

## **LEGAL ASPECT OF MIGRANT SMUGGLING IN REPUBLIC OF NORTH MACEDONIA**

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### **Abstract**

In this article I will try to give an overview of the way in which the criminal legislation in the Republic of Macedonia criminalizes the acts of human trafficking and smuggling of emigrants.

In the last few years, worldwide, even in the Republic of North Macedonia, the topic is relevant with migrants, who are increasingly migrating from different countries in the world, mostly due to the wars that are fought in those areas or from an economic point of view. In the Republic of North Macedonia, the efforts to follow and implement the international norms in this area are continuous, which has ratified the most important multilateral agreements in the fight against crime.

The purpose of the paper is to investigate whether in practice the distinction between trafficking in human beings and smuggling of migrants is effective and easy to establish and manage.

The contribution of the research will be prevention and fight against migrant smuggling, as well as promoting cooperation between the member states for that purpose.

*Keywords:* Migrant, smuggling, criminal, legal, legislation.

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### **1. Introduction**

According to the Protocol Against the Smuggling of Migrants by Land, Sea and Air (2000), which supplements the United Nations Convention against Transnational Organ - ized Crime, “Smuggling of migrants” means 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 of which the person is not a national or a permanent resident. Human rights law prohibits discrimination based on race and gender; it requires equal or at least certain key rights for foreigners, such as the prohibition of arbitrary detention, forced labour, debt slavery, forced marriage and sexual exploitation; and it advocates for freedom of movement and the right to leave one’s own country and return to it.

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

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

In the period when the European Union applied the principle of “open borders”, most of the refugees and migrants used the country’s territory for transiting to western and northern Europe. For these reasons, there was a need, in addition to the need for providing humanitarian assistance, for introducing mechanisms and procedures that would provide efficient and safe transit =. In coordination with states along the so-called “Balkan Route”, procedures that ensured a proper registration and facilitated transit of refugees and migrants were introduced. (Report, Macedonian Young Lawyers Association, 2019)

The last decade has brought a migrant crisis in which, although migrants aspired to enter one of the countries of the European Union, it did not bypass the non-EU countries that are on European ground. Specifically, our country, having in mind its location, found itself as part of the most used route - the Western Balkans route, for transit to the desired destination. Problems, from a criminal legal point of view, intensified especially after the closure of the route in March 2016, which contributed to the intensification of attempts for illegal entry, even at the cost of involvement in committing crimes. The route remained attractive, unlike alternatives that are not passable like it, and although closed, it was used illegally. Thus, the crimes that are done from the migrants and especially towards the migrants, has made them victims of several serious violations of human rights and freedoms. Especially the acts of trafficking in human beings and smuggling of migrants, as particularly severe crimes that are problematic to detect, recognize and suppress. Permanent analysis of the matter, to date, is especially necessary to prevent similar practices in the future. (Ivanova Elena, Kosevaliska Olga, Nanev Lazar, 2020).

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

## **2. Legal framework**

A broad legal framework for combating trafficking in human beings has been established, and it has been reinforced and harmonized by means of European legislation and international law and international standards.

The Constitution of the Republic of Macedonia (Art. 29) guarantees that foreigners in the Republic of North Macedonia enjoy freedoms and rights guaranteed by the Constitution, under conditions regulated by law and international agreements. The basic rights and freedoms of the legal migrants, which have been outlined in the Constitution of the Republic of North Macedonia, have been operationalized in several laws: the right of foreigners to enter and stay in the Republic of North Macedonia, as well as their rights and obligations, are regulated with the Law on Foreigners.<sup>11</sup> The following bylaws have been enacted to implement the Law on Foreigners:

1. Rulebook on foreigners.
2. Rulebook on travel and other documents for foreigners.
3. House Rules of the Reception Centre for Foreigners.
4. Rulebook on the means of issuing visas for foreigners, extending and shortening their validity, revocation and cancellation of visas, and the visa form and record keeping.

Law on Employment and Work of Foreigners - regulates the conditions under which foreigners may be employed and work in Macedonia.

Law on Primary Education – proclaims the basic principle that foreign children residing in the Republic of North Macedonia have the right to primary education under equal conditions as children who are citizens of the Republic of Macedonia.

Law on High Education – outlines that foreign citizens may receive high education and have the right to seek validation or equivalence of certificates obtained abroad.

Law on Higher Education – stipulates that foreign nationals are admitted to higher education studies under the same conditions as nationals of the Republic of North Macedonia. Foreign nationals may be restricted or denied entry only to studies relating to military or police education or studies that are of interest to national security.

