

Security for Human Beings and Borders

Combating Smuggling of Migrants
in the Western Balkan



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Analysis in the field of migrant smuggling in North Macedonia

Skopje, May 2022



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Introduction

The Republic of North Macedonia is part of the so-called “Western Balkan route”, but to reach this route, migrants from Asia and Africa have three main routes available:

- Eastern Mediterranean route from Turkey to Greece, for migrants from Syria, Arab Emirates, Afghanistan, Pakistan, but also Iraq and Somalia;
- Central Mediterranean route where Libya is the main starting point for Europe, i.e. Italy and Malta, for migrants from Tunisia and Algeria;
- Western Mediterranean route, through which illegal migrants, mostly from Morocco, Algeria and Ivory Coast, move to Spain, where migrants are transported by wooden fishing boats.¹

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

Although North Macedonia is a central point on the Balkan route, the migrants are experiencing RNM as a transit country, in average migrants spent a few days in the transit centers if they get to be accommodated there. However, in 2020, the main change that affected several processes was the emergence of the COVID-19 pandemic.

In 2020 there was an increase of 17,3% of smuggling of illegal migrants as detected crime. 95 cases including 91 offenders and 2.732 smuggled illegal migrants were reported.

Methodology

Desk Research

For the purpose of the analysis, the research is based on the study of available laws, bylaws, strategies, policies, documents and reports in the subject area (desk research); collection of public information obtained by submitting a request for free access to public information to the competent authorities – information holders. The data obtained through these tools were subject to qualitative and quantitative analysis and processing.

Court Decisions

The second part of the analysis is based on the available Court Decision for the crime of smuggling. For the purpose of the analysis, 27 court decisions available online were analyzed. There was no acquittal, therefore all of the analyzed verdicts are convictions.

¹ <https://repository.ukim.mk/bitstream/20.500.12188/8677/1/dpachemska2020.pdf>

1. Legal Framework in North Macedonia

Policies and documents related to smuggling migrants

North Macedonia has on place legislation and policies that govern the migration movement in the country. Specific laws and policies regulating the question per se include regulations, procedures and involvement of different state actors to ensure effective border security and border management in the country. In this regard, it should be emphasized that North Macedonia has considerable policies and regulations in place which are aligned with the EU regulations and directive.

National Strategy and Action Plan for combating trafficking in human beings and illegal migration 2017-2020²

The National strategy for combating trafficking in human beings and illegal migration is a strategic document which prescribes measures and activities for the state institutions authorized to detect and pursue perpetrators and improve the status of the victims of trafficking in human beings and illegal migration in Republic of North Macedonia. The Strategy is focused on combating trafficking in human beings and designs general and specific tasks for the authorities, both individually and collectively, as well as both at local and national level. Stressed priorities include strengthening the capacities of the government bodies and civil society organizations in order to improve their coordination, cooperation and harmonization of national policies, effective conduction of the planned activities, increased number of detected victims of trafficking in human beings and pursuing perpetrators, following the trends in the trafficking in human beings and illegal migration at national and international level, and increased identification of the victims of trafficking in human beings, especially children. Finally, it provides an overview over the institutional positioning and the capacities relevant to the prevention, referral and providing support to the victims of trafficking in human beings. One of the main strategic areas is the efficient detection and pursuing perpetrators of the crime Trafficking in human beings and Smuggling migrants. This is in line with the EU positions, including the decrease of illegal migration through research, prevention and chasing perpetrators of the crime – Smuggling migrants.

Resolution and Action Plan for Migration Policy 2015-2020³

The Resolution for Migration Policy is composed of three integrated parts. The first part categorizes the principles of the migration policies in the country through a detailed overview of the legal migration, illegal migration, smuggling, trafficking in human beings and asylum. The second part elaborates the directions and the goals of the migration policies in building consistent policies which shall entail all the aspects of migration. The third part is focused on the Action plan for conducting the defined priorities and activities. At the end, with the Resolution, the intention of the authorities is to improve the management with the migration processes regarding legal, illegal and international illegal migration. In addition to this, as stated in the Stabilization and Association Agreement between North Macedonia and the EU, the state has obliged itself to cooperate in the areas of visa, border control, asylum and migration. The state has also obliged itself to cooperate in the area of prevention and control against illegal migration and readmission.

Strategic Plan of the Ministry of Internal Affairs⁴

At the end of 2020, North Macedonia adopted the new Strategic plan of the Ministry of Internal Affairs for the period starting from 2021-2023. In the area of migration, special priority is given to preventing cross border crime and illegal migration, readmission control and realization of the right to asylum. In the part of the Strategy dedicated to activities for capacity building of the Public Security Bureau regarding the borders and migration management, the focus is given to cross-border police cooperation, coordination with the EU agencies and mutual contact points, building a new reception center for foreigners and harmonization of the national system with the EU Schengen requests for border management. One of the programs includes providing legality, professionalism and transparency in the public security burau operations. The number of detected crimes – smuggling migrants, penalties, illegal crossing, and abuse of the no-visa regime, increased amount of preventive and repressive activities are given as indicators for a successful program.

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

3 Available at <https://www.slvesnik.com.mk/Issues/a6a5102d81704eb39305182674122cb8.pdf#page=5>

4 [https://mvr.gov.mk/Upload/Editor_Upload/Strateski%20planovi/SP-na-MVR-2021-2023%20\(2\).pdf](https://mvr.gov.mk/Upload/Editor_Upload/Strateski%20planovi/SP-na-MVR-2021-2023%20(2).pdf)

National Strategy for Integrated Border Management

The Strategy for integrated border management has expired in 2019, while the new strategy is not available. The expired Strategy for integrated border management 2015-2019⁵ was prepared considering the specific social and political background, the legal system in North Macedonia, the comparative practices, international instruments and EU legislation, including the Schengen catalogue of best practices.

With the strategy, the authorities obliged to improve the border control system, increase the flow of people, goods and services, decrease illegal migration and cross-border crimes.

National legislative

The obligation of the state to protect victims of trafficking in human beings and migrants that were subject of smuggling is inscribed in each and every international instrument regulating this matter. Some of the most important domestic laws regulating this matter include: the Criminal Code, the Law on Border Control and the Law on Foreigners. In 2020 there were no significant legal amendments on this matter. Smuggling migrants is an act incriminated with the Criminal Code while the procedure is prescribed with the procedural Law on Criminal Procedure. The Law on Border Control plays a significant role when it comes to migration movements and the manner in which they are regulated by the state. The Law on Foreigners regulates the status of the migrants. There are some other laws which could also be mentioned here, such as the Law on International and Temporary protection, which application excludes the application of the Law on Foreigners.

Criminal Code⁶

The criminal legislative incriminates the acts: trafficking in human beings, smuggling migrants, organizing a group and inciting conduction of the crimes trafficking in human beings and smuggling migrants, as well as trafficking in children. The victims of smuggling migrants lack a precisely defined legal status – these persons are treated with a status of foreigners illegally residing at the territory of the Republic of North Macedonia, as per the Law on Foreigners, due to illegally realized entry, and they can be subjected to a procedure for voluntary return, forced removal, or, as it is often seen in practice, although it should only be used as last resort, to be kept in the Reception center for foreigners of the Ministry of Internal Affairs of RNM, until fulfilling the necessary conditions for conducting a return procedure, i.e. removal of foreigner, or until filing a request for international protection. There is no concrete provision that regulates the status of the smuggled migrants as victims of smuggling, so this status is not given to the migrants within the criminal procedures. The only victim status that can be granted is the general status of a victim of a crime under the Law on Criminal Procedure.⁷ The Law on Criminal Procedure generally recognizes, as a victim of crime, any person who has suffered harm, including physical or mental injury, emotional suffering, material loss or other injury or endangerment of his rights and interests as a consequence of a committed crime. Still there is no practice on defining or given status to smuggled migrants as victims, and there is a debate if even smuggled migrants should be treated as victims since they cooperated and willingly were transported and smuggled. It is important for victims of smuggling to get legally defined status, this way they could get legal stay in the country at least until the criminal procedure is still on going, and won't be arbitrarily deprived of their liberty and freedom of movement which could harm them and their vulnerability even further.

