorities in apprehending the perpetrators, or to return to the country he/she is a citizen or legal resident of. The victim cannot be expelled from the country during this period. Should the foreigner decide to cooperate with the authorities, a temporary residence permit may be issued, on the grounds that his/her presence in the country is necessary to conduct court proceedings, that he/she shows a clear intention to cooperate with the competent authorities in the detection of criminal offences, and that he/she has severed all contact with the suspected traffickers. The permit is issued for a period of up to six months, which may be extended if the previously mentioned conditions persist⁹⁴. The temporary residence permit may be withdrawn: if the foreign victim voluntarily, actively, and on their own initiative renews contact with the traffickers; for reasons of public order and national security; if the victim no longer cooperates with the competent authorities, or if the competent authorities decide to stop the procedure⁹⁵.

In 2017, only two victims of human trafficking were identified, both of whom were citizens of Macedonia, one male and one female from the Skopje region⁹⁶. There were 63 potential victims of human trafficking (34 men, 9 women and 20 children) identified among irregular

⁹² National Commission for Combating Trafficking in Human Beings and illegal Migration, National Strategy and Action Plan for Combating Trafficking in Human Beings and Illegal Migration (2017-2020) <http://nacionalnakomisija.gov.mk/mk/2017-2020/>

⁹³ Law on Foreigners, Article 81

⁹⁴ Law on Foreigners, Article 82

⁹⁵ Law on Foreigners, Article 83

⁹⁶ Annual report for 2017 of the National Commission for Combating Trafficking in Human Beings and Illegal Migration, <http://nacionalnakomisija.gov.mk/wp-content/uploads/2016/12/%D0%93%D0%BE%D0%B4%D0%B8%D1%88%D0%B5%D0%BD-%D0%B8%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98-%D0%BD%D0%B0-%D0%9D%D0%9A-%D0%B7%D0%B-%D0%A2%D0%9B-%D0%B7%D0%B0-2017.pdf>

migrants. Criminal charges were not brought against the perpetrators for human trafficking, but a verdict was issued for one suspect from the previous year. Three criminal charges were brought against three people in 2017, for the criminal offence of trafficking in minors. Criminal charges were submitted against 36 people, including 6 foreign nationals, for smuggling migrants. Combatting smuggling networks needs to be a priority. 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, such a law is in process of being drafted and it should be adopted in 2018. The national authorities have indicated that no victim of human trafficking has applied for and received compensation during the reporting period. There were two judgements in human trafficking-related cases resulting in the confiscation of the perpetrator's assets and four verdicts for the confiscation of instrumentalities of crime.

8. Protection of Irregular Migrant Children

On 21 November 2015, the Government of the Republic of Macedonia adopted the Standard Operating Procedures for the Treatment of Unaccompanied Foreign Children⁹⁷, which regulates the procedures, processes and manner in which identified unaccompanied foreign children are treated by authorized institutions, through a comprehensive approach based on respecting human rights, aimed at the best interests of the child. Unaccompanied and separated children are recognized as being at particular risk of trafficking and abuse. The Law on Foreigners and the Law on Asylum and Temporary Protection are the core laws regulating unaccompanied children. According to Article 112 of the Law on Foreigners, the MoI, upon identification of an unaccompanied minor, must immediately inform the diplomatic or consular mission of the child's country of origin in order to identify members of her/his immediate family. The nearest centre for social work appoints a legal guardian who represents the unaccompanied minor and ensures her/his best interests.

If the unaccompanied minor cannot be immediately transferred to the authorities of her/his country of origin, he/she will be placed in a special unit for children within the reception centre for foreigners. During her/his placement at the reception centre for foreigners, the unaccompanied minor is entitled to legal, social, medical and psychological assistance, as well as to education. Articles 80, 81 and 82 of the Law on Foreigners regulate the temporary residence permit of unaccompanied children issued for humanitarian reasons.

There are no provisions prohibiting the detention of minors (accompanied or unaccompanied). Even minors who are not seeking asylum, and whose respective embassy or consular mission is informed of their situation, they must nonetheless be assigned a legal guardian and placed in detention. According to official statistics, nine children were detained at the official

⁹⁷ <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c0638>

detention centre in 2017, down from 22 in 2016⁹⁸. The law specifies that children are to be placed in a separate section of the detention centre. However, observers who have visited the centre have noted that this separation is not actually put into practice. These reports also highlight that children do not know about their rights to legal guardianship. Additionally, there is no adequate accommodation for children who are not asylum seekers, because only the children who have applied for asylum are accommodated by the state. At the same time, it is not advisable for children to be accommodated at the detention centre, since it is a closed type centre and does not offer adequate conditions for children.

9. Challenges and Lessons Learned

There has been a substantial decrease in the migration flow through 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 2017, a total of 4,129 attempted irregular border crossings were prevented, the vast majority of which 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.

The 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. Therefore, Macedonia needs to establish a legal mechanism for re-admission and return of illegal migrants to the countries of entry/origin.

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.

⁹⁸ Official information from the Ministry of Interior acquired through a request for free access to public information

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





ALBANIA

Majority of the refugees or migrants that are passing through Albania are aiming to access the EU territory and rich to the Western Europe countries. Nevertheless, many of them who are in a more vulnerable position - families, unaccompanied children, elderly, etc, end up seeking asylum in Albania, which has experienced a sharp increase in the number of asylum requests in 2017

1. Introduction

Albania is currently considered a transit country by both migrants and authorities. Although not originally a part of the Balkan route, Albania has recently experienced a new wave of migrants through its borders as a result of the restriction of routes through Macedonia and Serbia. In the past few years, after the Arab Spring and the war in Syria, these new migration flows are characterized as composed mainly of people who are escaping countries of persecution (Syria, etc.), with the aim of reaching EU territory as soon as possible. However, many of those who are in a more vulnerable position – families, unaccompanied minors, the elderly – end up seeking asylum in one of the transit countries along the route. Thus, in 2017 Albania experienced a sharp increase in the number of asylum requests. Many of them were abandoned after a short stay in the country.

2. Definitions, Legal Framework and Policy Measures on Irregular Migration

Albanian migration policy is outlined in the Constitution, as a framework guaranteeing the rights and freedoms of foreigners, which are regulated by existing legislation, subordinate legal acts, and respective orders and instructions. The institutions responsible for the handling of various aspects of migration in Albania are responsible for implementing special migration policies, a component part of the overall migration policy according to the definitions in the legal acts which govern migration policy in Albania. The policies on foreigners in the country are regulated by the Law on Foreigners⁹⁹, the Law on Asylum¹⁰⁰ as well as a number of bylaws which cover areas from child protection to production of identification documents.

In view of a potential migration crisis, the government, in consultation with international organizations and local NGOs, drafted a contingency plan. The existence of the plan was made known to the public but its content remains undisclosed to date. The media, however, uncovered parts of the plan: Based on past experience, the plan assumes that all migrations flows would come from Greece. It foresees the entry of a maximum number of 10,000 people into the country at a time; assistance points would be established at the southern border with Greece, some along the route, and some at the intended exit points along the northern border with Montenegro.

Preconditions for legally crossing the state borders are regulated through the Law on Foreigners, Article 6¹⁰¹.

'Irregular stay' is the presence of a foreigner who does not meet or no longer meets the conditions for entry, stay or residence in the territory of the Republic of Albania¹⁰².

⁹⁹ The Law on Foreigners no. 108/2013 approved in 28 March 2013.

¹⁰⁰ The Law on Asylum no. 121/2014 approved in 18 September 2014.

¹⁰¹ The Law on Foreigners no. 108/2013, article no. 6, "Requirements for Entry, Stay, Exit and Transit in the Republic of Albania"

¹⁰² Article 3 of the Law on Foreigners - <https://www.asp.gov.al/images/pdf/ligje/ligji2013.pdf>

In 2017, Albanian authorities apprehended 124 irregular migrants - 53 Syrians, 26 Afghans, 21 Algerians, 7 Indians, 6 Moroccans, 6 Pakistanis, 3 Palestinians and 2 Iraqi nationals. Apprehended irregular migrants are given the option of applying for asylum in Albania; otherwise, they are ordered to leave the territory, or to return voluntarily to their country of origin. The majority of irregular crossings were detected through the Kakavia/ Kakavijë border crossing point with Greece. All irregular crossings in the reporting period were returned to Greece either voluntarily or by the Albanian police¹⁰³.

3. Relevant Institutions Addressing the Issue of Irregular Migration

The main actor dealing with migration flows is the Ministry of Interior (MoI), through its structures including: the State Police¹⁰⁴; the Asylum Directorate; and the Anti Trafficking Directorate. All of these institutions are mandated to deal with irregular migration issues. The Border and Migration Department conducts effective controls, manages irregular migration, and cooperates with the Asylum Directorate, which is the decision making authority responsible for asylum and refugees. It is responsible for handling and processing applications, examining hearings, and collecting other data necessary to complete the dossier for each asylum application.

The Anti Trafficking Directorate is responsible for the monitoring and coordination of activities among central/local structures regarding the prevention and fight against human trafficking, within the implementation of the National Strategy in the Fight Against Human Trafficking. This directorate also oversees the National Reception Centre for Asylum Seekers. When necessary, other entities, such as the Ministry of Health and Social Protection, intervene to deal with medical needs, child protection, etc. The MoI maintains close ties and cooperation with international partners ranging from IOM and UNHCR, to local NGOs such as RMSA and others.

¹⁰³ http://migration.iom.int/docs/Monthly_Flows_Compilation_No4_11_April_2017.pdf

¹⁰⁴ The State Police includes the Border and Migration Department and the Department Against Organized Crime

4. Statistical Data Collection on Irregular Migration in 2017

- Number of third country nationals who have passed through the country during the reporting period – unknown.
- Number of third-country nationals refused entry – unknown.
- Number of third country nationals with an order of departure – unknown.
- Number of third-country nationals found illegally in the country, to whom an administrative or judicial decision has been issued, or for whom it is established by law that their stay is illegal and are obliged to leave the country – unknown.

To clarify, the official number of irregular migrants apprehended by the Border and Migration Police (BMP), is 1,049 persons, most of whom were adult men. Neither the authorities nor other concerned actors have published any specific data concerning third country nationals who have passed through the country during the reporting period, beyond the 1,049 mentioned above. There have been allegations that the BMP may have apprehended only part of those passing through the country, but there are no official numbers available. However, it can be confirmed that in total, three third-country nationals had their asylum applications rejected in the final instance.

Total Arrivals	1049
Male %	88
Female %	12
Country of origin North Africa (Algeria, Libya, Morocco) %	45
Asia (Pakistan, Afghanistan, Iraq) %	13
Asia – Syria %	34
Asylum Seekers (a/s)	309
Male %	74
Female %	26
Country of origin a/s – Syria %	36
North Africa (Algeria, Libya, Morocco) %	32

5. Laws, Policies and Practices of Immigration Detention of Irregular Migrants and Vulnerable Groups

Albania has one main detention centre for irregular migrants, the Closed Centre for Irregular Migrants, in Karreç around 20 km from the capital, Tirana. It was built with EU assistance in 2008 and has a capacity of 100 persons. Its activity is regulated by a decision of the government and by internal regulations. International organizations such as IOM and UNHCR have repeatedly lodged complaints regarding the right to independent monitoring at the centre. Nevertheless, in recent years up to, and including, 2017, representatives from the office of the Ombudsman¹⁰⁵ have increased their presence at the centre in order to monitor a wide range of conditions, from food quality and access to fresh air, to effective opportunities to seek asylum and/or requests for contact with family members, and so on.

The government is in cooperation with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations to provide protection and assistance to refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern. Police have allowed UNHCR to monitor the processing, detention, and deportation of some migrants. UNHCR reported a few cases of police intimidation and reluctance to accept requests for asylum from migrants, refugees, and stateless persons. On two occasions, in June and November 2016, border authorities used force against groups of migrants who refused to return to Greece. Following the 2016 incident, one injured migrant was hospitalized and UNHCR filed a complaint with the border authorities. Authorities often detained irregular migrants who entered 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 back to Greece within 24 hours. Migrants detained further inland could spend several weeks at the Karrec 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 maintained that some of the migrants who requested asylum were deported as well. UNHCR lodged formal complaints to the government, but the authorities were generally slow to address them. UNHCR reported that conditions at the Karrec centre were unsuitable, particularly for children. As of September 2017, the government had referred fewer migrants to Karrec than in 2016, and only one minor – a 17-year-old boy traveling with a group – spent time there. There were credible reports from NGOs, migrants, and asylum seekers that authorities did not follow due process for some asylum seekers and that in other cases those seeking asylum did not have access to the system. During November 2017, 744 migrants – mostly Algerians, Syrians, and Libyans – entered the country mainly via the country's southern border with Greece. Of these, 128 requested asylum. Authorities returned those who did not request asylum to Greece; some immediately, but others after weeks of detention in inadequate facilities. UNHCR was critical of the government's migrant screening and detention procedures, particularly in view of the increased presence of children among the migrants¹⁰⁶.

¹⁰⁵ Specifically, from the Mechanism for the Prevention of Torture

¹⁰⁶ Country Reports on Human Rights Practices for 2017. United States Department of State • Bureau of Democracy, Human Rights and Labour. <https://www.state.gov/documents/organization/277377.pdf>

Despite government efforts, maintenance of conditions in the Closed Centre has shown to be very expensive and practically unaffordable for the authorities. Issues related to heating, quality of food and hygiene, special conditions for women and children, etc. continue to arise. Recognizing this problem, the BMP is cooperating with other government authorities to ease the burden of the centre and find better temporary arrangements for irregular migrants, particularly women and children. Most of such cases have been transferred to the National Asylum Seekers' Reception Centre, in the suburb of the capital, which is an open centre with much better conditions.

The Albanian Penal Code provides sanctions for both illegal border crossing and use of fake documents. Nevertheless, Albanian prosecutors have not been pursuing cases for illegal border crossing for irregular migrants. The detention of migrants, quite frequently, is done within the framework of the implementation of the Readmission Agreement between Albania and the European Union of 2008¹⁰⁷. The actual legislation also provides for limits to such detention. If, after six months, the BMP has not been able to return the migrant to the country of origin or to the country from where he/she entered Albania, the migrant is released under certain conditions (must reside in a particular town or district, for example).

When irregular migrants are intercepted and they do not seek asylum, and are not victims of trafficking, the regional BMP issues a decision for their removal from the country. Since there is no protocol with Greece for accelerated/simplified readmission procedures, normal readmission procedures may take at least one month. Irregular migrants have the right, in accordance with the Law on Foreigners, to appeal the expulsion decision initially before the higher administrative instance and then the court system. In practice, there are considerable obstacles and deficiencies in the exercise of such rights, since irregular migrants, neither at the border entry points, nor at the detention centre, receive any legal counselling/support.

107 Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorization. Date of signature 14/4/2005, date of entry into force 1/5/2006.



6. Legislation on Human Trafficking and Smuggling of Irregular Migrants

In addition to the laws mentioned above¹⁰⁸, Albania has periodically endorsed strategies in the fight against trafficking that determine the country's attitude towards the issue. One of the migration policies of the MoI, is the National Strategy of Albania – Integrated Border Management 2014-2020, and the Strategy and Action Plan against Trafficking in Human Beings 2014-2017¹⁰⁹. The former is intended to coordinate and facilitate cooperation among all authorities and agencies involved in border security, and to create effective and productive systems of integrated border management, aiming at reaching the goal of open, but controlled and secure borders. The latter is based on four pillars: criminal prosecution; protection of victims of trafficking; prevention; and coordination of work among institutions. The Albanian Code on Criminal Procedures¹¹⁰ was amended in May 2017 in the context of the ongoing reform of the justice sector. These amendments include a new provision that provides a number of guarantees for victims – including victims of gender-based violence – in criminal proceedings in accordance with international standards. The new provision aims at empowering victims of crimes by recognizing inter alia the right to various support services, the right to use his/her own language during the proceedings, the right to be informed at all stages of the proceedings, including information on the arrest and release of the offender, the right to claim compensation, etc.

Albania has marked a sharp decrease in the number of foreign victims of trafficking (VoT) which constitute less than 10% of the overall number of VoTs recorded in 2017. The overall number does not exceed 100 persons. In line with recommendations from international partners, such strategies include measures for fighting human trafficking, but also for assisting victims, and ensuring their reintegration into society as much as possible.

108 The Law on Foreigners no. 108/2013 approved in 28 March 2013. The Law on Asylum no. 121/2014 approved in 18 September 2014

109 <http://www.legislationline.org/topics/country/47/topic/14>

110 Article 58, Law No.35/2017 “On amendments to the law No.7905/21/03.1995 in the Code on Criminal Procedures.

7. Cases of Human Trafficking and Smuggling of Irregular Migrants

Identification of victims of human trafficking (VoT) or potential victims of trafficking (PVoT), is carried out based on Standard Operating Procedures for identification and referral of VoT/PVoT¹¹². Based on these SOPs, many state and non-state structures are responsible for the identification of this target group. Identification is the most important process in the whole chain of actions to ensure protection and assistance of VoT in accordance with the SOPs, and is performed in cooperation and collaboration with all authorities, the state, and non-state structures.

According to the Standard Operation Procedures, identification of the VoT/ PVoT is classified into initial identification and formal identification. Initial identification of VoT is the set of actions taken by the state and non-state institutions at the border, outside the border, and in the country. The responsible agency for the initial identification, at the border, is the Border and Migration Police. State agencies¹¹³ are responsible for internal identification, with the assistance of non-governmental institutions including shelters, and NGOs running assistance programs to people in need. Outside the country, the diplomatic representative offices of the Republic of Albania are responsible for the initial identification of VoT/PVoT abroad.

The formal identification process is performed by a member of the police from the Sector for Illicit Trafficking, together with a social worker, who conduct interviews and make a conclusion on the status of the victim¹¹⁴. Whereas outside of the territory, formal identification is essentially a request for information from the Albanian authority responsible for identifying and assisting Albanian victims of human trafficking, to the local authorities abroad that are responsible for the identification of trafficked persons¹¹⁵.

Assistance to VoT/PVoT has been provided in residential centres and communities as well. There are four trafficking victims' shelters in Albania: three are run by NGOs, and the fourth is a state-run shelter. The NGO-run shelters provide long-term reintegration services (residential and community services) for victims of trafficking. The reintegration program is divided into three phases, including emergency services, rehabilitation services and long-term monitoring during the process of social inclusion. The reintegration services of these shelters include: accommodation, medical assistance, psychosocial assistance, education, legal assistance, vocational training, social activities, services for economic empowerment and assistance to minors who are victims of trafficking.

Foreign VoT/PVoT have access to the same services as Albanian victims, including assisted return, in cooperation with the relevant embassies according to the SOPs.

¹¹¹ Ibid

¹¹² Decision no. 582, dated 27.7.2011 for approval of standard operating procedures for identification and referral of victims/potential victims of trafficking.

¹¹³ Social services, the state inspectorate, the employment office, educational services, health services, child protection units, etc.

¹¹⁴ Annex. 9.4 SOPs

¹¹⁵ <https://www.wvi.org/sites/default/files/Raporti%20mbi%20trafikimin%20anglisht%20-%202016.pdf>

Other services offered to foreign victims are: the right to apply for a temporary residence permit; provision of documents and other services for voluntary return to their country of origin; provision with interpretation and translation services; registration of children born in Albania; and enrolment in the education system for minors with a long term residency permit.

8. Protection of Irregular Migrant Children

Since the law ¹¹⁶ only anticipates social assistance for vulnerable groups, only certain groups of migrant children may benefit from assistance and protection services that meet their specific situation and needs. These groups include minors who are neglected, homeless, sexually abused, and exploited. However, in a country with a rapidly changing migratory profile, this definition may exclude many categories of migrants and children in need. According to the Criminal Code¹¹⁷, trafficking of minors is "the recruitment, sale, transportation, transfer, harbouring or receipt of children for the purpose of prostitution or other forms of sexual exploitation, forced labour or services, slavery or other practices similar to slavery or servitude, the removal of organs, as well as other forms of exploitation." Migration management and its harmonization with social and child protection services in Albania is characterized by an overall lack of coordination among institutions, combined with a lack of financial and human resources (both in terms of number and relevant skills of professionals). Assistance and protection offered to individuals, families and children affected by migration continues to be based on a narrow definition of 'vulnerable groups', with a consequent exclusion of those mostly in need of support. Regarding the protection of children in migration contexts, the Law on Protection of the Rights of the Child¹¹⁸ is a framework law that stipulates respect for the rights of children and for the structures responsible for their enforcement. The law predicts the right to life, to name and nationality, to family unity, to safe return, to freedom of expression, to education, to leisure, adequate living and health care, protection from violence, exploitation, freedom from use of drugs, from trafficking and armed conflicts, from torture and arrest, the right to alternative care.

Within the current legal framework, there are specific provisions concerning unaccompanied minors, separate from other groups of migrant children. These children are mentioned in the Law on Foreigners and in the Law on Asylum, although these laws refer to unaccompanied foreign minors entering Albania, and do not mention unaccompanied minors of Albanian nationality returning to the country. The Border Law outlines the procedure for identifying and assisting unaccompanied minors from Albania in migration situations. This law foresees protection measures and safeguards for this specific group of children, such as the use of detention as last resort measure, family tracing, identification, and referral to

116 Law no. 121/2016 extends the assistance provided to both Albanian and foreign citizens for social care services in the Republic of Albania, beyond cash based assistance granted in the past. In particular, this law now foresees a range of new services, including: social services; services in community centres; residential services (including shelter); social services in emergency situations; alternative care for children without parental care; online and phone-counselling and other specialized services.

