

# Detention of Migrants under Migration Regulations - Serbia, Montenegro, and North Macedonia

**-Regional Policy Brief-**

*Jelena Unijat*



# DETENTION OF MIGRANTS UNDER MIGRATION REGULATIONS – SERBIA, MONTENEGRO, AND NORTH MACEDONIA

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*Editor: Jelena Unijat*

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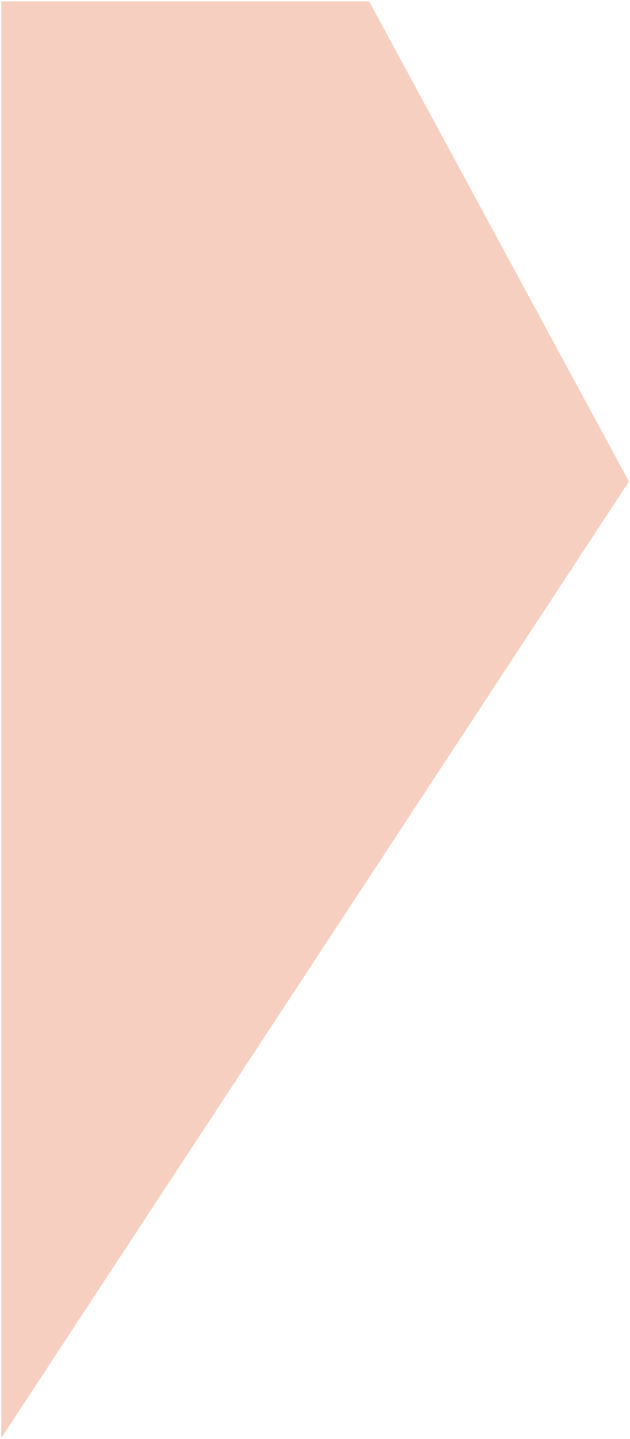
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# Comparative overview of the situation of detention of migrants in the Republic of Serbia, Montenegro, and North Macedonia

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*Author: Jelena Unijat*





# 1. Comparative overview of the situation of detention of migrants in the Republic of Serbia, Montenegro, and North Macedonia

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## Introduction

Although the so-called “Balkan route” for the movement of refugees and migrants has been formally closed since 2016, the countries of the Western Balkans are still transit countries. Despite significant restrictions and limitations on movement introduced as a result of the COVID-19 pandemic, last year 41,257 migrants<sup>1</sup> entered North Macedonia, 24,250 migrants<sup>2</sup> entered the Republic of Serbia, and 3,149 new entries<sup>3</sup> were registered in Montenegro. Although they generally have freedom of movement through these countries and are mostly accommodated in open centres, for certain reasons prescribed by the laws governing the status of foreigners and the laws governing the right to asylum and international protection, migrants may be deprived of their liberty and placed in a reception centre for foreigners. During 2020, a total of 119 foreigners were accommodated in the Gazi Baba Reception Centre for Foreigners in North Macedonia<sup>4</sup>, 200 foreigners<sup>5</sup> were accommodated in the Reception Centre for Foreigners in Padinska Skela in

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1 UN: North Macedonia Annual Results Report 2020, May 2021, available at: [https://northmacedonia.un.org/sites/default/files/2021-06/MK-UNCT-2020-ARR\\_ENG\\_Final\\_1.pdf](https://northmacedonia.un.org/sites/default/files/2021-06/MK-UNCT-2020-ARR_ENG_Final_1.pdf)

2 UNHCR Serbia Monthly Update, December 2020, available at: <https://reliefweb.int/report/serbia/unhcr-serbia-monthly-update-december-2020>.

3 Response of the Border Police Sector, Police Department of Montenegro, submitted to Civic Alliance on 17 March 2021.

4 Response of the Ministry of the Interior of North Macedonia based on free access to information of public importance.

5 Report on the implementation of the Strategy for Combating Irregular Migration for the period 2018-2020, June 2021, page 24, available at: <http://www.mup.rs/wps/wcm/connect/cf979b30-12ae-42dd-89dc-4d1734ec6025/lregularne++izve%C5%A1taj+18-20-cir.pdf?MOD=AJPERES&CVID=nEp4Se->.