The Article 418-b from the Criminal code refers to the criminal act smuggling migrants and it prescribes that whosoever by force or by serious threat commits an assault on the life and body, by kidnapping, deception, covetousness, by abuse of his official position and the position of weakness of another, illegally transfers migrants over the state border, and the one that makes, procures or possesses a false traveling documents for such purpose shall be sentenced to imprisonment of at least 4 years. A smaller sentence encompassing imprisonment from one to five years is prescribed for whosoever turns, transports, transfers, buys, sells, harbors or accepts migrants. And higher sentence – at least five years of imprisonment is prescribed for smuggling migrants if the life or health of a migrant is threatened, or the migrant is subject to particularly humiliating conduct or brutality, or the migrant is prevented from exercising the rights determined by international law. The legislator prescribes the highest penalty of at least eight year of

5 Available at <http://www.igu.gov.mk/files/STRATEGY.pdf>

6 Criminal Code, „Official Gazette“ nr. 37/1996; 80/1999; 48/2001; 4/2002; 16/2002 ;43/2003; 19/2004; 40/2004; 81/2005; 50/2006; 60/2006; 73/2006; 7/2008; 139/2008; 114/2009; 51/2011; 51/2011; 135/2011; 185/2011; 142/2012; 166/2012; 55/2013; 82/2013; 14/2014; 27/2014; 28/2014; 41/2014; 41/2014; 115/2014; 132/2014; 160/2014; 199/2014; 196/2015; 226/2015; 97/2017; 170/2017; 248/2018

7 Article 21 para. 4, Law on Criminal Procedure „Official Gazette“ nr. 150/2010, 100/2012, 142/2016, 193/2016, 198/2018

imprisonment in case of a child victim of trafficking. The legislator has prescribed additional provisions anticipating at least five years of imprisonment if the smuggling is conducted by an official person while performing his service, as well as that the objects and means of transport used for committing the crime shall be seized. The Article 418-c refers to organizing a group and instigating performance of crimes of human trafficking, trafficking in juveniles and migrants. A distinction and difference in the longitude of the imprisonment penalty is provided for the following participants in the criminal act: whosoever organizes a group, gang or other association for smuggling migrants – here the penalty is highest – 8 years of imprisonment; a smaller penalty of at least one year of imprisonment is prescribed for a member of the group, gang or association or otherwise helps the group, gang or the association, while a member of the group who reveals the group before it commits the crime within it or on its behalf, shall be acquitted from the sentence. Finally, a sentence from one to ten years of imprisonment awaits anyone that calls for, instigates or supports the commission of the crimes such as smuggling migrants and trafficking in human beings.

| Law On Border Control⁸

The border control covers matters related to the border checks and surveillance, analysis of the threats of national security and analysis of threats that may affect border security aiming at prevention and detection of criminal offenses and misdemeanors, prevention and detection of illegal migration and trafficking in human beings, protection of life, human health, personal safety, property, environment and nature and prevention and detection of other dangers of the public order, legal order, national security and international relations. The law applies to all persons crossing the state borders or North Macedonia, without compromising the right of the refugees and other persons seeking international protection particularly with regard to non-refoulement. Competent authority for border controls and management is the Ministry of interior through the police officers whose duties are broadly regulated with the Law on police.⁹ During the performance of the police duties, the police officers are obliged to respect human dignity, without discrimination against any ground.

On other hand, Border surveillance is carried out to prevent the illegal crossing of the state border, prevent cross-border crime and enable taking the necessary measures against persons who have crossed the border illegally. The border surveillance is performed out in a way to enable prevention and discourage persons intending to avoid border checks at border crossings. Border surveillance is carried out using static or mobile police units in order to detect and prevent persons that have entered the country by crossing the border illegally. In performing their surveillance duties the police is entitled to use all the technical and other available means, including dogs or setting up barriers that will prevent illegal border crossing. In light of the efficiency and effectiveness, four (4) units are established within the Sector for Border affairs and Migration: Regional Centre for Border Affairs and Migration – North; Regional Centre for Border Affairs and Migration – West; Regional Centre for Border Affairs and Migration – East; Regional Centre for Border Affairs and Migration – South. All of the units work in close cooperation with other departments within the ministry of interior to maximize their efforts for better protection of borders and prevention of illegal border crossing and organized crimes. Last but not least, the law regulates the cooperation between state authorities with competence in border management. The Articles 68-71 define the penalties due to breaches of the Law. There are 4 amounts of penalties anticipated: from 510 to 800 EUR and from 85 to 490 EUR in denar countervalue for natural persons, while penalties in amounts of 2,450 and 5,000 EUR in denar countervalue are prescribed for legal entities. The penalty for a misdemeanor – illegal crossing or attempt for illegal crossing at the border is from 510 to 800 EUR.

| Law On Foreigners¹⁰

The Parliament adopted the Law on Foreigners in 2018, as new legislation that is harmonized with the EU legislation, that entered into force in 2019. The law regulates the conditions of entry, exit, movement, departure, stay, return of illegal staying foreigner as well as the rights and obligations of foreigners in North Macedonia. A Foreigner is defined as a person who is not a citizen of North Macedonia and a person with no citizenship, that is, a person who is regarded by no country, by force of its law, as its own citizen. The provisions of this law are applicable to all foreigners with the exceptions of those that seek international and temporary protection in the country and those that enjoy privileges and immunities under the international law on basis of reciprocity. During the stay in the country all foreigners have the same rights and obligations as those of citizens. The law prescribes what is considered a legal entry in the country, what is considered as illegal entry, the consequences and repercussions for persons that have entered illegally to the country, or avoided border checks and controls, or have attempted to enter with fake travel documents, or those that

8 Law on Border Control „Official Gazette“ nr. 171/2010, 41/2014, 148/2015, 55/2016, 64/2018

9 Law on Police „Official Gazette“ nr. 114/2006; 148/2008; 6/2009; 145/2012; 41/2014; 33/2015; 31/2016; 106/2016; 120/2016; 21/2018; 64/2018

10 Law on Foreigners „Official Gazette“ nr. 97/2018 и 108/2019

have not respected the admitted period of stay. In this regard, victims of human trafficking will not be regarded as persons that have illegally entered the country if they can prove that their entry in the country was as a result of the crime – trafficking in human beings.

Furthermore, the law prescribes in details the grounds for entry and stay in the country as well as the grounds under which a foreigner might be removed or expelled from the country. A foreigner may be returned in accordance with the principle of non-refoulement, taking into consideration the best interest of the minor and the needs of the other vulnerable persons and victims of human trafficking, the family life and the health condition of the foreigner. A foreigner may be expelled due to imprisonment judgement, serious grounds about committed serious crimes, rejected or terminated international protection in the country, if the foreigner possesses threat to the public health, to the public policy, national security or international relations or has repeated violations of provisions the laws. At the same time foreigners will not be removed to country in which their life or freedom would be threatened due to race, religion, nationality, membership of a social group, or political opinion, or where they would be subjected to torture, inhuman or degrading treatment or punishment. The foreigner can be returned to the country of origin, in a country of transit in accordance with the readmission agreements or other procedures or in any other country in which he/she voluntarily decides to return. Minors cannot be returned in any other country that would be considered violation to the Convention on the Rights of the Child, the Convention on Protection against Torture and Inhuman or Degrading Treatment or Punishment or the Convention for the Protection of Human Rights and Fundamental Freedoms.