117 Criminal code of the Republic of Albania, Article 128/b - Trafficking of Minors.

<http://rai-see.org/wp-content/uploads/2015/08/Criminal-Code-11-06-2015-EN.pdf>

118 [http://tdh-europe.org/upload/document/7270/MIGRATION%20REPORT%20ALBANIA%20\(eng\)_web.pdf](http://tdh-europe.org/upload/document/7270/MIGRATION%20REPORT%20ALBANIA%20(eng)_web.pdf)

competent authorities. The institutional framework relating to child protection is composed by the National Council for the Protection of Children's Rights, the State Agency of Children's Rights and the Child Protection Units at the local level. Child protection institutions are new and their activities are still developing, and there is a degree of uncertainty regarding their jurisdiction on migration issues. Few cases of families with children are reported among the refugees recently entering Albania, mostly Syrian nationals. The Directory for Asylum reported that there were only 11 children with families in the Babrru centre. All children attended nurseries or schools depending on their age and were closely assisted by the staff of the above-mentioned directory. There are also families that relocate from the reception centre in Babrru to more independent accommodation, i.e. renting flats. Access to services appears to be overall reasonable for these refugee families. However, refugee children face discrimination, as their lack of documentation prevents them from accessing education.

9. Challenges and Lessons Learned

The policy framework regarding the relationship between migration and social protection seems to have been mostly driven by requirements and priorities set at the international level for the country – primarily as part of the EU accession process. Although, the above priorities do not necessarily reflect the most urgent needs of migrants, their families and communities, and of the local authorities working to assist them. Furthermore, current laws and policies do not seem to have fully kept pace with the latest developments in terms of migration trends – as the (limited) recent migration flow demonstrated. The implementation of procedures for these groups of migrants resulted in inadequate assistance and often led to an infringement of their fundamental rights. Families and children who enter irregularly and do not apply for asylum find themselves in a most precarious situation, a fact which points to one of the weakest aspects of Albania's migration infrastructure.

Priority areas to further improve:

- The treatment of irregularly entering migrants and asylum seekers, which currently 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 subjected to detailed scrutiny and considerable revision.
- Human and financial resources of Migration Counters. The Migration Counters should be provided with adequate 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.
- Support for living expenses. The local government should offer social assistance and housing in accordance with the needs of the residents. Access to this support must be available to all.

- Assistance to employment and self-employment. The Migration Counters should file a register of migrants' skills with a profile of professions 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 that conform with the migrants' potential and skills. Employment of migrants should be a priority for the Labour Office.
- Support for effective national and regional cooperation among key stakeholders, which constitutes a crucial factor in preventing and tackling human trafficking, migrant smuggling, organized crime, corruption and other cross-border crimes. Infrastructure improvement would also be advisable in order to enhance the capacity to refer migrants with different profiles to corresponding institutions, 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 the premises should be adequately equipped, with respect to international standards and human rights, and in order to ensure the protection and safety of the hosted individuals.
- Child protection laws, procedures, and institutions need to be mandated to treat cases of migrant children. The National Agency for Child Protection must take a leadership role in the coordination of child protection and assistance programs. The National Council must initiate the development of a child protection system. The government needs to enable budget spending in support of migrant children's education and inclusion, especially for immigrant families and other families in need.



KOSOVO

In 2017 there were 131 persons who irregularly crossed the country and this marks a significant drop of 57% in the number of irregular migrants, compared to the previous year when the number was 306. This number may rise in the upcoming years, since high numbers of migrants are on the move in neighbouring countries.

1. Introduction

Irregular migration is present in Kosovo, with the greatest number of citizens from Afghanistan, Syria, Libya, Algeria, Iraq and Iran. These people enter irregularly from Albanian and Macedonian territory and use Kosovo as a transit country towards the EU.

The Criminal Code¹¹⁹ of the Republic of Kosovo has defined illegal entry 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.”¹²⁰

In 2017 there were 131 persons who irregularly crossed the country, which marks a significant drop of 57% in the number of irregular migrants compared to 306 from the previous year. This number may rise in upcoming years, considering the high numbers of migrants on the move through neighbouring countries. CRP/K has started border monitoring activities from January 2018, in the frame of its project with UNHCR. However, during the reporting period there were no reports on push-backs from previous border monitoring organisations, nor did the asylum seekers interviewed by CRP/K report any.

Moreover, even though the current route used by migrants through Albania/Montenegro/Bosnia and Herzegovina/Croatia is outside Kosovo, there are indications that the geographic position of Kosovo favours irregular migration. The country has become more attractive for both migrants and smugglers because of the considerable number of unauthorised routes near border crossing points, as well as through the green border with Albania and Macedonia when entering, and Serbia and Montenegro on exiting (especially where there are villages near the borders). So far, according to state authorities, there has been no noted effect on the internal security of the country, but these are factors which might fuel an increase in the number of smugglers.

119 Official Gazette of the Republic of Kosovo / 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>

120 Article 170, subparagraph 8.2 of the Criminal Code of the Republic of Kosovo no. 04/L-082,

2. Definitions, Legal Framework and Policy Measures on Irregular Migration

The legal framework both on legal and irregular migration in Kosovo is contained in the Law on Foreigners¹²¹ 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*. Recently, amendments to the Law on Foreigners were adopted by the Parliament and will enter into force in mid-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. The Department of Citizenship, Asylum and Migration in the MoI is in charge of the implementation of migration policy. The strategy and action plan on migration for 2013-2018¹²² are in place. The 2016 migration profile was adopted in November 2017, and contains an extensive analysis of migration data and of 'push' and 'pull' factors, together with recommendations and policy guidance.

The purpose of the Law on Foreigners is to regulate the conditions of entry, movement, residence and employment of foreigners in the territory of the Republic of Kosovo. The law also applies to foreigners as whose status is not regulated under other legal provisions or under an international agreement endorsed by the Republic of Kosovo. Moreover, as stipulated by Article 2, paragraph 3, "Nothing in this law shall affect the rights, obligations and responsibilities of authorities and individuals under international law, including international humanitarian law and international human rights law and, in particular, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, the principle of non-refoulement and the right to seek asylum as contained therein".

As such, the legal framework on asylum-related matters is regulated by the Law on Asylum¹²³. However, 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 Parliament and is expected to enter into force in mid-May, 2018.

In 2017, the competent authorities also updated their contingency plan in case of an influx of migrants/refugees to Kosovo.

¹²¹ Official Gazette of the Republic of Kosovo / No. 35 / 5 September 2013, Pristina, Law on Foreigners no. 04/L-219, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=8876>

¹²² Available at: <https://mpb.rks-gov.net/Documents/anglisht-2.pdf>

¹²³ Official Gazette of the Republic of Kosovo / No. 32 / 30 August 2013, Pristina, Law on Asylum No. 04/L-217, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=8869>

3. Relevant Institutions Addressing the Issue of Irregular Migration

The Department of Citizenship, Asylum and Migration within the Ministry of Internal Affairs is the responsible institution for drafting migration policies, including those related to irregular migration, asylum and refugee issues.

The Border Police Department within the Kosovo Police is responsible for the management and control of the state border, and together with Directorate for Investigation of Organised Crime, is engaged in preventing and combating irregular migration.

The Directorate for Investigation of Human Trafficking is a specialised sector within the Directorate for Investigation of Organised Crime, in charge of investigating crimes related to human trafficking.

Starting from 2018, CRP/K has undertaken border monitoring activities. CRP/K's mandate derives from the technical agreement between MoI and UNHCR signed in 2013, which allows UNHCR's implementing partners to access to all entry points, including the airport, in order to monitor the identification of persons in need of international protection and submission of asylum applications. The CRP/K border monitoring team has been established and has prepared the visit plan. Approximately 30 visits will be conducted at official border points, but ad hoc visits will be also conducted at the police stations responsible for surveillance of the green border as well as the Regional Border Directories.

Persons working on the project are available during working hours Monday to Friday. Information on irregular migrants or asylum seekers is received from media reports or the Asylum Centre, and is confirmed via phone or meetings/direct visits with Regional Border Directories or police stations.

The border monitoring project focuses on monitoring the actual procedure being used by the border police to enable entry to the territory, and access to the asylum procedure for irregular migrants or persons in need of international protection. At the same time, border police capacities are evaluated and their needs for specialised training on the treatment of asylum seekers are assessed.



4. Statistical Data Collection on Irregular Migration in 2017

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	/

5. Laws, 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 into several blocks, where different parts of it are intended to accommodate/detain men, women, human trafficking victims, families and unaccompanied minors. The Detention Centre for Foreigners functions under the Department for Citizenship Asylum and Migration of the MoI. The centre started its work in June 2015. 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.

The Law on Foreigners¹²⁴ foresees the use of administrative detention for irregular migrants, offers alternatives to detention where applicable, and stipulates the rights of irregular migrants or foreigners hosted in the centre. Article 108 of the law foresees that detention is a last resort administrative measure which is issued and executed by the border police against a foreigner, for whom forced removal or a removal order has been issued, based on a case-by-case assessment, when all possible alternative measures are implemented or where such measures are considered inapplicable to a foreigner who is under readmission procedures according to readmission agreements in force. In addition, paragraph 2 of Article 108 foresees that a foreigner shall remain detained in the detention centre, for the shortest period of time, until the legal proceedings are carried out, to enable his 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 safety, 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 against the detaining order to the Basic Court within 30 days after receipt of the order or extension of detainment. The party that is 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 foresees that a child may be kept in a detention centre, but only in when it is in the best interest of the child or his/her family, in special facilities separate from those for adults. Before a child is detained, however, the opinion of a social worker or psychologist shall be requested. Despite the guarantees in the legislation, providing proper care for the most vulnerable groups of irregular migrants remains a challenge in Kosovo.

124 Law no.04/L-219

The Law on Foreigners also foresees temporary measures to be taken, 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. Such measures consist of the obligation to appear before the authorities, temporary confiscation of tickets or travel documents, confiscation of financial means or imposing a guarantee and restrictions on freedom of movement. However, Kosovo authorities tend to detain foreigners in the detention centre rather than using alternatives for detention.

On 2 May 2018, Kosovo's Ombudsman issued a report stating his recommendations after a visit to the Detention Centre for Foreigners in Vranidoll¹²⁵.

In the report, based on the findings, it was recommended that the centre must at the very least have a nurse available who would carry out medical checks of the newly accommodated detainees, administer medication, and take care of the medical files of the foreigners within the centre. The report also recommends the presence of a psychologist, as stipulated by the Regulation on the Operation of the Detention Centre for Foreigners¹²⁶.

The report further recommended that the centre should maintain protocols for the following cases: severe loneliness, bodily injury, self-harm, attempted suicide, sexual abuse and death. Also, it was recommended that the Regulation shall contain a special provision that foreigners, to whom a disciplinary measure is imposed, shall be served with a copy of the decision in a language which he/she understands. Further, it was emphasised that security personnel should undergo adequate training to work with this category.

Detained foreigners shall be provided with free legal aid in accordance with the Regulation¹²⁷, and foreigners shall be notified of their rights and obligations through a special document, in a language they understand and in which they can confirm that they have understood their rights and obligations.

¹²⁵ http://www.ombudspersonkosovo.org/repository/docs/ANG-raport_i_nga_vizita_ne_Qendren_e_Mbajtjes_ne_Vranidoll_25.4.2018_113983.pdf

¹²⁶ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=9803>

¹²⁷ Ibid

6. Legislation on Human Trafficking and Smuggling of Irregular Migrants

Kosovo has adopted legislation and policy framework on human trafficking and smuggling of irregular migrants. The Law on Preventing and Combating Trafficking in Human Beings and Protecting Victims of Trafficking¹²⁸ foresees legal provisions through which competent local authorities are granted the rights, and obligations to: prevent and combat human trafficking in all its forms; protect victims of trafficking, including ensuring the rights to legal aid, medical assistance, psychosocial support, and compensation for all persons who are presumed or identified as victims of trafficking, regardless of gender, age, marital status, language, mental or physical disability, political/religious conviction, etc., through a human rights based approach, in full compliance with international human rights instruments and standards; and national and international cooperation for the purpose of preventing and combating trafficking in human beings, and ensuring assistance and protection to victims of trafficking.

Moreover, this law shall be applied to all forms of human trafficking, whether national or transnational, and whether or not it is linked to organized crime, or to offences committed for the purpose of victims' exploitation, so far as they contain elements of human trafficking. The Law on Foreigners foresees measures for the protection of irregular migrants in the context of smuggling and trafficking. Article 60 foresees granting temporary residence permits to victims of trafficking after their identification by relevant authorities pursuant to the Law on Human Trafficking. This law stipulates the rights of victims of human trafficking who have been granted temporary residence permits. Special attention is also paid to the best interests of minors who are victims of human trafficking.

Kosovo has adopted the 2015-2019 strategy and action plan¹²⁹ against human trafficking which gives priority to 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 are in place, and measures are taken for the effective reintegration of victims.

The Criminal Code¹³⁰ defines smuggling of migrants, human trafficking, and withholding identity papers of victims of slavery or human trafficking as criminal offences against humanity and against the values protected by international law. As such, criminal sanctions are foreseen for each committed criminal offence. The Code¹³¹ also determines as mandatory either the rules of criminal procedures, or the proceedings of the courts, the state prosecutor and other participants in criminal proceedings.

128 Law no.04/L-218; <https://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20preventing%20and%20combating%20trafficking%20in%20human%20beings.pdf>

129 http://www.kryeministri-ks.net/repository/docs/NATIONAL_STRATEGY_AGAINST_TRAFFICKING_IN_HUMAN_BEINGS_IN_KOSOVO.pdf

130 Criminal Code no.04/L-082 of the Republic of Kosovo

131 Criminal Procedure Code no.04/L-123

Moreover, the laws of the Special Prosecution Office of the Republic of Kosovo foresee that it shall have subsidiary competence, according to the modalities set forth in Article 10, to investigate and prosecute the perpetrators of migrant smuggling and human trafficking.

7. Cases of Human Trafficking and Smuggling of Irregular Migrants

The anti-trafficking unit of the Kosovo police – the Directorate of Investigations on Trafficking in Human Beings (DITHB) – is the institution responsible for registering a suspected victim of trafficking. The people who may come into contact with a presumed victim of trafficking, and/or refer them to the police, include but are not limited to: law enforcement officers (anti-trafficking police, border police, community police, front-line officers, police investigators, customs officers), public prosecutors, NGOs workers, outreach workers, anti-trafficking and domestic violence helpline operators, the presumed victim of trafficking him/herself, other victims of trafficking, family members, private citizens, healthcare professionals, labour inspectors, immigration officers, detention centre personnel, transportation workers, embassy or consular officials, etc.

Once a victim is identified, within two hours a team is convened, composed of a police officer from the anti-trafficking unit, an advocate from the Regional Office, and a social worker from the municipal Centre for Social Work if the trafficking victim is a child, as well as an interpreter if the victim is a foreigner.

The initial screening is based on personal data, living/working conditions, and the trafficking process. This screening is carried out by the anti-trafficking unit officer, once informed consent is gathered from the presumed victim of trafficking, and in the case of a minor, from the parent/caregiver or social worker/legal guardian. An interpreter is made available if necessary.

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

Kosovo's Criminal Code¹³² stipulates that convicted migrant smugglers are fined and receive imprisonment from two to ten years. Those involved in falsifying documents (creating, selling or buying) with the intent to smuggle migrants are fined and will receive imprisonment for up to five years. Anyone who enables a person who is not a national of the Republic of Kosovo to remain in the country without complying with the necessary legal requirements to remain, or by any other illegal means, shall be fined and imprisoned for up to one year. The same article of the Criminal Code also states that a person is not criminally liable for such crimes if he or she is a migrant who is the object of the offence provided for in this article. The consent

¹³² Article 170

of the victim to be illegally transported through the country's borders is irrelevant when it's given under force, threat or even if he/she paid for the 'service'.

During the reporting period, two cases of smuggling were reported. In both cases, legal action was taken against the foreigners who were caught smuggling migrants from Pakistan, Afghanistan, Iraq and Syria. The smugglers were placed in detention, while court procedures are still ongoing.

Based on the Law on Preventing and Combating Human Trafficking 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, the Crime Victim Compensation Law¹³³ entered into force on June 2015. The purpose of this law is the establishment and functioning of the Crime Victim Compensation Program. This law sets out the basic compensation procedure while the Administrative Instruction on the Manner of Compensation Including the Calculation of the Compensation for Multiple Damages¹³⁴ determines the manner of compensation, including the procedure of receiving, handling and reviewing applications, calculation and making a decision on the compensation for crime victims.

Administrative Instruction No 02/2017 in the Register for Applicants and Decisions Issued on Compensation¹³⁵ entered into force in January 2017. This AI determines the form and manner of keeping records of applicants and decisions issued on victims' compensation. However, CRP/K was unable to obtain information on the number of trafficking victims who were subject to compensation during 2017.

133 Law No. 05/L-036; Official Gazette of The Republic of Kosovo / No. 17 / 30 June 2015, Pristina, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10936>

134 Administrative Instruction (Grk) No 01/2017 on the Manner of Compensation Including the Calculation of Compensation for Multiple Damages2, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10936>

135 Administrative Instruction (Grk) No 02/2017 on Register for Applicants and Decisions Issued on Compensation, 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

8. Protection of Irregular Migrant Children

The entire legislation which covers irregular immigration gives primary consideration to the principle of the best interest of the child.

The Law on Foreigners foresees measures for the protection of irregular migrants in the context of smuggling and trafficking. Special attention is also paid to the best interest of minor victims of human trafficking.

The Criminal Code¹³⁶ defines unauthorized crossings as movement across the “...border or boundary of the Republic of Kosovo at any location other than at an authorized border or boundary crossing point” and further sets the sentences. The same article further stipulates that the penalties are more severe when the perpetrator is accompanied by a child.

Article 171 of the Law on Trafficking in Persons stipulates that: “The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’.”

Kosovo authorities tend to apply the best interest of the child in all circumstances. There is no report that a child was detained in 2017 or that any pushbacks occurred involving minors. So far there have been no family reunification cases.

Once they enter Kosovo, all migrant children are placed in the Asylum Centre within a few hours of their first contact with the authorities. According to the Law on Asylum, a guardian is appointed to the child as soon as possible. As a result of consecutive meetings and advocacy from CRP/K with the authorities involved regarding the procedure of appointing of a legal guardian, an agreement was reached to accelerate the procedure, so that the guardian is appointed within just a few days, as opposed to the previous procedure that took weeks.

When it comes to age determination, the only valid procedure in use involves taking x-rays of the hand, so that the concerned person does not suffer unfair disadvantages due to being misidentified as a minor or an adult. In order for the procedure to take place, the MoI sends a request to forensics at the Ministry of Justice, who perform the procedure, once they have established that it will cause no harm to the health of the concerned person.

It is recommended that all relevant actors involved in the issue of migration, especially those who work in the field and have direct contact with migrant children, should have joint meetings periodically in order to exchange knowledge and good practices, and to identify gaps in the relevant legislation. So far, such meetings have been limited due to the very small number of cases.

¹³⁶ Criminal Code no. 04/L-082 of the Republic of Kosovo, Article 146

9. Challenges and Lessons Learned

CRP/K was a participant in the drafting and amendment of the relevant legislation and considers it to be in line with the acquis; however, a few challenges have been identified when it comes to implementation.

The Law on Foreigners foresees temporary measures to be taken as an alternative to detainment in the Detention Centre for Foreigners, where migrants are subject to removal by force. However, Kosovo authorities have more frequently resorted to placing foreigners in the detention centre, rather than using alternatives to detention.

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

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

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, Kosovo is still struggling to find sustainable funding to ensure shelter for victims of gender-based violence and human trafficking, as well as to ensure reintegration of victims.

Border staff needs proper training, in particular with issues related to migration and asylum. Also, refresher sessions for the relevant institutions on early identification of victims of trafficking and smuggling 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 Macedonia. In addition, as a result of the visa liberalization policy, an increased number of people from Iran are arriving to Serbia by plane. Within Serbia, the main transit point for refugees and migrants is Belgrade. Exit routes from Serbia go through Croatia, Hungary and Romania. The most recent data shows that a new exit route from Serbia towards Bosnia and Herzegovina has been established.

1. Introduction

The migration flow that culminated in 2015/2016 started in 2011/2012, when migrants from Africa and the Middle East started to arrive in the Republic of Serbia (RS) in larger groups. Migrants were crossing into RS through the eastern border with Bulgaria, and the border with Macedonia to the south. The so-called 'refugee crisis' that escalated in 2015 was a huge challenge for Serbian authorities and their capacity to respond. Lack of experience in similar situations and understaffed institutions charged with dealing with the crisis, resulted in a disorganised response that was not compliant with international law. The Serbian system was not ready for the unprecedented influx and was stretched to its limits. This resulted in ad hoc changes of policies, and the focus was mostly on the humanitarian aspect of the crisis.

For most of 2015, Serbia took an open border approach, and the majority of persons in need of international protection freely transited through the country. However, when analysed, the number of persons sanctioned for unlawful entry and illegal stay in RS by the misdemeanour courts shows that a significant number of persons from refugee producing countries were treated as irregular migrants. This practice was established without consideration of international standards and the domestic legal framework that apply to these groups.