Law on Volunteering – regulates volunteering, the conditions and manner of performing volunteering, the rights and obligations of the volunteers, and record-keeping of volunteer work. According to this law, a volunteer can be a domestic or foreign person.

Law on Health Care - guarantees basic health care to foreign nationals employed in RNM, foreigners who are receiving education or vocational training in RNM, who are in the service of international organizations, foreign consulates or other representative offices on the territory of RNM, or who are in personal service to foreign citizens who enjoy diplomatic immunity.

Health Insurance Law – outlines the health insurance of citizens and foreigners, the rights and obligations of the health insurance, as well as the manner of implementation of health insurance. This law regulates the rights and conditions for health insurance for the same categories of aliens referred to in the Law on Health Care.

Criminal Code – incriminates the acts Trafficking in human beings (Art. 418-a), Smuggling of migrants (Art. 418-b), Organization of a group and urging for commitment of the crimes trafficking in human beings and smuggling of migrants (Art. 418-c) and Trafficking of juveniles (Art. 418-d).

With the law for amending the Criminal code from March 30.2004 (Official gazette No. 19/04), the article 418 b was amended. With the last amendment of the paragraph 5, which is relevant for the official who is committing the crime during committing his official duty, the article 418 – b, smuggling of migrants reads:

Article 418-b

- (1). The one who by means of force or by serious threat to attack the live or body, by abduction, fraud, for cupidity, by means of abuse of his/her official position or by taking advantage of another person's inability illegally transfers migrants across the state border, as well as the one who produces, provides or possesses a false travel document for that purpose shall be sentenced to imprisonment for at least four years.
- (2). The one who recruits, transports, transfers, buys, sells, harbours or accepts migrants shall be sentenced to imprisonment for one to five years.
- (3). If during the perpetration of the acts of paragraphs 1 and 2 a migrants live or health is endangered, or if the migrant is treated in a particularly degrading or cruel manner, or if he/she is prevented from exercising the rights he/she is entitled to

according to international law, the perpetrator shall be sentenced to imprisonment for at least eight years.

- (4). If the act of paragraphs 1 and 2 is perpetrated against a juvenile, the perpetrator shall be sentenced to imprisonment for at least eight years.
- (5). If the act of paragraphs 1, 2, 3 and 4 of this Article is perpetrated by an official while carrying out his/her official duty, he/she shall be sentenced to imprisonment for at least ten years.
- (6). The articles and means of transportation used for the perpetration of the act shall be seized.

The basic form of the act of smuggling of migrants is committed by the one who by means of force or by serious threat to attack the live or body, by abduction, fraud, for cupidity, by means of abuse of his/her official position or by taking advantage of another person's inability illegally transfers migrants across the state border, as well as the one who produces, provides or possesses a false travel document for that purpose. In previous court practice the perpetrator of the criminal act of smuggling of migrants was a person who for cupidity illegally transferred migrants across the state border. In the period from 2005 to the August 2011, during the monitoring of the cases of Trafficking in human beings and illegal migration in Macedonia, the Smuggling of migrants is most frequent.

In some indictments the criminal acts were qualified as Smuggling of migrants, and in the other as Organizing a group and encouraging committing the Smuggling of migrants. In these criminal procedures, during the last years, the "Special investigative measures" found place, and 3 big, organized groups were identified and prosecuted.

The Law on Foreigners incriminates two additional criminal acts related to migration, i.e.:

- Assisting a foreigner in illegal entry and transit.
- Assisting a foreigner in illegal stay.

Changes to the Law on Asylum and Temporary Protection were enacted on 18 June 2015. These enabled a distinction to be made between the intent to seek asylum and the submission of the asylum request itself. Additionally, they enabled the migrants' legal transit through the country and the possibility to express intent to apply for recognition of the right to asylum. The main aims of these changes were:

- improving the conditions for medical and humanitarian assistance for the migrants.
- increasing the safety of migrants (reducing the number of crimes).
- reducing the number of road and railroad accidents with migrant victims.
- reducing the number of cases involving smuggling of migrants, as well as
- more efficient registering of the migrants who enter the Republic of North Macedonia.

Standard Operating Procedures for dealing with unaccompanied foreign children (SOP for UACF) have been enacted, as well as Standard Operating Procedures for processing vulnerable categories of foreign nationals (SOP for VCFN).

### **3. Smugglers' mode of operation in North Macedonia**

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

and mobile applications that determine the GPS coordinates. On receiving a notification warning about the police patrols, the vehicles that transport the migrants change or adapt their direction of movement. There is suspicion that some of the criminal groups cooperate with certain police officers from whom they receive up-to date information about police patrols, controls, and ambushes. (Slobodam Cvejik, Sande Kitanov 2017).

#### 4. Conclusion

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

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

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