The foreigners that have violated the terms of stay, have entered illegally in the country or have entered the country without documentation, whose identity needs to be established, are accommodated to the reception center for foreigner (detention center) prior expulsion or removal of the country. Although smuggled migrants are usually in a vulnerable position, still according to the law they are foreigners in the country that entered the territory illegally and don't have regular legal stay in the country. Therefore they are accommodated in the RC for Foreigners and most of the time deprived of their freedom of movement, even though this is not how this is described in the law. In most of the cases there is no procedure for punishment for illegal entry, the migrants are just arbitrarily used as witnesses in the criminal cases against the smugglers. This facility has the character of closed institution in which foreigner's freedom of movement is limited and restricted within the facility. The accommodation in this center may last maximum 18 months without possibility to extend this period. Despite the fact that the national legislation has not introduced the term "immigration detention" the reception center for foreigners is fulfilling that role in North Macedonia.

The law also anticipates establishment of integrated base of foreigners, including the data on asylum, migration and visas which will be shared among competent authorities for better monitoring of the movement and stay of the foreigners in the country.

Similarities Between the Crimes Smuggling Migrants and Trafficking in Human Beings

There is a tight connection between the crime trafficking in human beings and smuggling migrants. In practice, it can be hard to distinguish these two crimes at first sight. In many cases, the victims of trafficking in human beings may start as smuggled migrants. Consequently, when investigating the cases of trafficking in human beings, sometimes we may need to rely on the measures against smuggling. However, it is essential that the persons investigating smuggling cases are well informed about the crime trafficking in human beings, since the consequences from treating the trafficking case as a smuggling case can be cruel for the victim.¹¹

In the Criminal code of Republic of North Macedonia, the crime – trafficking in human beings is defined in Article 418-a: Whosoever by force, serious threat causes delusions or other forms of coercion, by kidnapping, by deceit and abuse of his own position and abusing the pregnancy or the position of weakness of somebody else, or the physical or mental disability of another, or by giving or receiving money or other benefits in order to obtain agreement of the person that has control over another person, or in any other manner turns, transports, transfers, buys, sells, harbors or accepts persons for the purpose of exploitation through prostitution or other forms of sexual exploitation, pornography, forced labor or servitude, slavery, forced marriages, forced pregnancy, unlawful adoption or similar relations to it, begging or exploitation for purposes forbidden by law, or illicit transplantation of human organs, shall be sentenced

11 UNITED NATIONS OFFICE FOR DRUGS AND CRIME, TRAFFICKING IN HUMAN BEINGS AND SMUGGLING MIGRANTS – Handbook on International Cooperation 2010, page 9

to imprisonment of at least four years.¹² The Criminal Code anticipates separate provisions for trafficking a child, as defined in Article 418-d, and it consequently anticipates higher punishments. The common elements of these two crimes are additionally stated in Article 418 – c, which refers to organizing a group and instigating performance of crimes of human trafficking, trafficking in juveniles and migrants.

Both crimes are defined within the Chapter thirty-four in the Criminal Code under Crimes against Humanity and International Law. It could be concluded that the penalties are not that much different, still in practice human traffickers get bigger prison sentences. When reading the definition in the Criminal Code for the crime of smuggling migrants (Whosoever by force or by serious threat commits an assault on the life and body, by kidnapping, deception, covetousness, by abuse of his official position and the position of weakness of another, illegally transfers migrants over the state border, and the one that makes, procures or possesses a false traveling documents for such purpose shall be sentenced to imprisonment of at least 4 years.) it could be noted that there is not clear distinction between this and the previously defined trafficking of human beings in the same Criminal Code. This can cause serious issues and given this definition for smuggling migrants it is even more difficult to understand why the smuggled migrants are not treated as victims, as are victims of human trafficking. A more clearly defined smuggling of migrants crime should exist in the Criminal code which will adequately transpose the definition of Protocol against the Smuggling of Migrants by Land, Sea and Air, that states the following: “Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.

In cases of facilitation of irregular movement, each irregular migrant that transits throughout the territory of one state is a possible victim of smuggling migrants, if considering the lack of possibilities for regular transit, then his goal would be to cross the borders irregularly and arrive at the desired destination. Unlike the smuggling of migrants whose main element is the intention and undertaking activities with the sole aim of illegally crossing the borders, the trafficking in human beings as its aim has the exploitation of the victims of trafficking in human beings, which can be of various nature (forced prostitution, begging, forced labor exploitation, pornography, casual crime, trade in tissues, cells and organs, etc.).¹³

Ratified Relevant Treaties

The country has signed and ratified numerous international treaties, bilateral and multilateral agreements on migration. These ratified treaties such as the International pact on civil and political rights, the International covenant for economic social and cultural rights, the International convention on elimination of all forms of discrimination, the European Convention for the prevention of torture and inhuman or degrading treatment, etc are the most important instruments that guarantee protection of the human rights of individuals including those of migrants and refugees. The Universal Declaration of the Human Rights, The Convention relating to the status of the refugees from 1951 and the Protocol Relating to the Status of the Refugees from 1967, The European Convention for protection of the Human Rights and fundamental liberties and the European Social charter are also ratified treaties that recognized human right and the right to asylum within the scope of human rights dimension. These instruments guarantee and articulate the obligations of each of the member countries to respect human rights and freedoms.

North Macedonia has ratified the United Nations Convention against Organized Crime as well as the Protocol against the Smuggling of Migrants by Land, Sea and Air. Migrants are explicitly exempt from criminal liability under this protocol. The definition given in this protocol is appropriately transferred to the Criminal Code of North Macedonia where a more detailed definition and qualification of the crime is given. The law, on the other hand, explicitly in the article that refers to the smuggling of migrants does not provide a direct principle of impunity for the victims of smuggling, ie migrants who have entered illegally. The Law on Foreigners acquits victims of trafficking who have entered illegally, but does not mention victims of smuggling.

12 CRIMINAL CODE of RM, Article 418-a

13 REPORT – TRAFFICKING IN HUMAN BEINGS AND SMUGGLING MIGRANTS IN NORTH MACEDONIA, MYLA 2019

Institutional capacity

I Institutional framework

When it comes to investigate any crime, including organized crime such as smuggling migrants, the Ministry of Internal Affairs is the central coordinative institution. This Ministry has several departments, units, commissions and centers, each with their specific role in investigation of crimes. The Ministry of Internal Affairs, in its efforts to improve their efficiency in detection and investigation of organized crimes, has established the Task force – National unit for suppression of smuggling of migrants and trafficking in human beings, established within the Basic prosecutor's office for prosecuting organized crime and corruption as a coordinator of this unit.

I Governmental Institutions

Sector For Border Affairs And Migration

The key operational role in identifying and suppression of smuggling of migrants and trafficking in human beings in Republic of North Macedonia is given to the Ministry of Internal Affairs of Republic of North Macedonia, i.e. the Sector for border affairs and migration. Within this sector, there is a Mobile unit for suppression of cross-border crime and compensatory measures, which is authorized to cover the territory of the Republic of North Macedonia with mobile teams from the border line and through the territory. The Sector for border affairs and migration is supported by the Sector for suppression of organized and serious crimes to handle the irregular migration, through the National unit for suppression of smuggling of migrants and trafficking in human beings, which are authorized to conduct investigations of cases of trafficking in human beings and smuggling migrants.