Stricter measures at the Serbian border were introduced in 2016 with the EU-Turkey deal, together with the establishment of joint police-army patrols by the Serbian government. These measures resulted in a significant decrease of migrants entering RS. Furthermore, the Serbian – Hungarian border was formally closed, which led to migrants remaining in limbo, having no opportunity to continue the journey or access an efficient asylum procedure in Serbia. Border control was further strengthened with the Decision on the Establishment of Joint Police-Army Forces adopted by the Serbian government. The explanation was that this measure aims to combat human smuggling and protect the state border with Republic of Macedonia and Bulgaria. However, these measures may have facilitated informal push-backs of migrants into neighbouring countries¹³⁷. Accusations surrounding push-backs continued in 2017, both from the Serbian police to neighbouring countries, and vice versa¹³⁸.

137 Right to Asylum in the Republic of Serbia 2016, Belgrade Centre for Human Rights, 2017, pp. 10. Available at: <http://www.bgcenter.org.rs/bgcenter/eng-lat/wp-content/uploads/2017/03/Right-to-Asylum-in-the-Republic-of-Serbia-2016-2.pdf>

138 Dangerous Game, Oxfam, 2017; Forcible irregular returns to the Republic of Serbia from neighbouring countries, Hungary and Croatia, Collected throughout 2016 and 2017, Humanitarian Centre for Integration and Tolerance, 2017.

2. Definitions, Legal Framework and Policy Measures on Irregular Migration

Pursuant to the Law on Migration Governance¹³⁹ of the Republic of Serbia, “migration is a voluntary or forced removal from the country of origin or residence due to temporary stay or permanent residence in the Republic of Serbia, and voluntary or forced removal from the Republic of Serbia due to temporary stay or permanent residence in another country (external migration), as well as the change of the place of residence within the country, or the change of the place of residence within the territory of the Republic of Serbia if the change was forced (internal migration)”¹⁴⁰. The 2009 Migration Management Strategy for migration governance¹⁴¹ envisages that the Serbia will deal with migration governance in a comprehensive way, adhering to European standards in the area of migration, with respect to its own specificities. It should be mentioned that the creation of a strategy on irregular migration is in progress.

The legal framework in Serbia does not contain an exact definition of the term ‘irregular migrant,’ but defines what is considered unlawful entry and unlawful stay. These offences are regulated with the Criminal Code of the Republic of Serbia¹⁴², Law on Foreigners¹⁴³, Law on Border Control¹⁴⁴ and Misdemeanour Law¹⁴⁵. Additionally, the Law on Border Control gives a definition of irregular migration as movement of a population from one country to another that is not in accordance with any legal framework, and includes stay in a country without fulfilling legal preconditions¹⁴⁶. Article 12 of the Law on Border Control stipulates the preconditions for legal crossing of the state border. Persons crossing the state border in a manner contrary to the provisions of this law, may be fined, or imprisoned for up to 30 days¹⁴⁷.

Article 350¹⁴⁸ of the Criminal Code of the Republic of Serbia¹⁴⁹ stipulates that persons crossing the border without authorized permission or those attempting to cross while armed or using violence, will be punished with maximum of one year imprisonment. None of the amendments to the Criminal Code tackled Article 350, and so the penalties for this criminal act remained the same. Additionally, the Law on Foreigners¹⁵⁰ regulates unlawful entry¹⁵¹ and unlawful stay¹⁵², as well as the consequent fines for these misdemeanour offences. According to Article 41 of the Misdemeanour Law, the court may exchange an administrative fine for imprisonment.

139 Official Gazette of the RS, no. 107/2012.

140 Official Gazette of the RS, no. 107/2012, Article 2, para 1.

141 Official Gazette of the RS, No. 55/05 and No.71/05-revision, No.101/07 and No. 65/08.

142 Official Gazette RS no. 85/2005, 88/2005 -corr., 107/2005 - corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016).

143 New Law on Foreigners was adopted in March 2018 and it will be enforced in 6 months’ time.

144 Official Gazette RS, no 24/2018.

145 Official Gazette RS, no 65/2013, 13/2016, 98/2016- CC decision.

146 Official Gazette RS, no 24/2018, Article 3, para 1, point 9.

147 Official Gazette RS, no 24/2018, Article 71, para 1, point 1.

148 Illegal crossing of the state border and human smuggling.

149 Official Gazette RS no. 85/2005, 88/2005 -corr., 107/2005 - corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016).

150 New Law on Foreigners was adopted in March 2018 and it will be enforced in 6 months’ time.

151 Unlawful entry into Republic of Serbia is an entry: outside of the place or time prescribed for crossing the state border; made by avoiding the border control; by using another person’s, invalid, and/or forged travel or other document; by providing incorrect information to the border police. The following measures are in effect: the protective measure of removal of foreigners from the Republic to Serbia, the security measure for banishing foreigners from the country, or withdrawal of the permission to stay. Unlawful stay in the territory of the Republic of Serbia is stay without a visa, permission for temporary residence or other legal grounds, Article 14, Law on Foreigners.

152 Unlawful stay on the territory of the Republic of Serbia is stay without a visa, permission for temporary residence or other legal grounds, Article 3, para 1, point 25.

For most of 2015, Serbia's open border policy allowed the majority of persons in need of international protection to freely transit through the country. However, it was found that in practice, the approach of the misdemeanour courts was problematic. Proceedings were also not uniform in past years, in cases where the defenders were the persons who could be considered prima facie refugees, and were treated by the court as irregular migrants. This practice was established without taking into consideration the international standards and domestic legal framework that apply to these groups. Additionally, it was often the case that migrants were not being provided with the opportunity to respond to the accusations, or express intention to seek asylum, as interpreters were not always provided by the court. In 2015, the number of foreign nationals found guilty for unlawful entry under Article 65 of the State Border Protection Law and Article 84 of the Law on Foreigners, was 9,134 in total¹⁵³. Under Article 85 of the Law on Foreigners, 435 foreign nationals were found guilty for unlawful stay in RS in 2015. In 2016, the number of migrants sanctioned under the same provisions was 2,221 which is a notable decrease, however this trend is proportionate to the radical slowdown of the migration flow through RS in this period. The BCHR is not in possession of the number of foreigners sanctioned for unlawful stay in 2016. A similar trend continued in 2017, when the number of foreign nationals sanctioned under same provisions for unlawful entry dropped to 920. Total of 473 foreign nationals were found guilty of unlawful stay in RS under Art. 85 of the Law on Foreigners in 2017¹⁵⁴. The establishment of joint police-army patrols¹⁵⁵ in 2016, was followed by statements from army officials, that large numbers of irregular migrants were discouraged to cross into the RS without receiving an explanation for the method and assessment of their cases on an individual basis.

¹⁵³ Statistical data stem from responses of misdemeanour courts in the RS to the BCHR requests for access to information of public importance.

¹⁵⁴ Ibid

¹⁵⁵ See more under question 1.

3. Relevant Institutions Addressing the Issue of Irregular Migration

The Ministry of Interior of the Republic of Serbia (MoI) has the main responsibility of controlling access to Serbia's territory, and subsequently, to the asylum procedure; it dictates how the asylum procedure is conducted; it processes returns through readmission agreements, etc. The Directorate of Border Police, a sector inside the MoI, has jurisdiction over: border crossing and security of state borders; suppression of illegal migration and human trafficking; cross border crimes; procedures related to movement and stay of foreigners in RS; asylum, etc. Within the Directorate of Border Police, the Department for Foreigners issues decisions and monitors foreigners' stay in the country, resolves status related issues for foreigners, registers asylum seekers, and manages the reception and accommodation of foreigners at the Shelter for Foreigners. Besides the Department for Foreigners, another department relevant to irregular migration inside the Directorate, is the Department for Suppression of Cross Border Crime, Illegal Migration and Human Trafficking.

The Asylum Office is a department of the MoI that implements the first-instance asylum procedure.

Pursuant to the Law on Migration Governance, the Commissariat for Refugees and Migration (CRM) is the competent authority that deals with migration issues¹⁵⁶. CRM's role is to offer suggestions to the government regarding migration policy priorities, as well as to measure the effects of regular migrations and the success rate of suppressing irregular migration. According to Article 10 of the Law on Migration Governance, it is within CRM's jurisdiction to, inter alia, recommend programs for the development of a system of measures intended for foreigners' families who irregularly (i.e. illegally) reside in the Republic of Serbia, and propose support programs intended for the voluntary return of foreigners irregularly residing in Serbia, to their countries of origin. CRM also manages the asylum and reception centres, providing accommodation and basic living conditions for both asylum seekers and irregular migrants.

In September 2016, the government Working Group on Mixed Migration Flows¹⁵⁷ adopted the Response Plan in case of an increased inflow of migrants to Serbia for the period October 2016 – March 2017. The Plan foresees the expansion of the accommodation capacities for migrants, the extension of health care, and provision of access to the asylum procedure to foreigners who express an interest in applying for asylum. The Plan did not specify the legal status of foreigners irregularly present in Serbia who do not wish to seek asylum, but are in need of protection because they come from countries in which their liberty and security were at risk or because they found themselves in a vulnerable situation.

¹⁵⁶ Official Gazette RS, no 107/2012.

¹⁵⁷ The working group was established in 2015 and comprises the Minister of Labour, Employment, Veteran, and Social Affairs, the Minister of Internal Affairs, the Minister of Health, the Minister of Defence, the Minister without Portfolio charged with EU Accession, and the Refugee Commissioner. The Decision on the Establishment of the Working Group is available in Serbian at: <http://slg.bazapropisa.net/54-20-05-2015/29541-odluka-o-obrazovanju-radne-grupe-za-resavanje-problema-mesovitih-migracionih-tokova.html/>. See more in: Tošković, The Human Rights of Migrants and Refugees in the Republic of Serbia-with special focus on the right to work and the right to education, Belgrade Centre for Human Rights, 2017. Available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2013/04/Ljudska-prava-ENG.pdf>.

Cooperation between government institutions and NGOs was intensified during 2015 and 2016, when state capacities mandated with providing protection to migrants were stretched to their limits. Thus, NGOs provided services such as legal aid, psychosocial support, child friendly spaces, non-food items, information provision etc. in camps, border areas and informal gathering points for migrants. Relevant NGOs still do not participate in border monitoring in Serbia.

4. Statistical Data Collection on Irregular Migration in 2017

The BHCR put in a request to the MoI for access to information of public importance regarding data on irregular migration, however, as of 2018, the MoI is refusing to share statistical data. This includes data which is collected as per Article 78 of the Law on Foreigners, such as the number of third-country nationals who were refused entry or number of third-country nationals who were returned through readmission agreements to neighbouring countries. Statistical data on asylum procedures has been obtained through the UNHCR office.

Total Number of Expressed Intentions to Seek Asylum in 2017	6199
Registered asylum seekers	244
Asylum applications submitted	236
ID cards issued	217
Interviews conducted	106
Suspended cases (persons)	158
Rejected applications (persons)	11
Refused applications (persons)	53
Subsidiary protection granted	11
Asylum granted	3



5. Laws, Policies and Practices of Immigration Detention of Irregular Migrants and Vulnerable Groups

The Shelter for Foreigners located in Belgrade, is used only for detention of foreigners with a capacity of 66 beds¹⁵⁸. Serbia does not have closed camps as alternatives for restriction of movement. Official statistics on the detention of vulnerable groups is not available, however based on information collected through legal counselling in the Shelter for Foreigners, minors were detained with the purpose of preserving family unity, while cases of single women being detained were rare.

According to the Law on Foreigners¹⁵⁹, the Shelter for Foreigners is a facility for the accommodation of foreigners who are not allowed to enter the country, or for those who are to be expelled or deported, but for whatever reason under the law, are still in the country and are determined to stay – under enhanced police supervision. However, in 2015 and 2016 migrants were detained in the Shelter for Foreigners also as a means of securing testimonies in criminal proceedings against persons for whom there was reasonable doubt that they had committed either the criminal act of crossing the border illegally and smuggling people, or the criminal act of human trafficking. Since testifying in criminal proceedings is not envisaged by the Law on Foreigners or the Code on Criminal Proceedings as a basis for placing foreigners in the shelter, such practice constitutes illegal and arbitrary deprivation of liberty.

Migrants who are considered to be irregular by the Serbian authorities and are placed in the Shelter for Foreigners, are returned to the country from which they came, if it is not possible to return them to their country of origin. The procedure for returns from the Shelter for Foreigners is implemented through readmission agreements. From the information the BCHR collected through field work and provision of legal assistance in the Shelter for Foreigners, there are indications that many of the foreigners who are considered irregular migrants are issued with a cancellation of stay. If it is not possible to deport such migrants, if there is a lack of readmission agreements or a misunderstanding regarding existing readmission agreements, irregular migrants are released from the shelter and expected to leave the country voluntarily. The BCHR does not have official data on this.

According to the Article 77 of the Law on Asylum and Temporary Protection¹⁶⁰, the movement of asylum seekers may be restricted by a decision of the Asylum Office, when it is necessary for the purpose of: establishing their identity; ensuring their presence in the course of the asylum procedure, if there are reasonable grounds to believe that they had filed their asylum applications in order to avoid deportation or if it is impossible to establish other essential facts on which their asylum applications are based in their absence; or protecting national security and public order in accordance with the law. It should be mentioned that Serbia does

158 Report on Shelter for Foreigners in Padinska Skela, National Preventive Mechanism, Belgrade, 2014. Available at: http://www.npm.rs/attachments/451_Prihvatiliste%20za%20strance.pdf.

159 Article 3 para. 1 point 28 of the Law on Foreigners

160 Official Gazette RS, no 24/2018.

not practice detaining asylum seekers during the asylum procedure. The BCHR's lawyers had unimpeded access to all foreigners detained in the shelter who were in need of legal aid, and access to the asylum procedure was enabled. Once a person who has expressed intention to seek asylum is issued a certificate of expressed intention to seek asylum, he/she is released to go to the camp on his/her own.

6. Legislation on Human Trafficking and Smuggling of Irregular Migrants

The Constitution of the Republic of Serbia explicitly prohibits slavery, keeping persons in conditions akin to slavery, and all forms of trafficking in persons¹⁶¹. The Criminal Code criminalizes human trafficking as well as trafficking in minors for adoption¹⁶². The sanctions for this crime are mostly in line with international standards. Human trafficking carries between three and twelve years' imprisonment, and a minimum of five years' imprisonment if the victim was a minor, or the crime resulted in grave bodily injuries¹⁶³. Ten years' imprisonment is the minimum penalty in the event the crime was committed by an organized criminal group; the victim's consent is irrelevant¹⁶⁴.

Someone with knowledge that a person was a victim of human trafficking and used his/her position, or enabled another to use his/her position, for the purpose of exploitation shall face imprisonment from six months to five years, while perpetrators with knowledge that the victim was a minor will be punished by imprisonment ranging from one to eight years¹⁶⁵.

According to data obtained from the Ministry of European Integration, in accordance with the Criminal Code, eight persons were convicted in the first half of 2017, which is the same number as the second half of 2016. Criminal charges were filed against 183 persons for smuggling of 1,351 persons in the first nine months of 2017¹⁶⁶.

In August of 2017, the Government of Serbia adopted the Strategy for Prevention and Suppression of Trafficking in Humans, Especially Women and Children, and Protection of Victims for the period 2017-2022, together with the accompanying Action Plan for 2017 and 2018¹⁶⁷. The adoption came six years after the previous Strategy for Combating Human Trafficking in Serbia had expired. The Strategy identifies fields needing further development – among others: the lack of a common and comprehensive system for collecting and analyzing data on human trafficking; the inadequate system for identification, protection,

161 Constitution of the Republic of Serbia; Art. 26 (1 and 2) Available at: http://www.srbija.gov.rs/cinjenice_o_srbiji/ustav.php?change_lang=en.

162 Criminal Code of the Republic of Serbia; Art. 388, 389 Available in Serbian at: <https://www.paragraf.rs/propisi/krivici/zakonik.html>.

163 Art. 388 of the Criminal Code of the Republic of Serbia

164 Ibid

165 Ibid

166 The non-paper on the state of affairs in Chapters 23 and 24 for Serbia (in Serbian), November 2017. Available at: http://www.mei.gov.rs/upload/documents/eu_dokumenta/non_paper_23_24/non_paper_23_24_novembar_srp.pdf.

167 Usvojena strategija o trgovini ljudima. Danas, 4 August 2017. Available at: <https://www.danas.rs/drustvo/usvojena-strategija-o-trgovini-ljudima/>.

and support of victims of human trafficking, especially children and vulnerable migrants; the lack of special support programs for high risk groups and vulnerable migrants when dealing with the prevention of human trafficking and supporting the victims of human trafficking; the fact that the system lacks human and material resources; as well as the fact that the shelter for urgent care of victims of human trafficking, founded within the Centre for Human Trafficking Victims Protection, is not yet operational.

According to the 2017 Trafficking in Persons Report for Serbia by the State Department Office to Monitor and Combat Trafficking in Persons¹⁶⁸, the Republic of Serbia remains a source, transit, and destination country for men, women, and children subjected to sex trafficking and forced labour, including domestic servitude and forced begging. The 2017 report lists Serbia on the Tier 2 Watchlist – meaning a country where there is either a significant number of victims of severe forms of trafficking, where the number is significantly increasing, or where there is no evidence of increasing efforts to combat trafficking in persons. Serbia was relegated to the Tier 2 Watchlist from Tier 2 status in 2016.

According to the 2017 report¹⁶⁹, the Government of Serbia demonstrated significant efforts to make a permanent human smuggling and trafficking law enforcement taskforce operational. Also, more victims were identified and prosecutors and judges were provided guidelines on non-penalization of trafficking victims. Guidance on trafficking indicators was developed and distributed and 630 first responders were trained on applying these indicators. At the same time the report notes that the government did not demonstrate increasing efforts compared to the previous reporting period and did not provide sufficient protection to victims participating in criminal proceedings, which exposed them to intimidation and secondary traumatization. The report also points out that the absence of formalized victim identification procedures and an outdated national referral mechanism hindered victim protection efforts. The 2017 report underlines that for the fourth consecutive year, the urgent reception centre of the Centre for Protection of Trafficking Victims (CPTV) was not functional. The shelters run by NGOs remain the only specialized shelters for female trafficking victims, while local centres for social work operate shelters for domestic violence victims, which also accommodate female trafficking victims. There are no child-specific procedures at the CPTV and the staff are not trained to work with children. Male victims do not have access to a dedicated trafficking shelter, but there is needs-based support provided by NGOs. In total, NGOs and international organizations provided assistance to 28 of the 49 victims of trafficking¹⁷⁰.

There were reports of victim intimidation for non-cooperation in proceedings before the national authorities, and judges did not assign vulnerable witness status to the victims. Although the law entitles victims to file both criminal and civil suits for compensation against traffickers, judges continued to encourage victims to file only civil suits, through which none of the victims received compensation in 2016¹⁷¹. Furthermore, experts highlighted other rather worrying facts, such as that the overall number of cases where victims received

168 United States Department of State, 2017 Trafficking in Persons Report - Serbia, 27 June 2017, available at: <http://www.refworld.org/docid/5959ec5d11.html>.

169 Ibid

170 Ibid

171 Ibid

compensation between 2000 – 2018 was probably not higher than five in total, as well as that a compensation fund for victims of trafficking was never established¹⁷². Temporary residence permits for trafficking victims were granted to two persons in 2016¹⁷³.

In its 2017 Human Trafficking Report¹⁷⁴, the Centre for the Protection of Trafficking Victims identified challenges regarding identification of trafficking victims among the refugee and migrant population. The report pointed out that psychological trauma does not allow the victims to adequately assess the situation and circumstances in order to improve their situation. Also, the victims are often afraid to report crimes in a foreign country for fear of facing criminal charges, particularly if they entered the country illegally. There is a lack of trust in the authorities of the host country, and the victims are often unaware of their rights and options to receive support and protection. In previous years, the short stay of refugees and migrants in Serbia was also an issue that prevented the establishment of trust necessary to allow for effective identification. Other issues include cultural differences and the language barrier.

The Centre for the Protection of Trafficking Victims received only a few reports of potential trafficking among refugees and migrants. In 2017 the CPTV identified only one trafficking victim among the refugee population, a citizen of Afghanistan¹⁷⁵.

According to the Serbia 2018 Report by the European Commission that was published in April 2018¹⁷⁶, 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 the competences were transferred from the Border Police to the Criminal Police Directorate¹⁷⁷ which encompasses a task force on human smuggling.

The Criminal Code prohibits human smuggling and specifies that whoever enables a person to illegally cross the border of Serbia or to stay in or transit through Serbia illegally in return for material gain shall be punished by imprisonment between six months and five years¹⁷⁸.

172 Interview with Andjelka Markovic dipl. Iur., Council of Europe consultant on an as needed basis for Horizontal Facility for Western Balkans and Turkey, "Preventing and Combating Trafficking in Human Beings in Serbia" Action.

173 United States Department of State, 2017 Trafficking in Persons Report - Serbia, 27 June 2017, available at: <http://www.refworld.org/docid/5959ec5d11.html>.

174 Human Trafficking Report for 2017 (in Serbian). Centre for the Protection of Trafficking Victims, Available at: <http://www.centarzztlj.rs/images/stat/17/Izvestaj%20o%20trgovini%20judima%20u%20Srbiji%202017.pdf>.