National Unit For Suppression Of Smuggling Of Migrants And Trafficking In Human Beings

The National unit for suppression of smuggling of migrants and trafficking in human beings (Task Force) has been established in 2018 and is composed of representatives from the Basic prosecutor's office for prosecuting organized crime and corruption and Ministry of internal affairs. The national unit is composed of: head, deputy head, assistant head and deputy assistant head, members and contact persons. The National unit is managed by the Head who is appointed by the Public prosecutor, upon proposal of the Basic public prosecutor of the Basic Public Prosecutor's Office for Prosecution of Organized Crime and Corruption. The activities of the representatives of the Ministry of Internal Affairs are coordinated by the assistant head, who is also head of the authorized organizational unit for trafficking in human beings and smuggling migrants at the Ministry of Internal Affairs.

Reception Center For Foreigners

The Reception Center for Foreigners is authorized for accommodation of foreigners and migrants with illegal entry, foreigners with limited freedom of movement and migrants and foreigners that are subjected to exile and removal. This is a closed type institution under jurisdiction of the Ministry of Internal Affairs.

National Commission For Combating Trafficking In Human Beings And Illegal Migration

The National Commission for Combating Trafficking in Human Beings and Illegal Migration of North Macedonia has been formed in 2001. The National Commission has an inter-institutional composure, i.e. members from the Ministry of Internal Affairs, Ministry of External Affairs, Ministry of Labor and Social Policy, Ministry of Education and Science, Ministry of Justice, Ministry of Health, Public prosecution, Judiciary, Employment agency and the State Labor Inspectorate are included into the work of the Commission. The Commission has the following authorizations: to monitor and analyze the condition with trafficking in human beings and illegal migration, to coordinate the activities of the authorized institutions and to cooperate with international and non-governmental organizations included in solving the problems in the area of trafficking in human beings. Within the Commission there is a Secretariate, as well as a sub-group for combating trafficking in children. The Secretariat is a body within the National Commission, composed of representatives of international and non-governmental organizations, as well as experts from state institutions. Apart from the National Commission, a total of 6 local commissions for combating trafficking in human beings and illegal migration have been formed and cover the municipalities Tetovo, Bitola, Shtip, Prilep, Veles and Gevgelija.¹⁴

14 <http://nacionalnakomisija.gov.mk/mk/%d0%b7%d0%b0-%d0%bd%d0%b0%d1%81/>

National Border Management Coordination Center

The National Border Management Coordination Center is a coordinative body of the Government of Republic of North Macedonia, which aims towards efficient coordination, facilitation of the exchange of data and information and better integration in the border management.¹⁵ The Center is composed of representatives from the Ministry of Internal Affairs, Ministry of Finance- Customs Administration and the Ministry of Agriculture, Forestry and Water Management, Ministry of foreign affairs, Ministry of Defense, Ministry of Health – Bureau for Medicines and the National Sanitary and Health Inspectorate, the Ministry for Transport and Communications, Ministry of Environment and physical planning, Directorate for Radiation Safety and the Food and Veterinary Agency.

National Preventive Mechanism

The National Preventive Mechanism (NPM) is a separate unit in the office of the Ombudsman of North Macedonia, whose primary goal is to prevent torture and other cruel, inhumane and degrading actions or punishments. The role of the NPM is to conduct regular (appointed or not) visits to venues and objects which accommodate detained persons (persons deprived from freedom).¹⁶ The visits to places that accommodate persons deprived of their liberty and freedom of movement is really important, since the victims of smuggling are most often accommodated in the RC for Foreigners, detention center, where foreigners are kept deprived from their freedom of movement.

| Court jurisdiction for SoM

Basic Prosecutor's Office For Prosecuting Organized Crime And Corruption

The Basic prosecutor's office for prosecuting organized crime and corruption in Skopje is authorized for pursuing perpetrators of the crimes "smuggling migrants" and "trafficking in human beings" and consequently, all cases related to organized crime, including smuggling migrants, are administered in Skopje. In order to be more effective in conducting investigations and identifying organized criminal groups of smuggling migrants and trafficking in human beings, in 2018 a National unit for suppression of smuggling of migrants and trafficking in human beings (TASK FORCE) has been incorporated by signing a Memorandum for cooperation by and between the Ministry of Internal Affairs and the Basic prosecutor's office for prosecuting organized crime and corruption.

Basic Criminal Court – Skopje And Appellate Court – Skopje

The smuggling of migrants cases are administered, i.e. the indictments are filed to the Basic Criminal Court Skopje, at the Specialized court unit authorized for organized crime cases. Upon received appeal, the cases are administered in the Appellate Court, which is also in Skopje.

| International and local NGOs

The following international organizations that are present in the country are relevant with active engagements on the migration management system: The International Organization for Migration (IOM), United Nations High Commissioner for Refugees (UNHCR), Migration Asylum Refugee Regional Initiative (MARRI), and The International Centre for Migration Policy Development (ICMPD). The international organization cover several aspects concerning migration and migrant rights in North Macedonia. International organization's activities address a variety of pressing migration related issues including the right of asylum, protection to refugees and stateless persons, trafficking in human beings, technical cooperation and institutional capacity building in the field of migration, voluntary return and reintegration programmes, economic stabilization programmes, to support the region in the migration management and policies etc.

From the local actors (CSOs) which are active on migration related issues are the Macedonian Young Lawyers Association (MYLA), Red Cross and Legis. MYLA provides legal aid and representation to asylum seekers, refugees and migrant in the country. It advocates for better asylum and migration standards and policies in the country through analyses research and litigation of cases before institutions. Legis is mostly focused on provision of humanitarian aid to refugees and migrants transiting through the country Although an international organization, the Red Cross Skopje and North Macedonia is implementing local activities with refugees and migrants.

15 Article 56 and 57 from the Law on Border Control

16 http://ombudsman.mk/MK/nacionalen_preventiven_mehanizam/npm_vo_rm.aspx

2. Court Practice in North Macedonia

Statistical Data

In 2020, 3 organized groups involving 22 criminal offenders were suppressed. For 19 persons criminal charges were pressed under article 418-v of the Criminal Code for “organizing a group and encouraging smuggling of migrants”. The biggest group included 12 members, while the other 2 groups had 4 to 6 members. All of the groups worked on national level and were involved in organizing and smuggling illegal migrants from the Middle East. They smuggled them from Greece through North Macedonia, Serbia, and then to the EU countries.¹⁷ Also there was an increase of 17,3% of smuggling of illegal migrants as a detected crime. 95 cases including 91 offenders and 2,732 smuggled illegal migrants were reported. 91 offenders were prosecuted for 65 criminal cases of smuggling migrants. Most of the offenders are Macedonian citizens, and only 10 were foreigners. The number of smuggled migrants is 78% higher compared to 2019. Top three countries of origin of the migrants are: Pakistan, Bangladesh and Afghanistan, followed by: Syria, India, Turkey, Kurdish, Iran, Egypt, Somalia and Iraq. Most of the smuggling cases are reported during the summer, while the lowest number was in April due to the COVID-19 intensive restrictive measures. Biggest efficiency is achieved within the Regional Center “East”, since there is an increased number of illegal migrants crossing the south border from Greece nearby the “Belasica” Mountain.¹⁸

In 2020, 32,10019 migrants were prevented from entering the territory of RNM illegally or are pushed back/returned to Greece outside the formal procedure. Except of the police of North Macedonia, other 937 foreign police officers had joint operation for enhanced surveillance of the south border. Top 5 countries of origin of the pushed back migrants are: Afghanistan 12,244 (100% increase compared to 2019), Pakistan 7,349, Bangladesh 3,746, Syria 2,683 and Stateless persons 1,409.²⁰ Also an increased number of migrants transiting through North Macedonia from Libya, Palestine, Somalia, and Turkey was noticed, as well as persons from Egypt, Morocco and Eritrea. The North border is still used as an exit point.

Until the end of 2020, 61 cases for 96 persons were reported to the Public Prosecutor’s Office for Prosecution of Organized Crime and Corruption. 70 of them were submitted to the Basic Criminal Court as indictments, and 16 prepositions for plea bargain. The court convicted 66 persons: 42 persons plead guilty, for 8 persons a full procedure was led and the main hearing ended in 2020, and 16 persons signed plea deal.²¹

The Basic Criminal Court received 77 cases for smuggling in 2020. 71 verdicts were brought by the Basic Criminal Court, while 45 verdicts became final. All of the convicted persons were male – thus 67 men were finally convicted in 2020. 42 of them received an effective prison sentence, while 25 persons were conditionally sentenced. 27 cases submitted to the court remained undecided.²²

37 appeals were submitted to the Criminal Court of Appeals, while the Court worked on 43 smuggling cases in total during 2020. 28 verdicts were brought of which 16 confirmed the verdicts from the Basic Criminal Court, 6 verdicts modified the verdicts from the Basic Criminal Court and 6 verdicts of the Basic Criminal Court were abrogated. All in all 22 persons were convicted.²³

17 Ministry of Interior of North Macedonia Annual Report for 2020 p. 46, https://mvr.gov.mk/Upload/Editor_Upload/%D0%93%D0%BE%D0%B4%D0%B8%D1%88%D0%B5%D0%BD%20%D0%B8%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98%202020.pdf

18 Ibid. p. 55

19 Ibid. p. 81

20 Ibid. p.81

21 Response to a Request for Public Information A br. 03-315/5 from the Public Prosecutor's Office for Prosecution of Organized Crime and Corruption

22 Response to a Request for Public Information from the Basic Criminal Court

23 Response to a Request for Public Information CPII бр. 19/21 from the Court of Appeals

Analysis of the Convictions

Verdicts from the Basic Criminal Court (length of proceedings, qualification of criminal offence)

No. of Verdict	Date of Verdict	Date of Crime	No. of convicted smugglers	Gender of the smuggler	No. of migrants	No. of children	Type of Verdict	Type of Sentence	Prison Time
III KOK.60/18 III KOK.101/18	29/6/2020	2016	1	M	9	0	Guilty Plea	Conditional Sentence	2 years within 5 years
III KOK.86/18	16/10/2020	10/4/2016	1	M	27	12	Conviction	Prison	4 years
III KOK.21/20	12/2/2020	10/4/2016	1	M	27	12	Conviction	Prison	4 years
VII KOK.149/19	11/3/2020	10/9/2019	1	M	10	3	Conviction	Prison	4 years
V KOK.1/20	9/1/2020	29/12/2019	1	M	1	0	Guilty Plea	Conditional Sentence	2 years within 4 years
VI KOK.4/20	19/2/2020	11/12/2019	1	M	9	0	Guilty Plea	Conditional Sentence	2 years within 5 years
VI KOK.8/20	19/2/2020	14/1/2020	1	M	36	0	Guilty Plea	Conditional Sentence	2 years within 5 years
IX KOK.19/20	1/7/2020	11/12/2019	2	M	9	0	Guilty Plea	Conditional Sentence	2 years within 5 years
VI KOK.24/20	5/3/2020	18/2/2020	1	M	5	0	Guilty Plea	Conditional Sentence	2 years within 5 years
VI KOK.26/20	31/3/2020	7/5/2016	1	M	57	9	Conviction	Prison	4 years and 6 months
III KOK.29/20	6/3/2020	2020	1	M	12	0	Guilty Plea	Prison	1 year
VI KOK.57/20	22/9/2020	7/6/2020	1	M	9	0	Guilty Plea	Conditional Sentence	2 years within 5 years
III KOK.84/20	25/9/2020	22/2/2020	1	M	43	12	Guilty Plea	Prison	4 years
VI KOK. 87/20	6/10/2020	29/5/2020	1	M	13	0	Guilty Plea	Prison	4 years
VI KOK.99/20	19/10/2020	16/7/2020	1	M	18	0	Guilty Plea	Conditional Sentence	2 years within 5 years
III KOK.144/20	23/12/2020	25/8/2020	1	M	10	1	Guilty Plea	Prison	4 years

Out of 45 final verdicts from the Basic Criminal Court, only 16 are available online. In the response to MYLA's request, the Court explained that the other verdicts are not anonymized yet. 13 of the convictions are on the basis of plea of guilt. There are no acquittals.

Most of the verdicts refer to cases submitted to the court within the same year 2020. However, 2 cases are registered in 2018 and 1 case in 2019. This indicated that the Section for organized crime and corruption in the Basic Criminal court works effectively and in a timely manner for the cases connected to smuggling migrants. This is a crucial aspect bearing in mind the nature of the crime and the dynamic and ongoing changes in the field. It could be noted that the verdicts for the older cases refer to more complex aspects of the crime connected to other crimes.

Most of the cases started with the Police procedure within the same year (less than 12 months) until a final verdict was brought. 4 cases refer to crimes that happened in 2016 but the smugglers were convicted in 2020.

The verdicts apply to offenses involving a total of at least 268 victims of which at least 37 were children. The Majority of migrants are from Syria, Pakistan, Afghanistan and Bangladesh.

The highest prison sentence is 4 years and 6 months in a case where there were children involved, even though the prescribed sentence in the Criminal Code when the victim is a child is at least 8 years, not considering the mitigating circumstances in the case. In this case the Court states the following: "Important facts regarding the time, place and way of committing the crime... " ..after the conducted control of the vehicle, whose driver escaped, 57 migrants from Afghanistan and Iraq were found in the freight part of a truck vehicle. At the same time in the vehicle a cigarette and plastic bottle were found and fingerprints were taken..."²⁴ Mitigating circumstance is also the fact that the defendant has been convicted several times before. The lowest prison sentence is 1 year. There isn't any higher sentence than 4 years and 6 months although in the case 87/20 the crime is qualified under article 418-b p. 3 in connection with article 22 of the Criminal Code, which states that: "If during the commission of the crimes of smuggling, the life or health of a migrant is threatened, or the migrant is subject to particularly humiliating conduct or brutality, or the migrant is prevented from exercising the rights determined by international law, the offender shall be sentenced to imprisonment of at least five years." In this particular case the smuggler accepted 13 migrants from Bangladesh and Pakistan in a car. The vehicle was traveling on a regional road and on the highway "Friendship". After a police car detected the smuggler's vehicle, he continued to drive with high speed in order to run away from the police. But the car flew out of the road, endangering the life of the migrants in the car. Two migrants from Bangladesh were physically harmed and one migrant passed out. The smuggler then ran away.

In 4 verdicts although the smugglers plead guilty, the Court convicted them with prison. In the Verdict III KOK.29/20, the defendant was prisoned for 1 year, while in the other 3 verdicts the defendants were prisoned for 4 years. In 2 cases III KOK.84/20 and III KOK.144/20 child migrants were victimized and in the case 87/20 the crime is qualified under article 418-b p. 3 in connection with article 22 of the Criminal Code.