175 Basic statistical report on the identification of victims of trafficking in human beings for 2017 (in Serbian), Centre for the Protection of Trafficking Victims. Available at: <http://www.centarzztlj.rs/images/stat/17/2017%20Statisticki%20izvestaj.pdf>.

176 Commission staff working document - 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: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf>.

177 Commission staff working document - 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: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf>.

178 Art. 350 of the Criminal Code of the Republic of Serbia.

Additionally, endangering the life or the health of the smuggled person shall be considered an aggravating circumstance and the perpetrator shall be sentenced to between two and twelve years' imprisonment¹⁷⁹. In the event that the crime of smuggling was committed by an organized group, the perpetrators shall be sentenced to between three and fifteen years' imprisonment. This provision, however, still does not afford the victims with adequate protection – inhuman or degrading treatment and exploitation of the smuggled migrants are not defined as a qualified form of crime, which deviates from the standard established in the Second Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime¹⁸⁰.

7. Protection of Irregular Migrant Children

The newly adopted Law on Foreigners stipulates residence options for children. Temporary residence for humanitarian reasons, for example, is granted to a foreign minor who has been abandoned, who is a victim of organized crime, or who has been left without parental care or guardianship. When deciding on a request for temporary residence, or the extension of temporary residence of a minor, the competent authority shall be guided by the best interest of the child.

Principles in the return process outline that the competent authorities must take into account the specific situation of particularly vulnerable persons, family matters and health conditions of the person returning, as well as the best interests of the child¹⁸¹. Prior to making the decision to return an unaccompanied child, authorities must provide appropriate assistance from the Centre for Social Work. Article 83 prescribes that unaccompanied children must not be forcibly removed, except in the cases where there is certainty that the child would be returned to a family member, guardian or appropriate institution.

Provisions on detention in the Shelter for Foreigners include rules on placing children. Article 92 prescribes that a child is placed in the Shelter for Foreigners together with their parent or guardian only as a last resort and for the shortest possible period of time. Families must be provided with separate accommodation for greater privacy, and children should be able to take part in activities involving play and recreational activities appropriate to their age, and depending on the length of stay in the shelter they must also have access to primary education.

The Law on Asylum and Temporary Protection defines a minor as a person under the age of 18 and an unaccompanied minor as a foreign person under 18 who is not accompanied by a parent, guardian, or responsible adult at the moment of entry to Serbia or at some point after entering Serbia. A separated minor is one who has been separated from his/her parent or legal guardian, but is in the company of adults who have taken temporary responsibility for him/her.

¹⁷⁹ Ibid

¹⁸⁰ Article 6(3)

¹⁸¹ Article 75 of the Law on Foreigners

Article 10 of the Law on Asylum and Temporary Protection defines the principle of the best interest of a minor. It stipulates that the authorities must act in accordance with the best interest of the minor in the course of the asylum procedure. For the assessment of the best interest several indicators are given – the welfare, social development and origin of the minor; the opinion of the minor, depending on their age and maturity level; the principle of family unity; and the protection and security of the minor, especially if there is a suspicion that the minor is a victim of human trafficking, domestic violence, or gender-based violence. The expression of intention to seek asylum as well as the request for asylum are made by the parent or guardian of the child. Exceptionally, minors who are older than 16 and who are married may act independently in the asylum procedure. The Centre for Social Work determines a temporary guardian for an unaccompanied minor as soon as they are identified as such, at the latest before they apply for asylum. A temporary guardian is obliged to inform the unaccompanied minor without delay about the asylum procedure and their rights and obligations. All procedures for unaccompanied children asylum seekers, as well as other procedures related to the rights of unaccompanied children, have priority over other procedures.

Newly introduced expedited procedures, and border crossing or transit zone procedures must not be carried out when an asylum seeker is an unaccompanied minor.

When it comes to accommodation of asylum seekers, the law prescribes that unaccompanied children are accommodated in facilities for asylum seekers, or if the unaccompanied minor has submitted an asylum application, the Commissariat will arrange accommodation at the request of the Centre for Social Work in a social welfare institution, with another accommodation provider, or another family.

Asylum seekers who are minors have the right to free primary and secondary education, which is provided immediately and no later than three months from the date of submission of the application.

A movement-restricting measure that may be imposed on a minor is confining him/her to a social care institution for minors for up to three months. This period may be extended once with increased monitoring, if it is determined on an individual basis that other measures may not be effective. This measure may be appealed in front of the competent higher court within 8 days; however, the appeal does not delay the execution of the decision.

8. Challenges and Lessons Learned

The Republic of Serbia continues to take a humanitarian approach, providing accommodation and care to a large number of migrants, including irregular migrants. This approach was taken without assessment in each case, regardless of the need for international protection, or their individual status. The only way for migrants to legalise their stay in Serbia is to express intention to seek asylum. However, persons who do not legalize their stay, and are considered irregular migrants, may have access to national accommodation facilities. One of the main challenges is the lack of capacities for accommodation of unaccompanied and separated minors. 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.

When it comes to institutional practices of the Republic of Serbia, in previous years the most problematic were the misdemeanour courts; however, this has been significantly improved and the number of migrants sanctioned for illegal entry and illegal stay has decreased. It should be mentioned that even though there is no mass restriction of freedom of movement of irregular migrants, current return procedures are weak in regards to procedural guarantees and guarantees for respect of human rights.

Also, the problem of accessing information from the state is a problem, as vital information is required to be presented to the applicants in accordance with the Law on Free Access to Public Information, in a manner and within a term specified by law. However, the requestors are not given full access to the necessary information, and the transparency of the state in migration issues is a challenge.

The work of joint police-army patrols that operated in 2016 and 2017 should have been subjected to monitoring in order to prevent violations of the 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. In its "Concluding Observations on the Second Periodic Report of the Republic of Serbia", the Committee against Torture recommended that Serbia should also establish formalized border monitoring mechanisms, in cooperation with UNHCR and civil society organizations. Additionally, indications on push-backs from, and to, the Republic of Serbia were registered during 2017.

One of the reasons why migrants do not consider Serbia as a refugee 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 Chapter 24.



MONTENEGRO

A growing number of migrants and refugees using the new Balkan route through Albania, Montenegro and Bosnia, has increased the number of migrants and refugees present in Montenegro. 807 irregular migrants were apprehended entering the country, while 85 irregular migrants were returned based on readmission agreements. The number of asylum applications also grew considerably from 335 in 2016 to 849 in 2017. Because of the unexpected influx, the authorities erected a razor-wire fence along the 26-kilometres long borderline with Albania, accusing official Tirana of not doing enough to deal with the problem.

1. Introduction

The national asylum system in Montenegro was established when the Law on Asylum entered into force on 25 January 2007¹⁸². From 2007 to 2011, Montenegro had registered a low number of asylum seekers, mainly from neighbouring countries. However, from 2011 onwards, Montenegro has faced a sharp increase in the number of asylum seekers due to the refugee crisis that has taken place through South Eastern Europe in 2015 and 2016. Although the country remained outside the main Western Balkans migration route to the EU, Montenegro witnessed an increase in the number of migrants/asylum seekers entering its territory, as indicated by the following asylum trends over the years: 46 requests in the period from 2006 to 2010, 1,531 in 2012 and 3,554 in 2013, 2,312 in 2014, 1,611 in 2015, 335 in 2016 and 849 in 2017.

In order to respond to the growing mixed migration trends, Montenegro has strengthened its legal and institutional framework in recent years, as well as its capacity to handle asylum requests in line with international and EU standards. Despite important improvements from the rudimentary stages of alignment with corresponding standards, until the adoption of the Law on International and Temporary Protection of Foreigners, the country is still only moderately prepared for the implementation of the EU *acquis communautaire* in this field. The capacity of the state to fully respond to the protection needs of asylum seekers and persons granted international protection, especially in case of a sudden migration-related pressure, remains the key challenge. Also, Montenegro needs to put a return mechanism in place for irregular migrants in line with the EU *acquis*, as well as to progressively align its visa policy with the EU's¹⁸³.

¹⁸² Official Gazette of Montenegro, No. 45/06

¹⁸³ Montenegro 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 {COM(2018) 450 final}, p. 5

2. Definitions, Legal Framework and Policy Measures on Irregular Migration

The legal and strategic frameworks on mixed migration are largely in place. The Law on International and Temporary Protection of Foreigners, which makes provisions for implementing the EU *acquis* in the context of international protection¹⁸⁴, is expected to enter into force on 1st January 2018¹⁸⁵. It represents the key regulations in this field, along with the new Law on Foreigners¹⁸⁶ whose implementation will start on 14 February 2018¹⁸⁷. Despite the fact that both laws allow for the effective regulation of mixed migration in line with EU standards, a substantial amount of secondary legislation, in particular on the determination of a safe country of origin, and on the application procedures for different categories of foreigners and stateless people, still remain to be adopted¹⁸⁸. Amendments to the Criminal Code allowing for the implementation of the Protocol to the UNTOC Convention concerning the smuggling of migrants, criminal liability, and aggravated circumstances of smuggling, were adopted in May 2017.

At the strategic level, Montenegro implements two important strategies. The 2016 - 2020 Strategy for the Reintegration of Persons Returned under Readmission Agreements, together with the 2016 Action Plan for its implementation, as well as the 2017 - 2020 and 2017 - 2020 Strategies for Integrated Migration Management in Montenegro, with the Action Plans for their implementation for 2017¹⁸⁹. Also, the Action Plan in case of possible inflow of Refugees and Migrants was adopted in November 2015 and the National Schengen Action Plan in February 2017, defining activities related to the comprehensive integrated border management and establishment of an adequate asylum system. Montenegro also has 13 implementing protocols on readmission with EU member states and 10 readmission agreements with non-EU countries (i.e. neighbouring countries, Macedonia, and Turkey).

184 This Law addresses most of the deficiencies of the previous Asylum Act, including the lack of clear division of competencies of different governmental entities involved in the asylum system, lack of judicial review of decisions of the second-instance body (actually, it imposes quasi-judicial review), limitations of accommodation and social aid for persons granted international protection, etc.

185 "Official Gazette of Montenegro", No. 2/2017

186 "Official Gazette of Montenegro", No. 12/2018 (the new Foreigners' Law regulates the entry, exit, movement, stay, rights and work of foreigners in Montenegro, but also returns, including voluntary returns, entry bans (thus aligning the legal framework with the EU *acquis* on both legal and irregular migration).

187 Since 2018, the Law on Asylum and the Foreigners' Law ("Official Gazette of Montenegro, No. 82/08, 72/09, 32/11, 53/11, 27/13 and 61/13") is in force.

188 Currently, Montenegro does not have a separate procedure for determining statelessness, despite having ratified the relevant Convention in 2013. Also, it has to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

189 The Reintegration Strategy aims to create preconditions for adequate access to the process of return and reintegration at all levels through further strengthening of the institutional framework, efficient assistance process and education, while the IMM Strategy aims to further strengthen the institutional and policy framework for controlling migration movements in accordance with *acquis communautaire*. Both documents have been prepared in line with the EU concept of integrated border management, as well as with the EU standards on readmission of irregular migrants.

3. Relevant Institutions Addressing the Issue of Irregular Migration

Competent institutions addressing the issue of irregular migrations are: the Ministry of Internal Affairs/ Police Directorate, the Ministry of Education, the Ministry of Health, the Ministry of Human and Minority Rights, the Ministry of Labour and Social Welfare/ Refugee Care Directorate, the Employment Agency of Montenegro, and the National Office for Combating Human Trafficking¹⁹⁰. The most important institution for irregular migrants is, however, the Ministry of Interior (Asylum Directorate and Asylum Office which decides asylum claims), and well as the Department for Foreigners, Migration and Readmission which is responsible for overall migration and visa policy, including readmission.

According to the most recent Country Report of the European Commission, the implementation of international protection standards will require stronger preparation and better coordination among relevant ministries¹⁹¹. Apart from the cooperation with IOM, as well as with UNHCR as the mandate organization and its implementing agency, the NGO Legal Centre, there are rare attempts to establish long-term cooperation and coordination among state institutions, the civil society and international organizations¹⁹², partially due to insufficient interest and capacity on the part of NGOs and the media to deal with irregular migrations.

Also, when it comes to enforcement capacity, the EU recalls that the new legislation on asylum and foreigners raises procedural standards, requiring sufficient human resources and expertise within institutions. Therefore, all stakeholders, including the Directorate for Asylum of the Ministry of Interior, the Border Police and the social ministries, will need further training and capacity building to be able to fully assume their tasks and responsibilities under the new legislation.

4. Statistical Data Collection on Irregular Migration in 2017

In 2017, 807 irregular migrants were apprehended entering the country¹⁹³, while 85 irregular migrants were returned based on readmission agreements, pursuant to provisions of the Law on Foreigners related to expulsion. A total of 234 apprehended migrants were accommodated in 2 reception centres - Asylum Centre (capacity 80) and Foreigners' Detention Centre (capacity 40) located in Spuz, Danilovgrad (compared to 123 in 2016). The migrants' nationality breakdown in 2017 differs from the previous year. In 2016, migrants from Middle East and Central/South West Asia comprised 59% of the overall arrivals, dominated by Afghan (18%),

190 Under the new asylum legislation, the Ministry of Interior takes over the management of the Centre for Asylum Seekers, while the integration of refugees, including access to employment, remains under the Ministry of Labour and Social Welfare's responsibility. Also, according to the new legislation, second-instance decision-making on asylum claims will be transferred from the State Asylum Appeal Commission to the Administrative Court of Montenegro.

191 P. 30 – 33.

193 This is almost a threefold increase when compared to year before, when 307 irregular entries have been reported.

Iraqi (12%) and Syrian (11%) nationals. The remaining 41% was composed of more than 20 different nationalities. However, in 2017, the country faced an influx of migrants from North African countries, more precisely Algeria (47%) and Morocco (13%) which comprised 60% of the overall arrivals¹⁹⁴. In 2017, a readmission request was received for 756 persons, about 200 persons less than in 2016.

The number of asylum applications also grew considerably from 335 in 2016 to 849 in 2017 (779 applications have been submitted by men, and 70 from women. Out of this number, 51 asylum seekers were minors (one of whom was an unaccompanied minor). Algerian nationals accounted for almost half of the applicants (393), followed by Iraqi, Albanian, Moroccan and Syrian nationals. The number of people under international protection in Montenegro remained small - 28 people in total at the end of 2017¹⁹⁵.

	Third country nationals passing through the country	Third-country nationals refused entry	Third-country nationals with orders of departure	Third-country nationals with rejected asylum applications in the final instance ¹⁹⁶
2017	15,081,601 ¹⁹⁷	2,360	732	46

As for third-country nationals for whom administrative or judicial decisions to leave the country have been issued, no data was available for CEDEM to access, because these measures fall under the jurisdiction of the general jurisdiction courts, as well as misdemeanour courts, who do not have electronic data filing systems, and are not connected to the judicial information system (so-called PRIS), and they are not obligated to inform the Ministry of Interior/Asylum Office about the imposed measures. Hence, access to requested information would imply step-by-step examination of paper-form case files for each measure imposed.

194 Migration flows to Europe – Displacement Tracking Matrix, January 2018, International Organization for Migrations, p. 43 and 44, http://migration.iom.int/docs/Flows_Compilation_Report_December_2017_%20.pdf

195 Data obtained from the Ministry of Interior, Asylum Office, based on free access to information.

196 In 2017, 156 complaints were filed against the first-instance decisions of the Asylum Directorate, out of which 46 were rejected as unfounded, while 110 appealed cases were moved to 2018.

197 This data has been obtained from the Ministry of Interior as the number of people registered at their entrance in/exit out of Montenegro. As Montenegro does not have an advanced passengers' information system, records are kept according to number of entries-exists, and not by number of persons;



5. Laws, Policies and Practices of Immigration Detention of Irregular Migrants and Vulnerable Groups

According to the Foreigners' Law, a foreign person may enter, move through and stay in Montenegro with a valid travel document, a visa, a temporary residence permit, a temporary work permit, or permanent residence permit, unless otherwise provided under the law or by an international treaty (Article 9)¹⁹⁸. However, restriction or prohibition of freedom of movement of a foreigner are possible for the whole territory of the country or for a particular area in the country if that is required due to reasons of national security, public order or public health, in accordance with the law (Article 10)¹⁹⁹.

Pursuant to Article 104 of the Foreigners' Law, a foreigner who has entered illegally or illegally resides in Montenegro must leave the territory, immediately or within the time limit set out in accordance with law²⁰⁰. Unlawful entry into Montenegro is considered when a foreign citizen crosses a state border outside the place or time determined for state border crossing, or avoids (or attempts to avoid) border control. If a foreigner claims that he/she is a legal resident of Montenegro, he/she must provide evidence of such. A third-country national or a stateless person, who has illegally entered Montenegro, while directly coming from an area from which he fears persecution, shall not be punished for illegal entry or stay, if he/she expresses intention to apply for international protection without delay, and justifies the reasons of illegal entry or stay²⁰¹.

Article 125 of the Foreigners' Law stipulates that a foreigner who cannot be forced to leave the country immediately or whose identity is not possible to determine and who cannot leave the state territory immediately, for any reason, may be subject to the restriction of freedom of movement and placed in the Foreigners' Reception Centre²⁰², but only for a maximum of six months²⁰³. The decision on detention in the Foreigners' centre may be appealed before the Administrative Court within five days from the date of the receipt of the decision (Article 127).

198 Law on Foreigners also contain provisions aligning with the Directive 2008/115/EC ("return Directive") as well as with Directive 2009/52/EC (on sanctions against employers of illegally staying third-country nationals. Non-paper on the state of play regarding chapters 23 and 24 for Montenegro May 2017, p.18, available at:

file:///C:/Windows/system32/config/systemprofile/Downloads/Rule%20of%20law%20non-paper%20Montenegro%20FINAL%20(1).pdf

199 If it is determined that a foreigners resides in the country illegally, the Police will issue a decision on his/her return to the country from which he/she came from, and a foreigner can appeal such decision before the Ministry of Interior within five days of receipt of the decision (Article 108). If the foreigner does not leave the country, a decision on his/her expulsion from the country will be made (Article 110, paragraph 1)

200 It is considered that a foreigner has left Montenegro by joining the country from which he/she came or to another state to which his/her entry was granted.

201 Impunity for illegal entry or stay in Montenegro is regulated by the Article 13 of the Law on Temporary and International Protection.

202 The Centre represents the Organizational unit of the Department for Foreigners, Visas and Suppression of Illegal Migration at the Ministry of Interior. It was built with the support of the European Union and the International Organization for Migration (IOM) and has a capacity for accommodating 46 persons. Although it was opened in 2012, on 13 December 2013, it was officially put into operation, after obtaining necessary licences for the work.

203 In case that the foreigner does not cooperate with the authorities or if there is a risk of avoiding the obligation to leave the country, the detention may be prolonged up to 12 months.

To prevent compulsive deportation, Article 111 and Article 116 prescribe that no foreign person shall be compulsively deported to a country where his/her life or freedom may be threatened because of racial or religious belonging, his/her language or nationality, membership in a particular social group or for having a different political conviction or where he/she might be exposed to torture, inhuman or degrading treatment. Foreigner's expulsion is hence prohibited if it contradicts the European Convention on Human Rights and Fundamental Freedoms, the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the UN Convention on the Rights of the Child.

Migrants, including unaccompanied minors, are given access to the territory in line with international protection standards. Identification is carried out by the border police, or the police of general jurisdiction if the person is found in the territory of the country outside the border zone. Confirmation of identity is done through personal documents; however, if the person does not have a document that can confirm his/her identity with certainty, the border police forwards the documentation to the competent Diplomatic Consular Representation in the country or abroad, through the Ministry of Foreign Affairs or Interpol.

However, there are certain factors that affect the conditions for reception and treatment of migrants, including juveniles. The identification process itself is difficult because migrants often do not carry identification documents with them. The identification process is also hampered by the lack of prescribed procedures or protocols for assessing the age of juveniles, so it is not rare for younger adult migrants to declare themselves as older minors to avoid misdemeanour prosecution for illegal border crossing, and to ensure more favourable treatment. The present practice, however, confirms that police officers in most cases respect the statements given by the persons claiming that they are juveniles, which is in line with related international standards. There is also a lack of translators for languages such as Urdu, Pashto, and Hindu.

As it comes to access to legal aid, this is facilitated through UNHCR and their implementing partner in Montenegro - the NGO Legal Centre, which provides a full range of legal aid services to asylum seekers and migrants. However, the presence of the members of the Legal Centre at the border is rare during the identification process because, inter alia, Montenegro does not recognize the concept of civil border monitoring. The asylum procedure can last from 3-5 months, except when initiating an administrative dispute. Although in most cases, the asylum seekers leave the country before the procedure ends, as Montenegro is a transit country for most migrants.