Verdicts from the Court of Appeals (length of proceedings, qualification of criminal offence)

No. of Verdict	Date of Verdict	Date of Initial Verdict	No. of convicted smugglers	Gender of the smuggler	Type of Verdict	Type of Sentence	Prison Time
KOKЖ.45/20	3/9/2020	12/12/2019	1	M	Verdict confirmed	Prison	4 years and 6 months
KOKЖ.25/20	14/5/2020	25/2/2020	1	M	Verdict Modified	Prison	4 years and 8 months
KOKЖ.9/20	10/2/2020	30/12/2019	1	M	Verdict Confirmed	Prison	1 year and 4 months
KOKЖ.6/20	19/2/2020	6/12/2019	1	M	Verdict Modified	Prison	1 year

24 Verdict of the Basic Criminal Court VI KOK 26/20 from 31 March 2020, p. 6.

No. of Verdict	Date of Verdict	Date of Initial Verdict	No. of convicted smugglers	Gender of the smuggler	Type of Verdict	Type of Sentence	Prison Time
KOKЖ.59/19	10/2/2020	14/10/2019	2	M	Retrial	Prison	9 years and 6 months
KOKЖ.60/19	16/3/2020	3/10/2019	1	M	Verdict Modified	Prison	6 years
KOKЖ.15/20	2/3/2020	3/2/2020	1	M	Verdict Confirmed	Prison	4 years
KOKЖ.55/20	2/11/2020	3/2/2020	1	M	Verdict Confirmed	Prison	4 years
KOKЖ.29/20	29/4/2020	20/3/2020	1	M	Verdict Confirmed	Prison	2 years
KOKЖ.44/20	28/9/2020	3/2/2020	1	M	Verdict Confirmed	Prison	6 years
KOKЖ.82/20	28/10/2020	1/10/2020	1	M	Verdict Confirmed	Prison	1 year

Out of 28 Verdicts of the Court of Appeals regarding smuggling cases only 11 (10 verdicts and 1 Court decision) were available online. Although the Court initially sent a list of the verdicts that are anonymized, not all of them are published and couldn't be found. Only 3 verdicts of the Court of Appeals modify the initial verdict of the Basic Criminal court, while all of the other verdicts confirmed the initial verdict. Most of the cases refer to 1 convicted smuggler, while only in 1 case 2 smugglers are comprised.

More than 60% of the cases are finished within less than 3 months. The fastest resolved case is 28 days after the verdict from the Basic Criminal Court has been brought. The longest lasting appeal procedure ended after 9 months.

In all of the cases the smugglers were sentenced to prison. Longer prison time is prescribed in the analyzed verdicts by the Court of Appeals, compared to the analyzed verdicts from the Basic Criminal Court. The highest prison sentence is 9 years and 6 months and the case has been sent to retrial. The second highest prison sentence is 6 years and the initial verdict was modified by the Court of Appeals. In the Court Decision KOKЖ.59/19 from 10 February 2020, the Court states: "The first instance court decided incorrectly when the statements from the preliminary procedure were read, accepting the Prosecutor's request for the migrant statements to be read, taking into account that according to the files in the case, it couldn't be surely determined that in this particular case the law conditions under article 388 paragraph 5 from the Law on Criminal Procedure have been met, so the witness statements should be read..."²⁵ This is really important indicator to the Court non-unified practice, since the witness statements from the migrants given in the preliminary procedure were accepted in other cases. "... there is evidence in the case that proves that the migrants are unavailable, therefore the court can read their statements, and so this court accepted the defendant's appeals..."²⁶ The second court statement is contradictory to the first, but still the court decided to send the case to retrial. In the same decision it is concluded that in the files of the case there is no evidence that the migrants are unavailable. Since the case is involving 6 children victims who are considered as an important aggravating circumstance together with the manner the smuggling has been conducted, the court is stating the following: "...the identity and age of the migrants couldn't be surely determined which refers to the fact that the factual situation is not fully determined."²⁷

Perpetrators of crimes

In terms of gender, age and origin of the smugglers, it can be concluded that most of them are adult male persons, while female persons can also be assistants in committing the crime. Organized crime groups operating on the territory of North Macedonia are part of larger international criminal networks, organized by people from the Middle East.

25 Decision of the Court of Appeals KOKЖ 59/19 from 10.02.2020, p. 5

26 Ibid. p.6

27 Ibid. p.5

The smugglers detected on the territory of North Macedonia are mostly citizens of North Macedonia, and only a small number of them are foreign citizens, most often, citizens of neighbouring countries such as Serbia and Kosovo. According to the place of residence, the smugglers are from: central, northern and southern part of the country.²⁸

Imposed sanctions, Mitigating and Aggravating circumstances

Based on the analyzed Court decisions it can be easily noted that the sentences are closer to the prescribed minimum rather than the maximum in the Criminal Code. The Courts are usually referring to the phrase: "In determining the type, i.e. the amount of the sentence, the court assessed all the circumstances provided in Article 39 of the Criminal Code, both aggravating and mitigating. Namely, as aggravating, the court assessed primarily the type and character of the crime, the degree of criminal responsibility, the motives from which the crime was committed, the object of protection, i.e. the intensity of the threat and the violation of the protective good, etc."

The fact whether the defendant has been convicted before plays really important role, especially for the type of the sentence. For example, all of the already convicted defendants were sentenced to prison, while the majority of the non-convicted defendants got a conditional sentence. Still it remains unclear why all of the defendants, even the smugglers who smuggled children and who were convicted before, were sentenced to prison but in most of the cases not longer than 4 years based on the data from the verdicts of the Basic Criminal Court. Compared to the analyzed verdicts from the Basic Criminal Court longer prison time is prescribed in the analyzed verdicts by the Court of Appeals.

As mitigating circumstances, the court assesses the age of the defendant, whether he has a family, the circumstance of committing the crime, whether he has property etc. Interesting fact is that some mitigating circumstances could play role of an aggravating one too. A mitigating circumstance could be that the defendant does or doesn't have a family, or that he is older or a young person.

Even though closer to the minimum prescribed sentence, it is really important that, in all of the cases where children appear as victims, the defendants were sentenced to prison. Defendants who were involved in smuggling of bigger group of migrants were sentenced to prison. The prison time is depending on the type and way the crime was committed. For example in the case VI KOK. 87/20 the Court has taken into consideration the fact that the life of the migrants was put in danger while committing the crime, but still didn't ordered higher sentence as prescribed in the law.

Modus Operandi and Usual Route in the Country

The migrants are usually traveling with another driver through Greece and then cross the border by foot through unmarked areas usually dangerous for their lives. In the meantime, another driver is waiting them nearby the south border of North Macedonia and transports them nearby the north border. The most used smuggling rout is the corridor 10: Gevgelija-Veles-Skopje. Still, in 2019 and 2020 Strumica, Shtip and Sveti Nikole were used as road routes for transporting migrants.²⁹

According to the data in the verdicts it could be concluded that smugglers use vehicles to transport the migrants, however usually tell them to cross the border by foot. In all of the cases the smugglers were caught either within the vehicle or because of the evidence found in the vehicle such as: fingerprints, swab samples in the car and on the objects left in the car such as drink cans, cigarettes etc. The smugglers use different kinds of vehicles, still cars are most commonly used, together with trucks. When the smugglers are using trucks a larger number of migrants are accommodated and transferred to the next point. Still in one case 27 migrants were placed in 2 cars. Usually the vehicles are not registered and are then seized in the criminal procedure. Also, telephones used for the crime are seized with a court order. The smugglers are usually caught by the police and they try to run away. The police manage to catch some of them, while the others have been recognized or described by the migrants themselves.

28 Decision for public information of MoI, 16.1.2-1128/5 from 27.10.2020 [https://mvr.gov.mk/Upload/Editor/Upload/%D0%A1%D1%82%D0%B0%D1%82%D0%B8%D1%81%D1%82%D0%B8%D1%87%D0%BA%D0%B8%20%D0%BF%D0%BE%D0%B4%D0%B0%D1%82%D0%BE%D1%86%D0%B8%20%D0%B7%D0%B0%20%20-%D0%B8%D0%BB%D0%B5%D0%B3%D0%B0%D0%BB%D0%BD%D0%B8%20%D0%BC%D0%B8%D0%B3%D1%80%D0%BD%D1%82%D0%B8%20%D0%B7%D0%B0%20%D0%BF%D0%B5%D1%80%D0%B8%D0%BE%D0%B4%20%D0%BE%D0%B4%202017%20%D0%B4%D0%BE%20%D1%98%D0%B0%D0%BD%D1%83%D0%B0%D1%80%D0%B8-%D1%81%D0%B5%D0%BF%D1%82%D0%B5%D0%BC%D0%B2%D1%80%D0%B8%202020%20\(%D0%B-D0%B4%D0%B3%D0%BE%D0%B2%D0%BE%D1%80%D0%B5%D0%BD%D0%BE%20%D0%B7%D0%B0%2013%20%D0%B4%D0%B5%D0%BD%D0%B0\).pdf](https://mvr.gov.mk/Upload/Editor/Upload/%D0%A1%D1%82%D0%B0%D1%82%D0%B8%D1%81%D1%82%D0%B8%D1%87%D0%BA%D0%B8%20%D0%BF%D0%BE%D0%B4%D0%B0%D1%82%D0%BE%D1%86%D0%B8%20%D0%B7%D0%B0%20%20-%D0%B8%D0%BB%D0%B5%D0%B3%D0%B0%D0%BB%D0%BD%D0%B8%20%D0%BC%D0%B8%D0%B3%D1%80%D0%BD%D1%82%D0%B8%20%D0%B7%D0%B0%20%D0%BF%D0%B5%D1%80%D0%B8%D0%BE%D0%B4%20%D0%BE%D0%B4%202017%20%D0%B4%D0%BE%20%D1%98%D0%B0%D0%BD%D1%83%D0%B0%D1%80%D0%B8-%D1%81%D0%B5%D0%BF%D1%82%D0%B5%D0%BC%D0%B2%D1%80%D0%B8%202020%20(%D0%B-D0%B4%D0%B3%D0%BE%D0%B2%D0%BE%D1%80%D0%B5%D0%BD%D0%BE%20%D0%B7%D0%B0%2013%20%D0%B4%D0%B5%D0%BD%D0%B0).pdf)

29 Ibid.

In the Verdict III KOK.60/18 the Basic Criminal Court states the following: *“The defendants A.B., V.S. and N.A. organized and coordinated the work of the group for reception and transportation of the migrants, and therefore contacted other unknown persons both in North Macedonia and in other foreign countries, for coordinated illegal entry and exiting of the migrants in and from North Macedonia, defined the sum and payment from the migrants, and they divided the cash among themselves, the members of the group and persons that they hired as immediate executors of the reception and transportation of the migrants, gave directions to the members of the group I.Dj., S.N.E.E.M.A, K.M., B.M., whose task was to find migrants, to contact them in English, the vehicles and the immediate executors of future reception and transportation, and the defendant I.Dj. even had a special role to help the work of the group, in the way that as a police officer in Mol in NM Bureau of Public Security SVR Veles tracked the movement of the police patrols, collected data of reported cases of reception and transportation of migrants, the perpetrators and the resources used for committing the crimes and gave the information to the organizer and the other members of the groups in order to protect and conceal their action, as a result of the act of the group.”* This part of the verdict especially highlights the nature of smuggling as organized crime. In the particular verdict it is mentioned the role of one of the group’s members who is also a police officer. In the Verdict KOKЖ.59/19 from the Court of Appeals it is stated the following: *“...based on a previous agreement, they accepted and transferred 18 illegal migrants from which 6 were children, in order to transport them to Kumanovo, to the border crossing with R. Serbia, so the defendant J.P., which procedure is separated, on 15.07.2018 around 22 o’clock nearby I. accepted the illegal migrants and led them as a group by foot around 2 hours to the village S., accommodated them under a bridge so they won’t be noticed by the police, and on 16.07.2018 around noon put the illegal migrants in PMV...that is determined that are property of Z.Z. from S. and he already reported the vehicle as lost, the PMV was driven by the suspect K.M. who accepted the illegal migrants and started the transport to the border with R. Serbia, during the transport the suspect K.M. had headphones connected to his phone through which he had a telephone connection with the defendant J.P., whose procedure is separated as a codriver and K.T. as a driver who drove before the vehicle that the migrants were put in a role of “Cleaners” and warned the defendant for any Police Patrols. The vehicle with the migrants stopped after 1 hour driving and after the night fall started to drive again, after 2 hours of driving around 23.40 o’clock in M.V. Iskrin Bridge the defendant K.M. stopped the vehicle that he transported the migrants with, escaped the vehicle and ran away in unknown direction.”* In the verdict the term “Cleaners” is used as a slang used among the smugglers. Also, the type of connection is specified and described that the smuggler of the irregular migrants is in ongoing connection with the “Cleaners” while transporting the migrants in order to be sure that there are no police patrols.

According to the verdict III KOK. 86/18, the defendant stated that: *“He reported to the police suspicious movements of foreign persons and therefore he cooperated and sent information to the Mol, that was confirmed by the witness K.Z. Deputy Commander of the Police Station, as by the witnesses B.I. and D.D. police officers, who testified that they met with the defendant in that period in his house.”* With this statement the preparatory activities could be noticed. The defendant who reported similar movements of migrants before is now a suspect and a defendant in a smuggling case. Also, the involvement of the authorities in this organized crime is once again pointed out.

The lawyer of the defendant had an interesting point of view presented in the verdict VI KOK. 26/20. The attorney asked the question *“... why instead of the state institutions who protect the border of the RNM, the persons who maybe illegally transport persons get punished, but in the same time they do not have the authority to ask for personal identification, and they shouldn’t check if someone is a minor or if the minor is travelling with its parents, in that direction the European Convention of Human Rights states that if the minor is travelling with its parent, it doesn’t have a status of a migrant, because the obligation of care for the minor belongs to its parent and he/she is the one who decides for its destiny i.e. his rights and responsibilities.”* However, the court didn’t accept these allegations and noted the following: *“This crime falls in the corpus of organized crimes with transnational character and therefore a more severe form is envisaged as in this case where among the migrants there were children, taking into account that the migrants were transported in freight motor vehicles, hidden in inadequate space where many persons are accommodated and their health and lives are really endangered, with this humiliating and inhuman behaviour.”*

Position of Smuggled Migrants

Although detaining migrants because of their presence as witnesses in criminal proceedings is arbitrary and illegal, this remains to be the main reason for immigration detention in North Macedonia. After the police catches the smugglers or finds and reports a group of irregular migrants, they detain the group or more usually some of the smuggled migrants in order for them to testify. According to the statements given by migrants during the interviews conducted by MYLA lawyers, usually the police detains the migrants who speak English or can somehow communicate and tell what happened. The other part of the group is immediately pushed back to Greece, or is detained too. According to the positive legal provisions and norms this is not a ground for detention. Under the applicable legal framework, a foreigner can be temporary detained by the Mol for maximum 24 hours for the purposes of forced removal. The foreigner shall be temporary detained in the Reception Center until the termination of the reasons which have

prevented his/her removal from the territory of the Republic of Macedonia, but not longer than six months. As an exception to paragraph (1) of this Article, the detention may be extended for additional 12 months at the longest, provided that the foreigner:

- refuses to give personal or other data and documents that are necessary for his/her removal or has given false data,
- hinders or prolongs the removal in any other manner, or
- if it is justifiably expected the travel or any other documents that are necessary for removal and that are requested from competent bodies of other countries to be delivered.