Regarding reception and accommodation, according to available reports, including the Ombudsman's report²⁰⁴, the situation has changed positively since the opening of the Asylum Centre and the Detention Centre (previously, migrants were accommodated in rented facilities that did not fulfil minimum reception and accommodation standards), allowing for a systemic approach to the treatment of accommodated asylum seekers. The Asylum Centre has a capacity of 65 beds in 17 rooms, with two rooms for persons with special needs. It provides separate accommodation for different categories of persons, as well as adequate

²⁰⁴ http://www.ombudsman.co.me/docs/izvjestaji/Izvjestaj_za_2014.pdf, page 78

nutrition and hygiene, psychosocial assistance, translation services, information leaflets for asylum seekers, internet, cable television, Montenegrin language/culture lessons, artisanal workshops, activities for users of psychoactive substances, sports facilities, and other kinds of work/occupational therapy for easier adaptation and integration. Access to healthcare is also provided, through the Centre's ambulatory unit, as well as through direct transfer to medical institutions in and around Podgorica. The work of the Centre is under regular assessment by UNCHR – their representatives have access to the centre and can inspect the facility through visits and meetings with residents of the Centre, as well as the management.

However, there are still certain ongoing challenges related to the scope of the services provided for migrants, like custodial treatment for minors. Namely, the role of the guardian is more formal, i.e., legal, than practical. According to the assessment of the Protector of Human Rights and Freedoms of Montenegro (Ombudsman)²⁰⁵, children of foreign nationals found in the territory of Montenegro are rarely provided with an adequate guardian who will really care about the realization of their rights and needs. Also, the procedures for admission and accommodation of minor migrants, as well as procedures that would regulate the regime of movement within accommodation centres, are widely lacking. Also, due to the lack of space, there is still a possibility that some minors may be accommodated in the Ljubović Centre, which served to accommodate minor migrants before the opening of the Asylum Centre, and which does not have specialized programs for support, protection and rehabilitation of unaccompanied minor asylum seekers; rather, it only provides access to the Centre's general services (individual and group counselling).

The biggest gaps are in the field of integration, as the state has not developed integration programmes so far, which would indicate clear integration prospects and modalities.

²⁰⁵ Ibid, http://www.ombudsman.co.me/docs/izvjestaji/Izvjestaj_za_2014.pdf

6. Legislation on Human Trafficking and Smuggling of Irregular Migrants

The strategic framework for dealing with human trafficking and migrant smuggling consists of the Strategy for Combating Trafficking in Human Beings, with the accompanying action plans. The Strategy represents the national policy for combating human trafficking in Montenegro, and is primarily focused on protecting the human rights of victims²⁰⁶. Strategic areas are: prevention; education; identification of victims of human trafficking; assistance, protection and reintegration of victims and efficient prosecution; international cooperation; and partnership. The Action Plan for 2017/2018 is to create conditions and strengthen the existing mechanisms – including additional training of experts, bodies and institutions involved in victim screenings – in order to raise victim detection and self-identification. Priorities in combating human trafficking are provided through the adoption of a set of laws in the judiciary field, as follows: the Criminal Code of Montenegro²⁰⁷; the Law on Misdemeanours²⁰⁸; the Criminal Procedure Code; the Law on Witness Protection; the Foreigners' Law; the Law on Liability of Legal Persons for Criminal Offences; the Law on International Legal Aid in Criminal Matters; and the Law on Personal Data Protection.

The Criminal Code prohibits sex and labour trafficking and prescribes penalties of up to 12 years' imprisonment, with longer sentences possible for cases involving child trafficking, which are sufficiently stringent and proportionate with those prescribed for other serious crimes, such as rape²⁰⁹. The Criminal Code of Montenegro also stipulates the criminal offences of illegal border crossing and smuggling of persons, as follows: "Anyone engaged in illegal transfer of other persons across the border of Montenegro, or who enables another person, with the aim of acquiring financial or other benefit, to illegally cross the border or to illegally stay or transit, shall be punished with a prison term from three months to five years"²¹⁰. If the criminal offence is committed by several persons in an organized manner, through misuse of one's office, or in a manner that endangers the life or health of persons whose illegal border crossing, stay or transit is enabled or where a number of people is smuggled, the sentence is a prison term from one to ten years²¹¹. The subject of the offence can be either a Montenegrin national or a foreigner. In addition to these two criminal offences, the Criminal Code also recognizes Trafficking in Minors for Adoption (Article 445) and Submission to Slavery and Transportation of Enslaved Persons (Article 446).

206 Objectives of the Strategy have been harmonized with the objectives prescribed by the Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011 on preventing and combating trafficking in human beings, recommendations of the relevant stakeholders at international level, as well as the NATO programme for combating trafficking in human beings. At the same time, a functional link is provided with the previously adopted strategies and plans relating to: combating organized crime and corruption, integrated border management, drug smuggling and confronting illegal migrations, including the National Action Plan on Gender Equality.

207 Official Gazette of Montenegro, No. 70/2003, 13/2004, 47/2006, 40/2008, 25/2010, 32/2011, 64/2011, 40/2013, 56/2013, 14/2015, 42/2015, 58/2015, 44/2017

208 Official Gazette of Montenegro, No. 1/2011, 6/2011, 39/11, 32/14, 51/17

209 Article 444, paragraph 1

210 Article 405, para. 2 of the Criminal Code

211 Article 405, paragraph 3 212 The Office has been previously attached to the Prime Minister's Office, but in last year it has been moved to the Ministry of Interior. The main task of the Office is to lead overall anti-trafficking efforts (head of the Office is the National coordinator for the Anti-Trafficking Taskforce).

Institutions involved in combating trafficking in human beings in Montenegro are: the Ministry of Interior – Office for the Fight against Trafficking in Human Beings²¹², the Police Directorate, the Ministry of Health, the Ministry of Labor and Social Welfare, the Ministry of Justice and Human Rights, the Ministry of Education and Science, the Ministry of Foreign Affairs and European Integration, the Ministry of Culture, the Ministry for Minority Rights, the Supreme Court of Montenegro, the Supreme State Prosecutor's Office and the National Shelter for Victims of Human Trafficking, which is a government sanctioned shelter, but is being run by the Montenegrin Women's Lobby.

7. Cases of Human Trafficking and Smuggling of Irregular Migrants

As reported over the past years, Montenegro is a source, transit, and destination country for men, women, and children subjected to sex trafficking and forced labour. Victims of sex trafficking identified in Montenegro are primarily women and girls from Montenegro, neighbouring Balkan countries, and, to a lesser extent, other countries in Eastern Europe. Sex trafficking victims are exploited in hospitality facilities, bars, restaurants, night clubs, and cafés. Children, particularly Roma and Albanian, are subjected to forced begging. Romani girls from Montenegro reportedly have been sold into marriages in Romani communities in Montenegro and, to a lesser extent, in Kosovo, and forced into domestic servitude. International organized criminal groups occasionally subject Montenegrin women and girls to sex trafficking in other Balkan countries.

As it comes to identification and treatment of victims, a multi-disciplinary national referral mechanism has been developed, providing standard operational procedures (SOPs) for identifying and referring victims to the relevant services²¹³. National mechanisms are established to monitor the implementation of protection-sensitive entry procedures and to ensure sustained capacity building and cooperation. First responders carry out the preliminary identification of potential victims and then contact police who formally recognize the individuals as potential trafficking victims. The government identifies potential victims as an official trafficking victim, only in cases with a final conviction; however, the government provides the same services to potential victims and officially recognized victims. The government, in cooperation with international organizations, continues to disseminate a victim identification checklist containing trafficking indicators to all law enforcement agencies, prosecutors, health and social workers, and school directors; however, police still conduct the majority of proactive identification efforts. The government-funded NGO-run shelter makes specialized services available for trafficking victims. The law provides witness protection, free legal aid, and a psychologist to encourage victims to participate

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213 Although operational guidelines exist, they are not being fully implemented, to allow for efficient operationalization of identification, profiling and referral mechanisms, formal referral mechanisms between the first contact government officials (border and police officials) and migration and asylum authorities. To illustrate, in 2016, the Government identified one potential trafficking victim, compared to 16 potential victims in 2015. Additionally, no victims participated in the prosecution of their traffickers or requested restitution in 2016 and 2015.

in prosecutions; however, observers have reported that the government assigned lawyers have little to no experience in trafficking cases. Despite legally instituted procedures for victims' protection and compensation, in practice no victims have been compensated in civil proceedings to date²¹⁴.

When it comes to the prosecution of human trafficking, Montenegro has made no progress, although the legal, institutional and strategic frameworks are in place and are being continuously improved. No prosecutions under article 444 have taken place in 2015 and 2016, while in 2017, two cases were reported, one including a 12-year old child, but did not result in a criminal conviction. Also, six suspects have been identified for migrant smuggling in 2017. In most of the alleged trafficking cases, perpetrators were prosecuted for another criminal offence, notably for brokering in prostitution, promoting prostitution, or leading or inciting another to engage in prostitution – not trafficking. Brokering in prostitution prescribes a penalty of up to one year's imprisonment, and when the victim is a minor, imprisonment for one to ten years.

8. Protection of Irregular Migrant Children

The national child protection system in Montenegro comprises of several legal, strategic and institutional mechanisms, which put into focus the protection of the specific needs of children. The national legislation is, to a certain extent, harmonized with the UN Convention on the Rights of the Child, and with 2013 – 2017 National Action Plan for Children (NPAD) which defines the country's general policy towards children.

The Constitution of Montenegro²¹⁵ guarantees the protection and enjoyment of all rights of the child, including special protection against psychological, physical, economic or other exploitation or abuse. The Law on International and Temporary Protection of Foreigners²¹⁶ puts strong focus on the rights of children and minors, in terms of their reception, accommodation and specific care, proclaiming the best interest of the minor as its guiding principle.

214 According to the criminal legislation, in a criminal proceeding, victims of crime are entitled to ask for compensation; the victim of trafficking may apply for compensation for material and non-material damage in criminal proceedings, no later than the end of the main trial before the first instance court. However, along with this request for compensation, the victim is obliged to submit evidence and to declare the amount of compensation (Article 236, paragraphs 1 to 3 of the Criminal Procedure Code of Montenegro). A victim may also withdraw the proposal in the criminal proceedings and to bring it into litigation (civil proceeding), in which case the victim is not entitled to submit such a proposal again in criminal proceedings (Article 237, paragraph 1). Existing practice shows that in most cases, victims were not encouraged to seek for compensation in criminal proceedings, but have been advised to seek for compensation in civil proceedings. Many of them did not participate in the trial phase and were not able to submit enough evidence based on which the court may decide on the amount of the compensation. So far, not one victim has acquired access to compensation according to the above mentioned legislation. There is an ongoing initiative launched by the Women Rights' Centre to establish a compensation fund for victims of trafficking, but so far it has not resulted in any legislative or institutional change in this regard which would prevent secondary victimisation and allow for effective compensation for the victims of this crime. For more details please refer to the following publication, file:///C:/Windows/system32/config/systemprofile/Downloads/Publikacije.pdf page 37

215 Official Gazette of Montenegro, No. 01/2007, 38/2013, Article 74

216 Article 10, paragraph 1, item 8 provides the definition of vulnerable groups, including children, while Article 15 stipulates that the best interests of a minor must be safeguarded, taking into consideration: 1) the well-being and social development of a minor and its origin; 2) the protection and safety of a minor, especially if it is likely that he is a victim of human trafficking; 3) the opinion of a minor depending on its age and maturity, and 4) the ability of reunification with the family. In order to achieve the best interests of an unaccompanied minor, the guardian of the minor shall take all necessary actions that involve contact and cooperation with government authorities, state authorities, authorities of other countries and international organizations and NGOs for the purpose of minor's reunification with his family, if this is in the best interests of the minor.

The Foreigners' Law also contains procedural guarantees for the protection of children within migratory flows, including the provision according to which a minor foreigner without parental care, or a minor victim of organized crime, can be issued a temporary residence permit, based on humanitarian grounds²¹⁷. This Law also stipulates that when applying the return policy, the best interests of minors shall be always considered (Article 138). An unaccompanied minor, as well as a minor under the age of 14, may be accommodated in an appropriate facility only if compulsory detention cannot be provided in a different manner, while a minor older than 14 years of age accompanied by a family member may be accommodated in the shelter, only if forced departure cannot be provided in a different way. In both cases, minors shall be accommodated in premises suitable for their placement²¹⁸. During their accommodation, minors, especially older minors, are entitled to participate in the decision-making process regarding their case.

In June 2015, the Government adopted the Feasibility Study for Capacity Building for the accommodation, protection and rehabilitation of unaccompanied minors and other vulnerable groups of migrants, which aims to analyse the capacities to accommodate unaccompanied minors and other vulnerable groups, and on the basis of this to provide an insight into the necessary financial resources for the construction and equipping of such capacities. The Study was prepared in coordination of the Ministry of Labour and Social Welfare of the Government of Montenegro, and the NGOs CEDEM and Civic Alliance, with support of TAIEX.

Following the adoption of the Feasibility Study, in July 2015 the Ministry of Labour and Social Welfare developed the Guidelines for the Treatment of Unaccompanied Minors (accommodation, protection and rehabilitation) and other vulnerable groups, grounded on the principles of the UN Convention on the Rights of the Child, and UN Convention on the Status of Refugees²¹⁹. The Guidelines emphasize that care must be taken in the best interest of the child, and provide instructions for officials and migration officers who come in contact with underage migrants, in order to provide adequate treatment (identification, guardianship, action upon asylum applications, accommodation, social and healthcare, education). Also, through the implementation of the project 'Development of Standard Operating Procedures (SOPs) for Dealing with Children Separated from Parents or Unaccompanied Minors', the National Office for Combating Human Trafficking developed procedures for the proactive screening of juvenile victims of human trafficking.

In Montenegro there is a legal framework regulating the procedures for fulfilment of the specific educational needs of juvenile asylum seekers, but so far it has not been the case in practice. Namely, the Asylum Act guarantees asylum seekers the right to free primary and secondary education in public schools. However, the Ministry of Education has not complied with this norm, because so far it has not regulated in detail the appropriate policies to implement the right to education. A comprehensive Montenegrin language, history

217 Article 52, paragraph 1, item 2

218 Article 134 - The same provision is provided for in the Rulebook on the manner of exercising the right to accommodation of asylum seekers, persons granted refugee status, persons under subsidiary protection and persons granted temporary protection (Article 7).

219 Information for the preparation of OHCHR Report on protecting the rights of the child in humanitarian situations, Human Rights Council Resolution 34/16, file:///C:/Windows/system32/config/systemprofile/Desktop/Montenegro.pdf

and culture learning program has not yet been defined, which would be carried out in all institutions where juvenile asylum seekers are accommodated (so far, it is only provided in the Asylum Centre). There is no established procedure of testing the knowledge of asylum seekers for inclusion in the education system.

The protection of children is divided among several institutions, including Ministry of Interior, Ministry of Labour and Social Welfare, Ministry of Health and Ministry of Education. Overall, there are no specific guidelines for dealing with unaccompanied minors (accommodation, protection and rehabilitation) and other vulnerable groups of asylum seekers. The conduct of police officers towards migrants and other socially vulnerable groups is not closely regulated by a separate act, and the identification process itself is difficult because of the lack of procedures for assessing the age of a juvenile. These shortcomings could in part be overcome by applying the UNHCR Guidelines on determining the best interests of the child. However, the present practice does not provide enough evidence to support these guidelines being applied by the relevant actors.

Although the country seeks to create an effective policy on the protection of children and minors, self-sustainable mechanisms and procedures are not always in place to identify vulnerable migrants and meet their specific needs in accordance with international human rights standards. Also, there is a need to strengthen the capacity of law enforcement to identify smugglers of migrants and smuggling activities related to children and minors.

9. Challenges and Lessons Learned

Based on the level of legislative and institutional developments, it can be stated that Montenegro is moderately prepared to implement the acquis in the field of asylum and irregular migrations. The process of alignment with the EU acquis is at an advanced stage; most of the competent institutions have the necessary legal powers and responsibilities to implement the adopted standards. Overall, the quality of reception facilities has improved (including for unaccompanied minors and families) and a permanent monitoring mechanism to assess the adequacy of reception conditions is in place.

However, the system needs important improvements. Instances of direct and indirect refoulement may still occur. While Montenegro's capacity to handle asylum applications has been sufficient so far, it is now challenged by: the growing number of asylum seekers and the extended length of their stays, sometimes due to lengthy appeal procedures; and the introduction of more demanding asylum procedures, aligned with EU standards. To meet the challenges of an integrated and efficient asylum policy, inter-ministerial and inter-service coordination must be considerably improved²²⁰.

220 CEDEM does not possess a track record of cases of migrants/refugees who have been denied access to territory/asylum procedures at the border, also because CEDEM is not involved in the provision of legal aid to migrants (more information can be provided directly by the Legal Centre, because their reports on cases are not available in a public format). However, if it exists, this kind of practice is not embedded in the law, neither it is being formalized. During previous implemented projects, CEDEM has taken note of possible push-backs taking place at the border with Albania and Bosnia and Herzegovina. However, this is not public and official data, it is used only for illustration purposes.

The government continued to decrease anti-trafficking law enforcement efforts and did not initiate any prosecutions under article 444 in 2016 or 2015, neither has it secured any convictions under article 444 in 2017, 2016, and 2015, respectively. Two of the cases in 2016 led to the arrest and prosecution of three suspects for brokering in prostitution, promoting prostitution or leading or inciting another to engage in prostitution, and six suspects for migrant smuggling; not trafficking. Also, the government did not report any investigations, prosecutions, or convictions of government officials complicit in human trafficking offences. The lack of adequate and effective solutions for recognized refugees, including low prospects for self-reliance and integration, may result in (irregular) onward movements. Refugees are not always able to exercise their rights, in line with the relevant national legislation and international standards, due to administrative barriers and delays.

Failure to identify victims and to detect the organized and forced nature of prostitution, child begging and of certain forms of labour, brings into question the ability of the police and the prosecutors to effectively address this type of crime. Proactive investigations are not a general practice in this area. All stakeholders (i.e. the police, the prosecutors, the judges, labour inspectors, and social workers) need to improve their operational capacity and their ability to work together in a multidisciplinary approach to prevent and suppress human trafficking. Cooperation between NGOs and police units also needs to be improved, in order to create conditions for efficient referral of cases from NGOs to the police²²¹. In the fight against migrant smuggling, law enforcement agencies should make better use of regional initiatives and of the possibility to participate in joint investigation teams²²².

Based on the above described situation in the field of irregular migrations, the country should address the following recommendations²²³:

- 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 mechanisms of burden sharing 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 border, which would strengthen the implementation of the non-refoulement principle;

²²¹ 2018 Montenegro Report, p.33

²²² United States Department of State, 2017 trafficking in Persons Report - Montenegro, 27 June 2017, p. 287- 289 available at: <https://www.state.gov/documents/organization/271343.pdf> [accessed 21 April 2018]. According to this Report, the "Government of Montenegro does not fully meet the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. The government demonstrated significant efforts during the reporting period by increasing funds for the NGO-run shelter and the Office for the Fight against Trafficking in Persons. However, the government did not demonstrate increasing efforts compared to the previous reporting period. The Government did not prosecute or convict any traffickers for the second consecutive year and tried several potential trafficking cases as lesser crimes. The government did not identify any sex trafficking victims. The lack of convictions prevented victims from obtaining restitution from their traffickers."

²²³ 2018 Montenegro Report, p.30

- In cooperation with relevant stakeholders, including the civil society, public awareness and information campaigns aimed at sensitizing the local population about the plight of refugees should be conducted;
- Improve the Assisted Voluntary Return and Reintegration by establishing and operationalizing 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 trafficking victims' participation in prosecutions in a manner that protects the victims; and increase the 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 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, including facilities appropriate for minors, and strengthen the capacity of the staff in all relevant administrations.



BOSNIA AND HERZEGOVINA

A new route through has opened up for migrants, from Greece through Albania, Montenegro and the Herzegovina part of Bosnia. The number of refugees and migrants using the route through Bosnia and Herzegovina is increasing. During the summer, most of the arrivals were via Serbia, whereas at the very end of the year, the majority of arrivals were from Montenegro, who move northwest to try to cross the border with Croatia. Some have already tried to enter the EU from Serbia into Hungary but were forced to turn back, and are now making a fresh attempt from Montenegro into Bosnia and then on to Croatia.

1. Introduction

During the second half of 2017, Bosnia and Herzegovina (BiH) experienced a significant increase in refugees and migrants, most of whom entered the country in an irregular manner at non-official border crossing points. In the first half of the year, most of the arrivals were via Serbia, whereas at the very end of the year, the majority of arrivals came from Montenegro. The BiH border police reported that from 1 January 2017 to 31 December 2017, 753 citizens of countries with a high migration risk were detected in attempted crossings, or immediately after crossing the state border, while in 2016 number of discovered irregular state border crossings was 218. As for irregular migrants, the biggest percentage of them were adult men travelling alone, although, women and minors were identified as well. Reported countries of origin were as follows: Pakistan, Algeria, Afghanistan, Turkey, Libya, Syria, Morocco, Iran, Albania and Kosovo.

2. Definitions, Legal Framework and Policy Measures on Irregular Migration

The Law On Foreigners²²⁴ regulates the conditions and procedures for entry of foreigners into the country, including: the visa and non-visa regime; travel documents for foreigners; stay of foreigners in BiH; removal of foreigners from BiH; admission of foreigners and placement of foreigners under surveillance; competency of relevant authorities for the implementation of this Law; and the other issues related to the stay of foreigners in BiH. This law also regulates the violations and penalties for breaching the provisions contained therein.

The Law on Asylum²²⁵ identifies the authorities responsible for its implementation, the principles, conditions and procedures for granting refugee status, the status of subsidiary protection, termination and revocation of refugee status and the status of subsidiary protection, temporary protection, identification documents, rights and obligations of asylum-seekers, refugees and foreigners under subsidiary protection, as well as other issues related to asylum in Bosnia and Herzegovina.

A Strategy in the Area of Migrations and Asylum and Action Plan for the Period 2016-2020 has been developed with the objective of defining comprehensive, sustainable and European standards-based policies in the area of migration and asylum. It contains a significant number of measures and activities aimed at harmonization of national legislation on migration and asylum with the EU acquis, strengthening capacities of the competent institutions, education and trainings of officials of these institutions, and management of security risks at the state border of BiH.

²²⁴ Law on Foreigners of BiH, Official Gazette no: 88/15, Article 1

²²⁵ Law on Asylum of BiH, Official Gazette no: 11/16, 16/16, Article 1

3. Relevant Institutions Addressing the Issue of Irregular Migration

The Ministry of Security was established in 2003 and is responsible for: protection of international borders; internal border crossings and regulation of traffic at border crossings of BiH; prevention and tracing of perpetrators of criminal offences of terrorism, illicit drug trade, counterfeiting of domestic and international currencies, and human trafficking, and other crimes of an international or inter entity nature; international cooperation in all fields that fall within the responsibilities of the Ministry; collection and use of data vital to the security of BiH; organization and harmonization of activities of the Ministries of the Interior of the entities and Brčko District of BiH, with the goal of performing security tasks in the interest of BiH.

The Ministry of Security is responsible for the creation, maintenance and implementation of immigration and asylum policy in BiH; it also regulates procedures and structure of the services related to the movement and stay of foreigners in BiH. The Ministry of Security issues first instance decisions on applications for international protection filed by foreigners in BiH. It is responsible for second instance decisions regarding appeals against first instance decisions made by the Service for Foreigners' Affairs and the BiH border police in accordance with the Law on Foreigners. The BiH border police is the body responsible for: the surveillance and control of the cross border movement of goods and persons; the protection of state borders; the protection of the lives and health of people crossing the borders; the prevention of criminal acts and tracking of criminals; the prevention of illegal cross border migration and prevention and tracking of other threats to public security, the legal system and national security. The Service for Foreigners' Affairs is an administrative organization within the Ministry of Security. The Service was established to: perform administrative and inspection activities related to the movement and stay of foreigners in BiH; issue decisions on administrative matters related to applications submitted by foreigners; and to perform other duties pursuant to the Law on Foreigners. The Ministry of security closely cooperates with its organizational units and other institutions in the area of migration.

4. Statistical Data Collection on Irregular Migration in 2017

Third country nationals illegally present in territory in accordance with national legislation on migration	753
Third country nationals who passed through the country during the reporting period	766 (registered illegal border crossings)
Third-country nationals refused entry	2313
Third country nationals with orders of departure	1
Third-country nationals found illegally in the country and for which administrative or judicial decisions, or acts, have been issued, that establish or declare that the stay is illegal and impose an obligation to leave the country;	927
Third-country nationals whose asylum applications have been rejected in the final instance	24
Third-country nationals detained in the immigration centre	860

5. Laws, Policies and Practices of Immigration Detention of Irregular Migrants and Vulnerable Groups

The Law on Foreigners²²⁶ prescribes that a foreigner shall be placed under surveillance by detainment in the Immigration Centre: a) if there are reasonable grounds to believe that, after the decision to expel is rendered, the free and unrestricted movement of a foreigner may endanger the legal and public order, the peace and security, or the international relations of BiH, or, that it may pose a threat to public health in 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 accuracy of the allegations of a foreigner concerning his/her identity, after the expulsion measure has been issued.

A foreigner may be placed under surveillance for a period no longer than 90 days. Should the reasons for initially imposing the surveillance remain unchanged following the expiration of the detention period, the period may be extended once more up to a maximum of 90 days, so that the total period in the Immigration Centre does not exceed 180 days. In case of the 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 detainment in the Immigration Centre cannot be longer than 18 months in continuity. A foreigner under surveillance in the Immigration Centre has the opportunity to submit an appeal against the detention decision to the Ministry of Security within three days of delivery of the decision. The appeal shall not stay its execution²²⁷.

The Immigration Centre, managed by the Service for Foreigners' Affairs, is the only detention facility available for placing a foreigner under surveillance in BiH. The Immigration Centre became operational on 30 June 2008, with an initial capacity of 40 beds. It was replaced with a newly-built facility, that opened on 23 November 2009, with a capacity of 80 beds. Following the opening of the additional facility, the accommodation capacity of the Immigration Centre was extended to 120 beds. Duties and responsibilities of detainees in the Immigration Centre are specified in the facility's rulebook. The Immigration Centre has three sections, one for males, and another for female detainees, and a third for families. In 2017, eight minors in total were deprived of liberty and placed under surveillance. No reports on detention conditions and possible allegations on ill-treatment are currently available. Conditions in the detention centre are acceptable. Detainees mostly complain about the length of stay, especially those who applied for asylum, having in mind that the asylum procedure does not affect the enforcement or execution of surveillance. The average duration of detention is 90 days. All beneficiaries receive a decision regarding their surveillance status, or in case of asylum seekers, a decision restricting their movement, but decisions are issued in the official languages of BiH, and are only partially translated into the languages of the beneficiaries. Access to judicial review is enabled. In such case that the Ministry of Security does not revoke a decision on surveillance in the Immigration Centre, a decision on extension of

²²⁶ Article 118 (3)

²²⁷ Article 119 of the Law on Foreigners

surveillance, or a 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 Herzegovina²²⁸.

Access to legal aid is provided upon personal request. The VP can enter the Immigration Centre only upon previous request for free legal aid submitted by the interested beneficiary. Along with the VP, access to the Immigration Centre is enabled to UNHCR and BHWI (Bosnian Women's Initiative), an NGO providing psychosocial support. An alternative to detention at the Immigration Centre is placing a foreigner under surveillance with restricted movement in a specific area or location, where the foreigner is under obligation to regularly report to an organizational unit of the Service for Foreigners' Affairs or the police.

Border management is quite strict, rather than open, towards new arrivals of refugees and migrants. There are no official reports of pushbacks or refoulement by UNHCR, the Ombudsman or any other agencies at the border, although it is very likely that pushbacks are taking place in practice²²⁹.

228 Article 120 (6) of the Law on Foreigners

229 Several media are reporting that migrants were prevented from entering BiH (e.g. see: <https://www.radiosarajevo.ba/vijesti/bosna-i-hercegovina/tokom-vikenda-od-ilegalnog-ulaska-u-bih-vraceno-155-migranata/301450>)



6. Legislation on Human Trafficking and Smuggling of Irregular Migrants

The Criminal code of BiH²³⁰ defines international human trafficking as follows: “Whoever, by use of force or threat of use of force or other forms of coercion, abduction, fraud or deception, abuse of power or influence or a position of vulnerability, or by the giving or receiving payments or other benefits to achieve the consent of a person having control over another person, recruits, transports, transfers, harbours or receives a person for the purpose of exploitation of that person in the country in which that person does not have residence or citizenship, shall be punished by imprisonment for a term of at least five years.

Whoever recruits, solicits, transports, transfers, harbours or receives a person younger than 18 years of age with the purpose of exploitation through prostitution or other forms of sexual exploitation, forced labor or services, slavery or similar status, servitude or the removal of body parts or of some other type of exploitation, in the country in which that person does not have residence or citizenship, shall be punished by imprisonment for a term of at least ten years. If the criminal offence is committed by an official person while executing official duty, the perpetrator shall be punished by imprisonment for a term of at least ten years. Whoever counterfeits, procures or issues travel or identification documents, or uses, holds, seizes, alters, damages or destroys travel or identification documents of another person with the purpose of facilitating international trafficking in human beings, shall be punished by imprisonment for a term between one and five years. Whoever uses the services of a victim of international trafficking in human beings shall be punished by imprisonment for a term of between six months and five years. If the perpetration of the criminal offence caused serious health damage, grievous bodily harm or the death of the person, the perpetrator shall be punished by imprisonment for a term of at least ten years or long-term imprisonment. Exploitation means: prostitution of another person or other forms of sexual exploitation, forced labour or services, slavery or similar status, servitude or the removal of body parts or some other type of exploitation. Consent of the victim of international trafficking in human beings to the exploitation bears no relevance to the existence of the criminal offence of international trafficking in human beings. No criminal proceedings will be conducted against a victim of international trafficking in human beings who was forced, by the perpetrator of the offence, to participate in the commission of another criminal offence if such action was direct result of his/her status of the victim of international trafficking in human beings.”

Organized International Trafficking in Persons²³¹ reads: “Whoever organizes or manages a group or another association that jointly perpetrates the criminal offence of international trafficking in persons as per this Code shall be punished by imprisonment for a term of at least ten years or long-term imprisonment. Whoever commits a crime as a member of the group or another association or in any other way assists the group or the association, shall be punished by imprisonment for a term of at least ten years. The provisions foreseen for the criminal offence of organized crime shall apply to members of the organized group or another association for the purpose of international trafficking in persons.”

²³⁰ Criminal Code of BiH, Official Gazette no: 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 8/10, 47/14, 22/15, 40/15 (Article 186)

²³¹ Article 186a of the Criminal Code of BiH

The Criminal Code of BiH also defines smuggling of persons as²³² : “Whoever, with the aim of gaining profit for themselves or another, illicitly transports or enables the transport of one or more migrants or other persons across the state border, or whoever creates, procures or possesses counterfeit travel or identity documents for that purpose, shall be punished by imprisonment for a term of between one and ten years. Whoever recruits, transports, hides, harbours or in any other way enables the stay of the smuggled persons in Bosnia and Herzegovina, shall be punished by imprisonment for a term of between six months and five years. If this criminal offence is committed by an organized group or an organized criminal group, by the abuse of official authority or in such a manner which poses a threat to the life, health or safety of the persons smuggled, or if the smuggled persons were intended for exploitation or treated in another inhuman or degrading manner, the perpetrator shall be punished by imprisonment for a term of between three and fifteen years. Whoever subjects an individual younger than 18 years of age to this offence shall also be punished by imprisonment for a term between three and fifteen years. If the offence of smuggling caused the death of one or more smuggled persons, the perpetrator shall be punished by imprisonment for a term of not less than five years.”

The Code outlines the penalty for organizing a group or an association for the purpose of perpetrating the criminal offence of smuggling of migrants, in the following manner²³³:

“Whoever organizes a group or another association for the purpose of perpetrating the criminal offence of smuggling of persons shall be punished by imprisonment for a term of not less than three years. Whoever becomes a member of the group or another association dealing in the offence of smuggling in persons or in any other way assists the group or the association, shall be punished by imprisonment for a term of not less than one year. The provisions related to the criminal offence of organized crime as per the Criminal Code shall apply to organizers or leaders and members of the organized group or another association that have perpetrated the criminal offence of smuggling of persons.”

232 Article 189 of the Criminal Code of BiH

233 Article 189 a of the Criminal Code of BiH

7. Cases of Human Trafficking and Smuggling of Irregular Migrants

The process of identification of foreign victims of trafficking (VoT) is detailed in the rulebook on protection of foreign victims of human trafficking²³⁴. 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 or potential VoT was found; the limitation of personal freedom; the psychological and physical condition of the person as well as his/her age, especially in cases of minors; the manner and purpose of entry into Bosnia and Herzegovina; status, movement and residence of the 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 who identify the offence. If trafficking cases are prosecuted under other offences, this results in a failure to identify victims of trafficking. Further, if a victim of trafficking does not co-operate with the investigating 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 rare²³⁵. The National Guidelines for Regional Monitoring Teams in combating human trafficking were adopted in 2012, in 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 Human Trafficking²³⁶ was adopted on 31 December 2016, replacing the former Strategy and Action Plan for 2013-2015.

Temporary residence on humanitarian grounds may be granted to foreigners who were victims of trafficking²³⁷ for the purpose of providing him/her with protection and assistance for rehabilitation and repatriation into the country of his/her origin, a habitual residence or a third country to admit him/her, and providing him/her with protection and assistance when necessary for the purpose of cooperation with competent authorities in investigating and processing criminal cases of human trafficking. A foreigner/VoT who is granted temporary residence based on humanitarian grounds is entitled to: adequate and safe accommodation, access to emergency medical care, psychological assistance, information on his/her legal status, legal assistance during criminal and other proceedings in which he/she is granted other rights, access to employment under the same conditions applying to foreigners, as well as access to professional training and education. A child granted temporary residence as a victim of human trafficking shall have te access to public education.

Access to justice and the right to compensation of victims of trafficking is still limited. Even though, in theory, victims have a right to claim compensation, in practice, only a few victims submit a claim for compensation. And when such claims are awarded, they are hardly

²³⁴ Official Gazette no: 79/16

²³⁵ GRETA report BiH 2017, available at: <https://rm.coe.int/greta-2017-15-fgr-bih-en/1680782ac1>

²³⁶ Action plan is for period 2016-2019

²³⁷ Article 58(2) a) of the Law on Foreigners

executed in practice. There is no specific Law for the compensation of victims, however, VoT can request compensation in criminal or civil proceedings. The prosecutor is obligated to inform the victim about 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 minimal compensation for the victims, and left it up to them to bring a claim before the civil court for the rest of the compensation. Victims of trafficking often refrain from seeking claims before a civil court because the proceedings are lengthy and involve high costs. No information is available on criminal prosecutions of migrants for having been smuggled.

8. Protection of Irregular Migrant Children

The Law on Asylum²³⁸ and Law on Foreigners of BiH²³⁹ regulate the mechanisms for protection of children within migratory flows, including detention. The Criminal Code of BiH defines the criminal offence of human trafficking in general, however, trafficking of children is considered an aggravating circumstance which leads to more rigorous sentences²⁴⁰. If an underage child of a foreigner is abandoned, becomes a victim of organized crime, remains without parental protection or custody, or is left unaccompanied for any other reason whatsoever, he/she may be granted temporary stay on humanitarian grounds²⁴¹. Competent authorities in BiH are obliged to treat minor foreigners with particular attention and respect and in accordance with the Convention on the Rights of the Child, as well as with the BiH regulations on care of minors and their protection. The state has not established Standard Operational Procedures for dealing with unaccompanied/separated children or procedures for family reunification. There are no official reports on children being pushed back by the police, but this is likely to have happened. Families with minors shall be detained in the Immigration Centre only as a last resort and for the shortest possible time. Minor foreigners who have illegally entered BiH and are not accompanied by a parent, guardian, or legal representative, or who remained without their presence upon entering BiH, and whom the Service cannot immediately return to the country from which he/she arrived, nor deliver him/her to the representatives of the country of his/her citizenship, shall be temporarily placed in the unit of the institution specialized for minors and the competent centre for social work shall be informed, which would, in accordance with the law, immediately appoint a temporary guardian. Unaccompanied minors shall be detained in the Immigration Centre exceptionally, only as a last resort and for the shortest possible time²⁴².

238 Official Gazette no: 11/16, 16/16

239 Official Gazette no: 88/15

240 Whoever recruits, solicits, transports, transfers, harbours or receives a person younger than 18 years of age with the purpose of exploitation through prostitution or other forms of sexual exploitation, forced labor or services, slavery or similar status, servitude or the removal of body parts or of some other type of exploitation, in the country in which that person does not have residence or citizenship, shall be punished by imprisonment for a term of at least ten years. (Article 186, paragraph 2 of the Criminal code of BiH).

241 Article 58 (2) b) of the Law on Foreigners of BiH

242 Article 123 of the Law on Foreigners of BiH

Generally, the treatment of children is inadequate and not in accordance with international mechanisms. The Centres for Social Welfare are frequently showing reluctance to appoint legal guardians for migrant children, due to the lack of capacities and budget. The procedure for appointing legal guardians is very slow. The impossibility to provide interpretation services causes more difficulties in future activities and the process for establishing the best interest of the child. The figure of legal guardian is therefore more provisional than proactive. The state has never established a specialized institution for the accommodation of unaccompanied/separated children. The authorities do not appropriately assess the needs of minor migrants when entering BiH.

9. Challenges and Lessons Learned

- 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;
- A facility for accommodation of unaccompanied minors must be established by the state. A more effective engagement of the Service for Social Welfare in situations of unaccompanied minors is needed, including more effective assessments of the best interest of the child;
- Capacity building for officials (border police, Service for Foreigners Affairs, Sector for Asylum) must be continuous;
- Alternatives for detention must be applied in place of detention, when indicated;
- Safeguards and independent border monitoring for possible unlawful expulsions and deportations, as well as pushbacks across borders, must be established.



CROATIA

The migrants' increasingly desperate attempts to cross into Croatia have only increased since Hungary erected its second fence. This is also indicated by the rise in the number of expulsions from Croatia. In 2017 Croatia reportedly pushed back 3,242 migrants and refugees, often denying them access to the international protection system and refusing to consider asylum requests. There have also been many reports of abuse and violence against the migrants.

1. Introduction

Croatia's experience with irregular transit or arrival of migrants and asylum seekers, is similar to the countries along the Western Balkan route. In fact, the whole region has been subject to large numbers of individuals in transit, from the second half of 2015 to early 2016. For Croatia specifically, the Court of Justice of the European Union (CJEU), with the judgment from 26 July 2017, declared that people transiting through Croatia to access other countries are to be considered irregular migrants under Article 13 of the Dublin III Regulation. This implies that Croatia is responsible for the applications for asylum from the migrants in transit through the country. The judgment of the CJEU clearly did not take into consideration the fact that the European Commission claimed, during the Western Balkan Summit of 25 October 2015, that the countries in the region worked to achieve the gradual, controlled and orderly movement of persons along the Western Balkans route, making it unclear how this form of entry can fit into the categories of entry considered by the Dublin III Regulation.

Another migration trend in Croatia can be delineated from three reports on illegal and violent pushbacks from the territory of Croatia that were published in 2017 by two civil society organizations, the Welcome! Initiative and Are You Syrious²⁴³. According to their reports, a large number of individuals from different countries (Afghanistan, Pakistan, Syria, Iraq, and Algeria) were not given their right to access the asylum procedure. Instead, they were pushed back to neighbouring countries (Serbia, and Bosnia and Herzegovina), often with violent behaviour perpetrated by Croatian police officers. The issue was raised by international human rights organizations like Human Rights Watch, Amnesty International Save the Children²⁴⁴.

Several reports from NGOs about incidents at the Croatian-Serbian border have been published²⁴⁵. Moreover, a tragedy occurred in November 2017, when a six-year-old girl, Madina Hussiny, was hit by a train and died during an attempt to cross the Croatian-Serbian border with her family. The Croatian Ombudsman, after the death of the girl, submitted a report to the Chief State Attorney with all the relevant information collected. In the same report, the Ombudsman emphasized that, "despite the numerous warnings and recommendations sent by the Ombudsman to the Ministry of the Interior regarding police conduct towards irregular migrants, as well as abiding by the provision of return measures prescribed by the Foreigners Act towards claimants of international protection, no adequate effective measures have been taken to protect the human rights of the aforementioned groups in accordance with the Refugee Status Convention, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)"²⁴⁶.

243 Welcome Initiative, Are You Syrious, 2017. January: https://www.cms.hr/system/article_document/doc/501/IZVJE_TAJ_O_NEZAKONITIM_I_NASILNIM_PROTJERIVANJIMA_IZBJEGLICA_IZ_REPUBLIKE_HRVATSKE.pdf ; March: <http://welcome.cms.hr/wp-content/uploads/2017/03/DRUGI-IZVJE%C5%A0TAJ-O-NEZAKONITIM-I-NASILNIM-PROTJERIVANJIMA-IZBJEGLICA-IZ-REPUBLIKE-HRVATSKE.doc> ; May: <http://welcome.cms.hr/wp-content/uploads/2017/05/Izvj%C5%A1taj-o-novom-valu-nasilja-prema-izbjeglicama-na-granicama-Republike-Hrvatske.pdf>

244 Human Rights Watch, 'Croatia: Asylum seekers forced back to Serbia', 20 January 2017, available at: <http://bit.ly/2k9cLej> ; Amnesty International, Annual Report 2017/18, available at: <https://bit.ly/2HFODIw> ; Save the Children, 'Refugee and migrant children injured in illegal border push-backs across Balkans', 24 January 2017, available at: <http://bit.ly/2jH4a2I>.

245 OXFAM, A dangerous game, April 2017: https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp-dangerous-game-pushback-migrants-refugees-060417-en_0.pdf; Balkan Insight, June 2017: <http://www.balkaninsight.com/en/article/ngo-claims-croatian-police-continues-to-beat-refugees-06-27-2017>.

246 Report from the Croatian Ombudsman, 5 February 2018, <http://ombudsman.hr/hr/npm-novosti/cln/1263-pravobraniteljica-dostavila-dorh-u-sve-informacije-o-okolnostima-pogibije-madine-husseini-modulnppm>

2. Definitions, Legal Framework and Policy Measures on Irregular Migration

In 2017, there was no official national migration policy. The last national migration policy covered the period from 2013-2015. The goal of the migration policy was to ensure that migratory movements in the Republic of Croatia are beneficial to the economic and social development of the country and society, and that all state bodies and other stakeholders work in a timely and coordinated manner to find effective responses to the positive and negative effects of migratory movements. The migration policy established measures to be implemented in the following areas: visa policy, the status of foreign nationals, the acquisition of Croatian citizenship, asylum, integration policy, irregular migration and the Croatian diaspora²⁴⁷.