However, in most of the cases smuggled migrants who are witnesses in the smuggling cases are not issued a decision or are issued a decision for accommodation in the RC for Foreigners without further explanation.

The number of detained persons in 2020 (352) is higher compared to 2019 (319). The number of detained children in 2020 (76) has more than doubled, compared to 2019 (30).³⁰ In 2020, the migrants were detained at two locations – in the RC for Foreigners and in TC Vinojug. TC Vinojug was used as quarantine accommodation center during 2020. The detainees in TC Vinojug did not have proper access to legal aid and consultation. Most of the detainees were returned to Greece outside the formal deportation procedure after testifying as witnesses against the smugglers.³¹ The detainees in TC Vinojug were not issued a detention decision and the police terminated the registration process for migrants, which was a regular practice before the pandemic.

The detainees did not understand the reason and the length of their detention, taking into account the fact that they were kept in quarantine for 25 days because of the coronavirus pandemic before being brought out to testify. Still, during the quarantine they were issued a decision for quarantine. Also, because of the lack of access to legal aid during the quarantine, they addressed their complaints directly to the Ombudsman of RNM. After the reaction of MYLA and the Ombudsman to the authorities the quarantine was reduced to 14 days. In 2020, the immigration detention was still treated as a part of an administrative procedure and it is not reviewed by a judge after 12 hours.³²

In 2020 the number of detained children doubled. Also in 2020, because of Covid-19, the detention conditions changed and varied based on the current Governmental Decisions and policies. The detainees were accommodated in the TC Vinojug. The guardians of the children detained in TC Vinojug, unlike those detained in the RC for Foreigners, were not always given access to the children. During their detention in TC Vinojug, the children were not involved in education, nor did they have access to educational and interactive programs. The detention conditions for children in TC Vinojug and the RC for Foreigners do not meet relevant domestic and international legislation and standards. Some of the children who were kept in the RC for foreigners and TC Vinojug were placed in a room together with other adults. Most of the detainees in TC Vinojug, including children and women, did not have access to fresh air outside the center, except during the breaks for going to the toilet, when a police officer accompanied them. Considering the fact that the TC is playing a role of a refugee camp, the detained persons didn't have the right of walk and fresh air even in the camp, outside of their containers.³³

The Law on compensation to victims of crimes is still not brought, so the victims of smuggling don't even have chance to start this kind of procedures yet. Still even when the Law will be brought, it is questionable if the smuggled migrants are going to be classified as victims and what will be the determining factor to establish the status of a victim.

30 Ibid p.3

31 Ibid. p. 1

32 MYLA Immigration Detention in North Macedonia through numbers, January – September 2019 p.1, <https://myla.org.mk/wp-content/uploads/2019/12/Immigration-Detention-Mid-year-Report-2019.pdf>

33 MYLA Immigration Detention in North Macedonia through numbers, January – September 2020 p.4 <https://myla.org.mk/wp-content/uploads/2020/12/ENG-Immigration-detention-in-North-Macedonia-through-numbers-January-September-2020-1.pdf>

Conclusions

There was an increase of 17,3% of smuggling of irregular migrants as a detected crime. 95 cases including 91 offenders and 2.732 smuggled irregular migrants were reported. 91 offenders were prosecuted for 65 criminal cases of smuggling migrants.

The Basic Criminal Court and the Court of Appeals effectively and in a timely manner decided for the cases connected to smuggling migrants. The sentences are closer to the prescribed minimum sanction or under the minimum sanction prescribed in the relevant article in the material law, because of the aggravating circumstances. This could mean that the relevant circumstances and the danger is not well interpreted. Bigger sentences would discourage smugglers to act and do the crime. But even more important to have bigger sentences and better dealing with the corruption and involvement of police and other officials in the smuggling networks.

The most used smuggling rout is the corridor 10: Gevgelija-Veles-Skopje. Still, in 2019 and 2020 Strumica, Shtip and Sveti Nikole were used as road routes for transporting migrants. Police officers are most often involved in the organized crime. They usually help the smugglers by giving them the necessary information and cleaning the road before the smuggler's vehicle passes. The border closures along the Balkan route has increased the risks for refugees in becoming victims of smuggling of migrants and trafficking of human beings.

In 2020, 3 organized groups involving 22 criminal offenders were suppressed. For 19 persons criminal charges were pressed under article 418-v of the Criminal Code for "organizing a group and encouraging smuggling of migrants".

The numerous deportations and deportations contrary to lawful procedure additionally influence irregular migrants, turning them to organized criminal groups dealing in the smuggling of migrants. Finally, treatment of victims of smuggling of migrants is not exercised in accordance with the law and the needs of the persons – these persons are detained in the Reception Center for Foreigners for the primary purpose of ensuring their participation as witnesses in criminal proceedings, whereby they are not provided with effective access to legal aid and legal remedy.

Recommendations

Improvement of legal framework

- Smuggled migrants should be treated according to Article 53 and Article 54 of the Law on Criminal Procedure, and, if necessary an amendment to the Law on Criminal Procedure for the purpose of treating these persons as victims of a criminal act should be initiated;
- Amendments of the Criminal Code are necessary. More clearly defined smuggling of migrants crime should exist in the Criminal code which will adequately transpose the definition of Protocol against the Smuggling of Migrants by Land, Sea and Air.

Improvement of institutional capacity

- There is a necessity to continue strengthening and developing the capacities for dealing with smuggling of migrants, including the adjustment of capacities and the infrastructure, which was built at the peak of the refugee crisis, to adapt it to the newly created conditions;
- Detention for immigration reasons should be applied exclusively in situations determined by law, while each detained foreigner should be give an explanation of the reasons for detention in a language that he/she understands, and he/she should be provided with an access to legal aid and legal remedy. No child must be detained and restricted in his/her freedom of movement;
- There is a need to increase the capacity to combat smuggling and to provide appropriate training in the treatment of smuggled migrants by the police. It is especially important to address the issue of corruption and the involvement of civil servants and the police in organized crime.

Improvement of current court practice

- Case law in smuggling cases should be standardized. Convictions and prison time should be depending on standardizes rules but also considering the manner the crime is committed and if vulnerable persons were victimized. The type of sentence and the prison time should be in direct connection with these mitigation circumstances.

- Considering that most of the decisions and sentences are closer to the prescribed minimum sanction or under the minimum sanction prescribed in the relevant article in the material law because of the aggravating circumstances, the relevant courts might consider higher sentences since great number of smugglers are recommitting the crime.
- The anonymization of the court decisions should be done correctly and all of the decisions should be published on the court's web site.
- The Court decisions should include wider and better explanation of the type of sentence.
- There should be a unified approach on weather witness statements by the migrants from the investigation procedure before the Prosecutor will be accepted in the court procedure.

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