The Foreigners Act²⁴⁸ provides for definitions and legal frameworks on irregular migrations. The Foreigners Act defines a foreigner as any person who is not a Croatian national and who is either an EEA national, a national of the Swiss Confederation, a third country national, or a stateless person. A third country national is any person who does not have a nationality of a member state of EEA or the Swiss Confederation (Article 2/1/4). Return means voluntary or enforced return of a third country national who illegally resides in Croatia to a third country (Article 2/1/21). A third country national is illegally residing if he/she 1) is not a short-term resident; 2) does not have a valid permit for temporary or permanent residence; 3) is not entitled to legal residence on the basis of special regulation regulating international and temporary protection; 4) did not submit a request for temporary residence, or extension of a temporary residence permit, prior to the expiry of short-term residence until the decision on the request is enforceable, and does not meet the conditions for exceptional approval of permanent residence; 5) is moving outside the area determined by bilateral international treaty (Article 102/1). A third country national who is illegally residing in the country is obliged to leave the Republic of Croatia without delay (Article 102/2). A third country national who is illegally residing and a third country national whose legal residence ceased will be issued with a return decision (Article 103). The Foreigners Act also provides for conditions on expulsion of a third country national (Articles 108 and 109), entry ban (Article 111) and immigration detention (Articles 130 – 133). There are various by-laws further regulating these issues.

²⁴⁷ Migration Policy of the Republic of Croatia for the period 2013-2015 (Official Gazette 27/2013)

²⁴⁸ Official Gazette “Narodne novine”, Foreigners Act, 130/11, 74/13, 69/17, Article 2

3. Relevant Institutions Addressing the Issue of Irregular Migration

According to the “Balkan Route Reversed”²⁴⁹ report from ECRE, within the Ministry of Interior, the Border Police Directorate is structured around 20 regional administrations that are all responsible for preventing and detecting irregular migration. Border police stations are located at the actual land border as well as inland, and each police administration is organised around three main duties: protection, control and irregular migration. Every station has an official responsible for irregular migration, with a total of about 350 in the 20 regional administrations.

The Dublin Unit consists of a team of eight state officials, within the Asylum Department, who conduct EURODAC and Dublin procedures²⁵⁰. Moreover, Article 18 and the criteria of irregular entry in Article 13 are often invoked for incoming requests²⁵¹.

In December 2017, a protocol between the Minister of Interior, UNHCR and the Croatian Law Centre (HPC) was signed for the implementation of a project on monitoring the conduct of police officers of the Ministry of Interior regarding illegal migration and asylum. The project includes 13 visits to selected police administrations in the course of 2018, with insight into case files on the treatment of irregular migrants, and potential applicants for international protection²⁵².

Within the project funded by UNHCR, the Croatian Law Centre together with Minister of Interior organized four workshops for border officials, in order to strengthen their knowledge on mixed migration flow border management. The curriculum was prepared by UNHCR and the Croatian Law Centre, based on their Border Monitoring Manual²⁵³.

4. Statistical Data Collection on Irregular Migration in 2017

The official statistical report of the Ministry of Interior for 2017 indicates there were 4,808 cases of illegal entries of third country nationals into Croatia (965 Afghans, 401 Albanians, 131 Algerians, 67 Bangladeshis, 129 Bosnians, 107 Iraqis, 204 Iranians, 787 Kosovars, 61 Moroccans, 8 Nigerians, 367 Pakistanis, 196 Syrians, 92 Serbians, 29 Tunisians, 517 Turks, and 747 others). The same report indicates that 550 persons tried to illegally enter one of the neighbouring countries after illegally entering Croatia (480 towards Slovenia, 4 towards

²⁴⁹ ECRE, *Balkan Route Reversed*, 2017

²⁵⁰ AIDA country report, 2018. Information provided by the Ministry of Interior, 13 February 2018.

²⁵¹ AIDA country report, 2018. Information provided by the Ministry of Interior, 13 February 2018

²⁵² AIDA country report, 2018.

²⁵³ AIDA country report, 2018.

Hungary, 1,455 towards Serbia, 44 towards Montenegro, 327 towards Bosnia and Herzegovina, and 14 by sea/air). In 2017, 10,602 third country nationals were refused entry (2,155 Albanians, 3,390 Bosnians, 143 Montenegrins, 316 Macedonians, 353 Russians, 497 Kosovars, 1,035 Serbians, 639 Turks, 112 Ukrainians, and 1,962 others). There were 1,223 cases of forced removals/departures of foreigners, out of which 580 were based on readmission agreements. 645 third country nationals were detained at the Reception Centre for Foreigners in Ježevo, from which there were 325 cases of forced removal/departures, 60 releases, 6 persons moved to Dugave and 211 to the Reception Centre in Porin (603 persons in total). Out of a total of 1,887 asylum applicants in 2017, 117 applications were rejected in final instance²⁵⁴.

5. Laws, Policies and Practices of Immigration Detention of Irregular Migrants and Vulnerable Groups

Article 131 of the Foreigners Act²⁵⁵ states that third country nationals may be placed in a Reception Centre for Foreigners²⁵⁶ 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, movement restricted to 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 misdemeanours²⁵⁷, with explicit emphasis on the fact that it equally comprises prisons, camps, detention centres, airports and other places where an individual's freedom of movement is restricted²⁵⁸. Persons can be detained for three or six months²⁵⁹. In special circumstances, detention can be prolonged for 12 additional months²⁶⁰.

In 2017, 45 third country nationals were detained at the Reception Centre for Foreigners in Ježevo (total capacity: 95 beds)²⁶¹. According to the AIDA report, 134 asylum seekers were detained there in 2017, and detention orders were issued for all of them, since alternatives to detention were not used²⁶². A special wing for vulnerable groups in Ježevo was completed at

254 Ministry of Interior, January 2018, Statistical review of basic safety indicators and results of work in 2017: <https://mup.hr/public/documents/Statistika/Statisti%C4%8Dki%20pregled%20temeljnih%20sigurnosnih%20pokazatelja%20i%20rezultata%20rada%20u%202017.%20godini.pdf>

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

256 The Republic of Croatia has one Detention Centre for foreigners (officially called Reception Centre for Foreigners) located in Ježevo near Zagreb. In addition to that, the state opened two transit centres in border areas: in Tovarnik at the border with the Republic of Serbia and in Trilj at the border with Bosnia and Herzegovina.

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

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

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

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

261 Ministry of Interior, January 2018, Statistical review of basic safety indicators and results of work in 2017: <https://mup.hr/public/documents/Statistika/Statisti%C4%8Dki%20pregled%20temeljnih%20sigurnosnih%20pokazatelja%20i%20rezultata%20rada%20u%202017.%20godini.pdf>

262 AIDA and Croatian Law Centre report, http://www.asylumineurope.org/sites/default/files/report-download/aida_hr_2017update.pdf

the end of 2015, with a total capacity of 27 beds. Furthermore, vulnerable persons, including victims of trafficking and unaccompanied minors, have been detained at the Reception Centre for Foreigners in Ježevo, contrary to previous practice. Also, two transit reception centres were opened, one in Trilj and one in Tovarnik. Each centre can accommodate 62 persons, and includes a separate wing for vulnerable groups. Special detention premises also exist at the airport in Zagreb (14 beds) and at the airport in Dubrovnik (6 beds), while at other airports, space intended for international departure is being used for these purposes. During 2017, a total of 489 persons were refused entry at the country's airports²⁶³.

The Republic of Croatia does not yet have any developed alternative to the detention model, even though such a possibility is mentioned in the legislative framework in the Foreigners Act²⁶⁴ as 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. Certain civil society organisations visit the Reception Centre for Foreigners and monitor migrant detention in practice, but their reports²⁶⁵ do not mention the application of lesser measures introduced by the amendments to the Act in 2017.

The conditions in the detention centre do not present problematic aspects. However, according to the most recent interviews conducted with the Ombudsperson in 2018²⁶⁶, the conditions for children and vulnerable persons in the Ježevo Detention Centre and the Tovarnik Transit Detention Centre were substandard. Following a visit, the Ombudsperson's Office reported the conditions to the relevant state bodies. Moreover, as already reported by FRA, the Centre for Peace Studies has been unsuccessfully trying to access the detention centre since the beginning of 2018, in order to conduct regular visits as previously informally agreed with the Head Officer of the Detention Centre.

The Jesuit Refugee Service (JRS), the Croatian Law Centre, UNHCR, the media, and politicians have access to the detention centre, but every visit needs to be announced in advance. Regarding the access of detainees to legal aid, The Asylum and Foreigners Service introduced a new practice making the approval of visits of NGOs to detention facilities more cumbersome. Lawyers of the Croatian Law Centre are present for free legal counselling once a month in the Reception Centre for Foreigners in Ježevo. However, according to the AIDA report, in previous years there seem to have been obstacles in accessing legal assistance in practice, as attorneys informed the Croatian Law Centre that the Administrative Court did not approve free legal aid in some cases of detention and consequently lawyers were not paid for their work.

²⁶³ AIDA country report, 2018

²⁶⁴ Official Gazette "Narodne novine", Foreigners Act, 130/11, 74/13, 69/17, Article 132. <https://www.zakon.hr/z/142/zakon-o-strancima>

²⁶⁵ CMS (2017) Izvještaj o detenciji i pritvaranju stranaca u Republici Hrvatskoj: Svrha i uvjeti detencije stranaca tijekom 2016. godine u Prihvatnom centru za strance (Report on Detention of Foreigners in the Republic of Croatia: Purpose and Conditions of Foreigner Detention during 2016 in the Reception Centre for Foreigners), Zagreb

²⁶⁶ Ombudsman's report for 2017, <http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu>



6. Legislation on Human Trafficking and Smuggling of Irregular Migrants

The Penal Code²⁶⁷ defines human trafficking as a criminal offence. It prescribes that any person who, by use of force or means of threat, deception, fraud, abduction, the abuse of power or of a difficult position or position of vulnerability, or of the giving or receiving of payment or other benefit to achieve the consent to have control over another person, or in some other way recruits, transports, transfers, harbours or receives a person, or exchanges or transfers controls over a person, for the purpose of exploitation of labour by forced labour or servitude, establishing slavery or practices similar to slavery, or for the purpose of exploitation of prostitution or other forms of sexual exploitation, including pornography, of illicit or forced marriage, or of removal of organs or of using in armed combats or of undertaking illegal acts, will be punished by one to ten years of imprisonment. It further provides the aggravating circumstances of the offences.

According to the Foreigners Act, a victim of human trafficking may be granted temporary residence based on humanitarian reasons if the victim accepts the Program for Support and Protection (Article 65). The Ministry of Interior, in cooperation with civil society organisations, carries out identification of victims of human trafficking. If the victim is a minor, the Ministry of Interior is obliged to cooperate with social welfare authorities. The operational team of the National Committee for Combating Trafficking in Human Beings notifies the Ministry of Interior about the victim's acceptance of the Program for Support and Protection. This program includes health and psychosocial protection, safe accommodation, interpretation and translation services, legal aid, and safe return to the country of origin (Article 66). The victim, who is then granted temporary stay, is entitled to safe accommodation, health protection, financial aid, education and work. Pregnant women and persons with disabilities are entitled to special support (Article 67). All bodies included in the Program for Support and Protection of Minor Victims should take into account the best interest of the minor. Ministry of Interior carries out special measures to uncover the identification, citizenship and existing family members of the victim. The minor victim is assigned a special guardian. Safe return of a third country national with the status of a victim of trafficking 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 (Article 68).

The National Plan for Combating Human Trafficking for the period of 2017 to 2020 is currently in the legislative procedure²⁶⁸. The Protocol on Identification, Support and Protection of Victims of Human Trafficking provides for standard operational procedures for identifying, supporting and protecting victims²⁶⁹.

The Penal Code regulates migrant smuggling as a criminal offence. It prescribes that any person who, for financial gain, enables or assists another person's unlawful entry, exit, transit

²⁶⁷ Penal Code (Official gazette 125/11, 144/12, 56/15, 61/15, 101/17), available at <https://zakon.hr/z/98/Kazneni-zakon>

²⁶⁸ <https://mdomsp.gov.hr/print.aspx?id=1760&url=print>

²⁶⁹ <https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Protokol%20za%20identifikaciju,%20pomo%20i%20za%20A1titu%20C5%BERTava%20trgovanja%20judima.pdf>

or stay in the Republic of Croatia, other Member State of the EU or signatory to the Schengen Agreement, will be punished by one to eight years of imprisonment. It further provides for aggravating forms of the offence.

The Foreigners Act does not have special provisions regarding victims of migrant smuggling. Still, Article 65 provides that temporary residence on humanitarian grounds will be granted to a third country national should there be serious issues of a humanitarian nature.

The Criminal Procedures Act²⁷⁰ provides special guarantees for victims of criminal offences. Some guarantees can be applied to all criminal offences, while some are reserved only for victims of human trafficking. Victims should have access to services providing support, the right to efficient psychological and other professional help, and the support of bodies, institutions or organisations providing help to victims, the right to protection from intimidation, the right to protection of dignity, the right to be heard without undue delay, the right to be accompanied by a person of trust, the right to individual assessment, and various other procedural rights (Articles 43 and 43a). Minor victims are entitled to a free representative and to confidentiality. Victims of human trafficking are entitled to a free representative, to be questioned by a person of same sex, to withhold personal information not connected to the criminal offence, and to confidentiality (Article 44).

7. Cases of Human Trafficking and Smuggling of Irregular Migrants

Police Officers of the Croatian Ministry of Interior carry out daily activities aimed at the prevention, detection and prosecution of criminal offences and other punishable practices related to smuggling of persons, as well as identification of new forms of smuggling and other acts of organized criminal groups. Over the past years, police actions resulted in an increase in the detection and reporting of criminal offences, and some criminal investigations have been carried out in cooperation with other countries within the framework of joint international police investigations. In 2017, there were 365 criminal cases (361 resolved) of irregular migrant smuggling, and 321 perpetrators of that criminal offence²⁷¹.

In 2017, there were 15 cases of human trafficking (all resolved) with 26 perpetrators.²⁷²

The Act on Pecuniary Compensation for Victims of Criminal Offences²⁷³ regulates the right to monetary compensation for Croatian nationals, Croatian residents and EU nationals, and victims of violent criminal offences who suffered grave physical injuries or grave health

²⁷⁰ Criminal Procedures Act (Official gazette 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17), available at <https://www.zakon.hr/z/174/Zakon-o-kaznenom-postupku>

²⁷¹ <https://www.mup.hr/novosti/5577/priopcenje-za-medije-operativna-akcija-penta>

²⁷² Ministry of Interior, January 2018, Statistical review of basic safety indicators and results of work in 2017: <https://mup.hr/public/documents/Statistika/Statisti%C4%8Dki%20pregled%20temeljnih%20sigurnosnih%20pokazatelja%20i%20rezultata%20rada%20u%202017.%20godini.pdf>

²⁷³ Act on Pecuniary Compensation for Victims of Criminal Offences (Official Gazette 80/08, 27/11), available at <https://www.zakon.hr/z/252/Zakon-o-nov%C4%8Danoj-naknadi-%C5%Bertvama-kaznenih-djela>

disorders. Entitlement to compensation depends on the criminal offence being reported. Compensation includes reimbursement for medical expenses, loss of income, loss of support, and funeral expenses. Besides that, according to the Criminal Procedures Act, the victim is entitled to claim damages within the frame of criminal proceedings or before the civil court (Articles 153 – 162).

Since the trends in human trafficking are often changing (recruitment of victims, exploitation, trafficking routes etc.) the need to enhance The Protocol on Identification, Support and Protection of Victims of Human Trafficking is increasingly more urgent.

8. Protection of Irregular Migrant Children

The chief national legislative acts providing for protection mechanisms for irregular migrant children are the Croatian Constitution, the Law on Upbringing and Education in Primary and Secondary schools, the Law on Compulsory Health Insurance and Health Protection of Foreigners in the Republic of Croatia, the Welfare Act, the Family Act, the Law on International and Temporary Protection, the Foreigners Act, the Protocol on the Treatment of Children Separated from Parents - Foreign Citizens (hereinafter: the Protocol), and the Rulebook on the manner and conditions for exercising the right to house asylum seekers, foreigners under subsidiary and temporary protection, and the participation of asylum seekers or foreigners under subsidiary/temporary protection in the payment of accommodation costs. The Croatian Constitution stipulates that "...the state shall protect maternity, children and youth, and shall create social, cultural, educational, material and other conditions promoting the achievement of the right to a suitable life... (Article 63)"; "...physically and mentally disabled and socially neglected children shall be entitled to special care, education and welfare (Article 64)"; "...everyone shall have the duty to protect children and infirm persons... (Article 65)"; "...in the Republic of Croatia, everyone shall have access to education under equal conditions and in accordance with his/her aptitudes. Compulsory education shall be free, in conformity with law..." (Article 66). Children who are illegal residents in the Republic of Croatia have the right to primary education if: they are located at the reception centre for foreigners; or if forced removal is temporarily postponed or the deadline for their return has been set during this period (Law on Upbringing and Education in Primary and Secondary Schools). A child who is an illegal resident in the Republic of Croatia has the right to emergency medical assistance (Law on Compulsory Health Insurance and Health Protection of Foreigners in the Republic of Croatia).

An unaccompanied child is entitled to: a) a special guardian; b) health checks; and c) placement in homes for raising children and youth, or other social welfare facilities²⁷⁴, the reception centre for asylum seekers, the detention centre for foreigners or other adequate alternative placement (according to the Protocol). Responsibilities of the special guardian are: a) to listen to a child and his/her needs; b) accessibility and protection; c) accommodation, food, clothing, and health protection; d) a durable solution in the child's interest; e) contact with

²⁷⁴ up to the age of 14, in homes for children without adequate parental care; above the age of 14, in homes for raising children and youth

NGOs; f) representation; g) contact with family, and family reunification where applicable; and h) repatriation (Protocol). Social welfare homes ensure: a) shelter; b) food and clothing; c) health protection; d) contact with family; and e) education (Protocol).

The Foreigners Act provides special regulations regarding detention. Unaccompanied minors and families with minors shall only be detained as a last resort measure and for the shortest appropriate period of time. They should be accommodated separate from other third country nationals. Family members should have separate accommodation guaranteeing appropriate privacy. Children should have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age. The Foreigners Act also prescribes measures aimed at ensuring return. With regard to children, the Foreigners Act envisages that the best interest of the child, including his/her family life and health, should be taken into account. Furthermore, prior to the 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 a free representative and to confidentiality, alongside guarantees provided for adult victims (The Criminal Procedures Act).

The practice of dealing with children needs to be done according to national and international laws, as well as the Convention on the Rights of the Child. All actions must be in accordance with the best interest of the child. When unaccompanied children are found on Croatian territory, a professional worker from the social welfare centre needs to be present during the police interview in order to assure that the best interest of the child is considered. A special guardian needs to be appointed in order to find the most appropriate form of protection for the child. A medical examination needs to be done in order to assure that the child is not injured or ill and has not suffered any form of violence or torture. According to the public statistics of the Ministry of Interior for 2017, there is no information available on the age of detained people. However, the Centre for Peace Studies visited the detention centre in Ježevo in May, July and October 2017, and in October there were two children with parents placed in detention (in the facility separated from the one where adult men are detained), and four unaccompanied children at the moment of the visit. Based on many testimonies gathered in 2017, especially from people who were pushed back from Croatia, it is clear that the abovementioned legally foreseen practice is not respected by the police. Even the Croatian Ombudsperson warned about irregular practices towards unaccompanied children, including those being pushed back into Serbia. Testimonies that were gathered and published include cases of violent pushbacks of minors. Family reunification is regulated through the Act on Foreigners and the Law on International Protection. So far, there have been successful cases of family reunification, but they remain problematic because of the duration and complexity of the procedure (contact with the embassies and lack of necessary documents).

The treatment of unaccompanied children needs to be improved, especially in cases of illegal entrance and access to asylum procedure. The screening of their needs is insufficient. Due to the expense of the procedure, forensic age determination is not done regularly, and is often determined at the sole discretion of the police officers.

9. Challenges and Lessons Learned

If we look at positive events and trends in Croatia in 2017, what stands out is the decision to not criminalize and punish acts of solidarity from local citizens towards people with irregular migrant status. In fact, in July 2017, after more than a year of warnings to the entire population, the Croatian Parliament has taken on the arguments of its citizens and the civil society, and has not criminalized acts of solidarity. Namely, the Croatian Parliament submitted a new bill in the frame of the amendments to the Foreigners Act, which acknowledges that offering humanitarian aid to individuals with irregular migrant status will not be punished²⁷⁵.

Since 2015 there has not been a migration policy, or action plan, which would stipulate the overall goals for state bodies and stakeholders, and which would specify particular measures to be implemented in the field of irregular migration.

Legal acts governing protection of unaccompanied children should be amended in a manner

- a) that would enable fostering of such children, which is not the case at the moment;
- b) that unaccompanied children should be placed in adequate facilities, not in homes for raising children and youth, which are facilities designed for children with behavioural issues; and
- c) that children should not be detained.

Another area that could be improved is the capacity of the Ministry of Interior and border officials. There is a clear need to increase their understanding of human rights and, more specifically, the treatment of irregular migrants, as well as access to international protection as an inalienable right.

Practical workshops should be organized, together with effective border monitoring by civil society organizations in order to supervise and check potential illegal and violent practices, as testified in several occasions by numerous individuals.

²⁷⁵ Centre for Peace Studies, July 2017: <https://www.cms.hr/hr/azil-i-integracijske-politike/hrvatska-ipak-nije-kriminalizirala-solidarnost>



SLOVENIA

The number of irregular crossings in 2017 began to rise in April, even more so in May, fluctuating by the end of the year. The Slovenian police recorded 891 illegal crossings of the Slovenian border with Italy, Austria and Hungary. The majority of foreigners (592) entered irregularly through the border with Italy, which is also the most frequent entry point for migration to the EU in 2017. This is the main reason for the increase in the number of irregular migrants in Slovenia this year. At the border with Croatia, the refugees and migrants are illegally entering Slovenia, mainly by swimming across the Kupa boundary river or crossing the river at points where it is shallow.

1. Introduction

Ever since the increased refugee influx in 2015, the migratory situation in Slovenia has changed, and the number of migrants entering Slovenia, mostly irregularly, has increased. The number of irregular crossings in 2017 began to rise in April, even more so in May, and then fluctuated towards the end of the year. Citizens of Afghanistan represent a third of all irregular crossings of the state border, followed by Turks and citizens of Kosovo. In 2017, the number of citizens of Turkey, Algeria and Kosovo arriving to Slovenia increased markedly. Concerning the internal Schengen borders, the majority of foreigners enter irregularly through the border with Italy, which is also the most frequent entry point for migration to the EU in 2017. This is the main reason for the increase in the number of irregular migration to Slovenia this year. The vast majority of migrants who irregularly enter Italy regulate their status in Italy (though not allowed to move freely within the EU). The number of refusals of entry of third-country nationals is still lower than refusals in the same period of the previous year. The most commonly rejected requests for entry are from citizens of the Western Balkan countries.

The number of migrants with irregular stay has also increased in 2017; irregularity is in most cases a consequence of expired permits to stay (overstaying). Again, this is most common with citizens from the Western Balkans countries.

The trend of returning irregular migrants changed in 2014 and Slovene police have since issued more return decisions ordering forced removal, as opposed to the period before 2014 when more decisions were issued allowing voluntary return.

In 2017, 1,476 asylum applications were submitted which is a moderate 12% increase in comparison to 2016 (1,308), but a significant increase in comparison to 2015 (277) or 2014 (385). 152 persons were granted protection. In the first three months of 2018, already more than 500 asylum applications have been submitted and an increase of more than 200% in irregular migration has been observed.

In early 2017, Slovenia adopted amendments to the Foreigners Act²⁷⁶ which allow for restrictions to access to the asylum procedure. According to the amendments, the National Assembly (Parliament) may vote on suspending the right to asylum, in case migration poses “a threat to public order and internal safety in the Republic of Slovenia”. The Act has been submitted to constitutional review by the Ombudsman.

²⁷⁶ Foreigners Act (Zakon o tujcih, UL RS št. Uradni list 50/2011 (57/2011-popr.), 26/2014, 45/2014-UPB1, 90/2014, 19/2015, 47/2015-ZZSDT, 5/2017, 16/2017-UPB5, 59/2017, 1/2018-UPB6 (9/2018-popr.)

2. Definitions, Legal Framework and Policy Measures on Irregular Migration

Slovene migration policy was first set with the Resolution on Migration Policy of the Republic of Slovenia²⁷⁷ in 2002. After EU accession in 2004, Slovene migration policy was shaped through the European migration and asylum acquis. Provisions of EU directives, regulations and decisions in this area have been transposed to Slovene legislation. Governing regular and irregular migration in the Republic of Slovenia is the Foreigners Act. Foreigners Act, which sets out the conditions for, and methods of, entry into, departure from and residence of foreigners in the Republic of Slovenia. The act also defines irregular (e.g. illegal) entry to the country: the entry of a foreigner into the Republic of Slovenia is deemed to be illegal if the foreigner enters the Republic of Slovenia despite being refused entry, if the foreigner evades border control, if the foreigner uses forged or modified travel or other documents of another person upon entry, if he/she provides false information to border control authorities, if the foreigner enters the Republic of Slovenia at the internal border in contravention of this act, or if a foreigner enters the country in spite of the fact that an entry ban issued to him/her has not yet expired.

An important part of Slovene legal framework on irregular migration consists of bilateral or European agreements on readmission of third-country nationals or stateless persons who have illegally entered the territory. The legal framework on irregular migration also consists of the Temporary Protection of Displaced Persons Act²⁷⁸ and the International Protection Act, both in parts regulating or defining some aspects of irregular migration.

In February 2016, the Government of Slovenia issued a decree on a list of safe countries of origin, which includes: 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 illegally staying third-country nationals (Return Directive). Return policy is not high on the current political agenda as the number of migrants ordered to leave, in spite of the increased migration flow, is low. In 2017 Slovene police issued approximately 600 return decisions (voluntary and forced).

²⁷⁷ Resolution on migration policy of the Republic of Slovenia (Resolucija o migracijski politiki Republike Slovenije, Uradni list RS, št. 106/02)

²⁷⁸ Temporary Protection Act (Zakon o začasni zaščiti razseljenih oseb, Uradni list RS, št. 16/17 – uradno prečiščeno besedilo)

3. Relevant Institutions Addressing the Issue of Irregular Migration

In Slovenia different aspects related to irregular migration involve the following institutions and organizations: Police (Border Police Division), Centres for Social Work, Government Office for the Support and Integration of Migrants, Ministry of Interior, Ministry of Public Affairs, State Prevention Mechanism (Ombudsman) and NGOs.

The Border Police Division performs tasks in the field of state border security including the prevention of irregular migrations²⁷⁹; it also directs and coordinates the work of the Foreigners Centre (detention centre) where irregular migrants are accommodated. The Centres for Social Work, in accordance with the Foreigners Act, are obliged to provide professional support and guardianship in procedures with unaccompanied minors (UACMs), if they do not apply for asylum. Cooperation between the Centres for Social Work and the police is regulated by a Protocol providing assistance to unaccompanied foreign minors, which was adopted in 2012. The Government Office for the Support and Integration of Migrants performs tasks defined by the laws governing migration, international protection and temporary protection of displaced persons. Within the scope of its function it coordinates the work and tasks of other national authorities, non-governmental and other organizations regarding the support, as well as the integration, of migrants, and monitors the migration situation. The basic activity of the Office, as a separate government service, whose central tasks are providing accommodation and support to different categories of migrants, arises from the need for monitored operations in supporting the migrants entering the territory of the Republic of Slovenia. The Office plays an important role due to the possibility of implementing urgent measures for “protecting public order and internal state security” as well as to the horizontal nature of its tasks.

Finally, the Ministry of Interior (the police) and Ministry of Public Affairs (Administration Units) are competent for issuing return decisions, if a foreigner’s stay in the country is deemed to be irregular.

Within the mandate of the Ombudsman to perform tasks as the State Prevention Mechanism, unannounced visits and monitoring may take place in the Centre for Foreigners, and police stations where irregular migrants can be apprehended and held for up to 48 hours, and all files are subject to inspection. Findings are published in thematic or yearly reports²⁸⁰.

NGOs have a very limited role and limited access in the area of irregular migration, especially since the UNHCR Regional Office for Central Europe has closed all its projects related to monitoring access to the territory and asylum procedure in Slovenia; since then (2016), there have been no activities whatsoever implemented in this aspect. PIC is currently implementing a project on free legal aid to migrants in return procedures and Caritas is monitoring forced returns of irregular migrants from Slovenia. Both are funded through AMIF and the Slovene Ministry of Interior.

²⁷⁹ Tasks and duties of Slovenia’s police related to illegal migrants, <https://www.policija.si/index.php/component/content/article/35-sporocila-za-javnost/79737-naloge-in-pristojnosti-slovenske-policije-v-zvezi-z-ilegalnimi-migranti>

²⁸⁰ http://www.varuh-rs.si/fileadmin/user_upload/pdf/DPM/Porocila/DPM_2017.pdf ; English translation of the report will be provided within next few months

4. Statistical Data Collection on Irregular Migration in 2017

	CATEGORY	2017	
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 illegally in the country increased by almost 65% in comparison with the previous year.
2	Third country nationals who have passed through the country during the reporting period	925	Third country nationals who were detected without permission to stay or without other documents allowing them to transit the internal Schengen border.
3	Third-country nationals refused entry	3,814	
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	
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	



5. Laws, Policies and Practices of Immigration Detention of Irregular Migrants and Vulnerable Groups

Immigration detention is regulated by the Foreigners Act²⁸¹. The Centre for Foreigners accommodates foreigners who are illegally staying in the Republic of Slovenia, namely the following: foreigners who have failed to depart from the country within a specified period and who cannot be removed immediately; foreigners whose identity has not been established; foreigners for whom expulsion has been ordered; unaccompanied minors; foreigners who are staying illegally in Slovenia and are awaiting extradition on the basis of a bilateral agreement; foreigners who are to be deported. The Centre also accommodates (re) applicants for international protection who have either been issued a decision restricting their movement in line with the International Protection Act, or a Dublin decision.

Foreigners placed in detention receive a detention order obliging them to stay in the Centre for Foreigners or outside it (alternative to detention, often used). Maximum length of detention is six months and can be extended to an additional six months. The Centre accommodates all migrants, including vulnerable groups; women, families, children, unaccompanied minors, elderly people, and severely ill and other vulnerable persons are accommodated separately. Detention of children is still common practice, and this has been widely criticized by national NGOs, international organizations for human rights protection and international HR bodies (Council of Europe, UN). In 2016, a pilot project on accommodation of UACM in dormitories was implemented, and positively evaluated in 2017, which then led to the establishment of an inter-ministerial working group with the goal of preparing a sustainable solution for proper accommodation and care of UACMs. A foreigner who cannot be accommodated at the Centre for special reasons or needs may be accommodated at a social security facility or provided with other appropriate institutional care.

The Centre for Foreigners provides foreigners with basic care in respect of their religious and cultural habits, healthcare services and psychosocial care. In this context the Centre works with healthcare providers, non-governmental organizations, other authorities and organizations, Slovenian embassies, foreign law enforcement agencies and international institutions. Visits to the Centre are allowed for relatives and friends of the detainees. Visits are also paid by NGOs performing voluntary work or providing legal aid (e.g. PIC) and by the International Organization for Migration (IOM).

The police may impose strict supervision if the foreigner has already attempted to avoid deportation through absconding or has actively resisted deportation, if the foreigner has violated the rules of stay in the Centre or does not observe lawful orders and instructions, or if the circumstances and the foreigner's actions indicate that the foreigner intends to avoid deportation.

The police may issue a decision on imposing certain accommodation arrangements to a foreigner in the Centre or outside it, as well as a decision for stay under strict police supervision. The foreigner may appeal against the accommodation decision and the decision imposing stay under strict police supervision within eight days of delivery of the decision. An appeal does not withhold the execution of the decision. A judicial review of the decision on appeal is permitted and the Administrative Court decides upon the appeal within eight days.

According to the reports of the Ombudsman in his role as the State Prevention Mechanism, the main concerns are the detention of UAMs and children with families (he encourages alternative measures), the lack of access to fresh air, the lack of orthopaedic equipment allowing better care to vulnerable groups (pregnant women, elderly, migrants with disabilities) and recommends improvements to procedures involving UACMs.

The police may, ex officio or at the request of a foreigner, replace the measure of obligatory accommodation at the Centre with more lenient measures provided that this also entails deportation of the foreigner from the country.

6. Legislation on Human Trafficking and Smuggling of Irregular Migrants

At the international level, in addition to the Council of Europe Convention on Action against Trafficking in Human Beings, Slovenia has ratified the UN Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. Slovenia is also party to the UN Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, the Convention on the Elimination of All Forms of Discrimination against Women, as well as conventions elaborated under the International Labour Organisation. Slovenia is also party to a number of Council of Europe conventions in the criminal field which are relevant to action against human trafficking.

As a member of the European Union, Slovenia is bound by Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating human trafficking and protecting its victims, Directive 2004/81/EC of 29 April 2004 on residence permits issued to third-country nationals who are victims of human trafficking or who have been the subject of an action to facilitate illegal immigration, and who co-operate with the competent authorities, Directive 2004/80/EC relating to compensation to crime victims, and Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings.

As regards the national legal framework in the field of action against human trafficking, Article 113 of the Criminal Code establishes human trafficking as a criminal offence. Other internal legal acts of relevance to action against human trafficking include: the Act Ratifying the Council of Europe Convention on Action against Trafficking in Human Beings, which defines the responsibilities of ministries in the implementation of the Convention and regulates the organisation of assistance to victims of trafficking; the Criminal Procedure Act, which provides in Article 65 that child victims of human trafficking are entitled to have an authorised person assisting them; the Foreigners Act, which provides for measures and procedures regarding victims of trafficking, including a three-month recovery and reflection period and the possibility to obtain a temporary residence permit (Articles 30 and 50); the Witness Protection Act, which includes provisions referring to the protection of witnesses of human trafficking; the State Prosecutor Act, which envisages that the criminal offences of human trafficking and establishing slavery relations are dealt with by the Specialised Office of the State Prosecutor of the Republic of Slovenia (Article 192).

7. Cases of Human Trafficking and Smuggling of Irregular Migrants

In 2016, the Slovenian Government approved the Manual on the Identification, Assistance and Protection of Victims of Trafficking in Human Beings (Manual)²⁸² defining the role and tasks of different stakeholders in the identification, assistance and protection of victims of trafficking.

Slovene border police staff uses the Frontex training manual for border guards and the Handbook on Risk Profiles on Trafficking in Human Beings, which provides 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 or with small children, and young 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 human trafficking and assistance possibilities are distributed.

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

²⁸² Priročnik o identifikaciji, pomoči in zaščiti žrtev trgovine z ljudmi http://www.mnz.gov.si/fileadmin/mnz.gov.si/pageuploads/SOJ/word/2016/Prirocnik_-_print_A4.pdf

child being a victim of trafficking to the police, the State Prosecutor's Office or a social work centre. Child victims of human trafficking are accommodated in the crisis shelter, together with adult victims.

Official statistics show that in recent years (2015-2017) only two child victims of human trafficking were identified in Slovenia. According to NGOs this does not reflect the real situation and the number of children who are forced into begging, forced into marriage or sexually exploited is much higher. Of great concern is the disappearance of unaccompanied children who may include victims of trafficking (in 2016, 218 unaccompanied children went missing).

A victim of a criminal offence may seek damages from the perpetrator in the course of criminal proceedings through a compensation claim. The Criminal Procedure Act allows a victim to submit a compensation claim within the criminal proceedings, though there is no *lex specialis* that regulates compensation of victims. 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. Victims of human trafficking may also claim compensation pursuant to the Crime Victims Compensation Act, however, the scope of application of this 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, as well as 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 on the basis of the Free Legal Aid Act to grant free legal aid to persons without sufficient means and select a lawyer from a roster.

8. Protection of Irregular Migrant Children

Legislation regulating irregular migration also applies to unaccompanied minors but refers to this group separately, or within the context of vulnerable persons, and provides special protection measures or conditions in some aspects of the procedure.

Article 82 of the Foreigners Act regulates procedures with regard to UAMs that do not apply for international protection, or whose international protection application has been rejected. When apprehending an unaccompanied minor who irregularly entered the country or has resided in the country without valid permission to stay, the police station notifies the territorially competent Centre for Social Work. If a minor has been travelling for a long time with a group with people he/she personally knows (neighbour, second degree of kinship) police considers him/her as accompanied. Identification of possible smuggling is

done according to the Frontex training manual for border guards and the Handbook on Risk Profiles on Human Trafficking. The Centre for Social Work is briefly informed of the current findings, the condition of the unaccompanied minor and of the planned action. The centre then appoints a social worker who conducts an interview with the minor, provides him/her with any necessary social assistance, and acquires a statement on assigning a special case guardian. Where necessary, the social worker accompanies the minor in transfer to the adequate accommodation facilities - in most cases, the Centre for Foreigners.

The tasks of the Centre for Social Work in cases of UAMs not applying for international protection, are as follows: representing minors in the police decision-making process on return to the country of origin; informing the minor which rights he/she can exercise in the territory of Slovenia as an unaccompanied minor; ensuring the minor's best interest regarding accommodation in an appropriate institution for accommodation of minors; representing minors in the decision-making processes before different authorities in Slovenia.

The return procedure of an UAM is regulated by the Foreigners Act, Article 82. In the event of removal of an UAM, the police inform the Centre for Social Work, which must immediately appoint a special case guardian. "The police issues a return decision to an UAM, when the guardian, after careful consideration of all circumstances, establishes that return is in the child's best interest." The Act provides for safeguards to not remove an UAM to the country of origin or to a third country that is willing to accept him, until his/her reception there is ensured. Prior to removal, it must be ensured that the minor foreigner is returned to a family member, approved guardian or relevant reception centre in the country of return. The UAM is, in agreement with the special case guardian, placed in appropriate facilities for the accommodation of minors, and if this is not possible, in the Foreigners Centre. However, UAMs "most often express their intention to apply for international protection. In this case, they are transported to the Asylum House in Ljubljana, where the procedure for submitting the request for international protection begins as soon as possible."

An UAM whose application for international protection has been rejected, may be issued a permit to stay under the Foreigners Act. Pursuant to Article 73 of the Foreigners Act, "under this Act, permission to stay means an authorization to a foreigner who must be removed from the country, to temporarily stay in /RS/." The UAM is allowed to stay if requested by his special case guardian.

It should be noted that the number of absconding cases is very high in Slovenia (on average around 80-90%).

The process of preparation of SOPs with migrant children is still in development, therefore no specific guidelines or standards among different stakeholders have yet been adopted.

9. Challenges and Lessons Learned

Main gaps in managing irregular migration in Slovenia are:

1.) Entry

- razor-wired fence on the border with Croatia should be immediately removed in order to prevent casualties among migrants;
- amendments to Foreigners Act constituting gross human rights violations if used must be annulled;
- implementation of readmission agreements should be closely monitored and statistically followed (statistical data should be properly aggregated);

2.) Asylum

- lengthy asylum procedures should be immediately addressed as this can constitute a violation of rights; asylum applicants can wait for up to 18 months for a first instance decision, including UAMs;

3.) Human trafficking

- more measures should be taken for prevention of child trafficking;
- the government should address the problem of unaccompanied children disappearing from public care by providing suitable safe accommodation and adequately trained supervisors or foster parents (legislative amendments to the Family Code and adoption of a new code on guardianship);

4.) Return

- The Foreigners Act, in its provisions related to issuance of permits to stay (mostly to protect from non-refoulement), does not allow for consideration of the protection of the right to family and private life as per the ECHR, therefore regularization of the status on these grounds is not possible.



ABOUT THE CSOs



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

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 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.



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.



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.



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.



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.



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.



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.



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 immediately to 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;
- 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;
- The Greek authorities' failure to execute the *MSS v. Belgium and Greece* judgment adequately; the decision of the CoM (CM/Del/Dec(2017)1288/H46-15)²⁸³ does not acknowledge that the systemic deficiencies of the Greek asylum system expose asylum seekers to a real risk of inhuman or degrading treatment. Given that the execution of the *MSS* judgment is still under the supervision of the Committee of Ministers, and that Greece continues to be unable to guarantee basic human rights protections for asylum seekers, the effective protection of human rights requires the ban on any returns to continue;
- To stop the detention of unaccompanied children on the basis of pre-removal or asylum detention provisions, or on the basis of the provisions concerning "protective custody";
- Improving the detention conditions in the pre-removal centre of Moria and detention conditions prevailing in the Evros region, as well 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.

For 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;
- To improve protection for the victims of human trafficking; special measures should be taken to prevent child trafficking. The skills of the border police in communication, interaction and treatment of migrants need to be upgraded;
- Including non-punishment of trafficked persons for the offences they have committed in connection with, or as a result of, being trafficked, into the Criminal Code. A new law on compensation for victims of criminal offences should be drafted and adopted;
- An independent border monitoring system to be established and introduced in the new Law on Foreigners as written in the Return Directive²⁸⁴.

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

²⁸³ European Commission, Commission Recommendation of 8.12.2016 addressed to the Member States on the resumption of transfers to Greece under Regulation (EU) No 604/2013, C(2016) 8524 final

²⁸⁴ 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>

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;

- 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 to 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 and in order to ensure 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 for 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 foresees 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 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 needs 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:

- 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 numbers 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

- 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 increase 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 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 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 from 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 Slovenia:

- The razor wire fence along the border with Croatia should be immediately removed in order to prevent casualties among migrants;

- Amendments to the Foreigners' Act constituting gross human rights violations must be withdrawn;

- Implementation of readmission agreements should be closely monitored and statistically followed (statistical data should be properly aggregated);

- Lengthy asylum procedures should be immediately addressed as this can constitute a violation of rights; asylum applicants currently wait for up to 18 months for a first instance decision, including UAMs;

- More measures should be taken for prevention of child trafficking;

- The government should address the problem of unaccompanied children disappearing from public care by providing suitable safe accommodation and adequately trained supervisors, or foster parents (legislative amendments to the Family Code and adoption of a new code on guardianship);

- The provisions of the Foreigners' Act related to issuance of permits for stay (mostly to protect from non-refoulement), do not allow for consideration of the protection of the right for family and private life as per the ECHR, therefore regularization of the status on this ground is not possible.



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