Serbia, while 418 foreigners<sup>6</sup> were accommodated in the Reception Centre for Foreigners in Spuz in Montenegro. In addition to the accommodation of migrants in the reception centre for foreigners, in all three countries, certain short term detentions are envisaged under migration regulations.

The aim of this paper is to summarise a comparative overview of the state of accommodation of migrants in reception centres for foreigners and other forms of detention of migrants based on migration regulations in Serbia, Montenegro and North Macedonia, with the intention to highlight good practices and identify practices that could be improved. After the regional presentation, in separate papers written by authors from the region, a detailed overview of the situation by countries with recommendations follows.

## Accommodation of migrants in reception centres for foreigners

In each of the three countries, there is currently one reception centre for foreigners in the jurisdiction of the Ministry of the Interior, which is under strict police supervision, and which cannot be left arbitrarily. They are closed type institutions within the circle of prisons in Serbia and Montenegro. In North Macedonia, the reception centre is an adapted preschool institution, and the construction of a new purpose-built building is currently underway, which will be used as a reception centre for foreigners.<sup>7</sup> In Serbia, there are also plans to set up two more reception centres in the border areas - Plandiste (near the border with Romania) and Dimitrovgrad (near the border with Bulgaria).<sup>8</sup>

The reasons and conditions for placing persons in a reception centre for foreigners are similar in all three countries and are regulated by national laws on foreigners<sup>9</sup> and laws on asylum and temporary protection.<sup>10</sup> In accordance with the principle of proportionality, it is necessary to consider the implementation of

6 Data obtained from the Ministry of the Interior of Montenegro during the online discussion forum held on 16 March 2021.

7 Listed in the Strategic Plan of the Ministry of the Interior of North Macedonia 2021-2023, available at: [https://mvr.gov.mk/Upload/Editor\\_Upload//210316%20SP%20na%20MVR%202021-2023.pdf](https://mvr.gov.mk/Upload/Editor_Upload//210316%20SP%20na%20MVR%202021-2023.pdf).

8 Report on the implementation of the revised Action Plan for Chapter 24, point 1.3.1, available on the website of the Ministry of the Interior: [http://mup.gov.rs/wps/wcm/connect/6158b60e-d734-4b25-85f42012a3ee2fe2/Final\\_SRB-I+izvestaj.pdf?MOD=AJPERES&CVID=nzgAW85](http://mup.gov.rs/wps/wcm/connect/6158b60e-d734-4b25-85f42012a3ee2fe2/Final_SRB-I+izvestaj.pdf?MOD=AJPERES&CVID=nzgAW85).

9 The Law on Foreigners of the Republic of Serbia ("Official Gazette of RS", No. 24/2018 and 31/2019), the Law on Foreigners of Montenegro, "Official Gazette of Montenegro", No. 012/18 and 003/19 and the Law on Foreigners of North Macedonia, "Official Gazette of the Republic of North Macedonia", No. 97/17 and 108/19.

10 The Law on Asylum and Temporary Protection of the Republic of Serbia ("Official Gazette of RS", No. 24/2018), the Law on International and Temporary Protection of Foreigners of Montenegro ("Official Gazette of Montenegro", No. 002/17 and 003/19) and the Law on International and Temporary Protection of North Macedonia, "Official Gazette of the Republic of North Macedonia", No. 64/18.

lenient measures before determining accommodation in a reception centre. The maximum duration of accommodation in a reception centre for foreigners is the shortest in Serbia and according to the Law on Foreigners can be determined for a maximum of 90 days, with the possibility of extension for another 90 days, or a maximum of 180 days, while according to the Law on Asylum and Temporary Protection three months and can be exceptionally extended for an additional three, for a total of six months. In Montenegro and North Macedonia, according to the provisions of the law on foreigners, accommodation in a reception centre can last for a maximum of six months, with the possibility of extension for another 12 months, so that the total maximum duration can be up to 18 months. Additionally, in both countries, according to the provisions of the Law on International and Temporary Protection of Foreigners, a shorter duration of this measure is envisaged - a maximum of three months with the possibility of extension for another three, which is a total of six. Additionally, in Montenegro, a foreigner in transfer<sup>11</sup> may be restricted in his / her freedom of movement for up to six weeks for the purpose of transferring to another country responsible for deciding on an application for international protection, provided there is a risk of absconding, with particular regard to expressing opposition to the transfer.<sup>12</sup>

An administrative dispute may be initiated against the decision on accommodation in a reception centre for foreigners by filing a lawsuit in an administrative court<sup>13</sup>, with the exception of the legislative solution provided by the Law on Asylum and Temporary Protection of the Republic of Serbia, according to which an appeal can be filed to the competent Higher Court. In Montenegro and North Macedonia, it is prescribed only that the procedure before the Administrative Court is urgent, without setting a specific deadline for making a court decision, while in Serbia it is specified that the Administrative Court is obliged to make a decision within 15 days. However, in practice, it happens that this deadline is not met, and the proceedings are generally conducted without holding a public hearing and bringing persons to court.

## Accommodation of minors in the reception centre for foreigners

In Serbia, minors can be accommodated in a reception centre for foreigners only together with their parents or guardians, and under no circumstances is it allowed to accommodate unaccompanied minors. If there is a need, unaccompanied minors are accommodated in social protection institutions. Unlike the situation in Serbia, in Montenegro and North Macedonia, accommodation of unaccompanied

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11 "A foreigner in transfer is a third-country national and a stateless person who is in the process of transferal to the state responsible for examining the application for international protection" Law on International and Temporary Protection of Foreigners of Montenegro, Article 10, paragraph 4.

12 Article 62 of the Law on International and Temporary Protection of Foreigners.

13 Article 78 of the Law on Asylum and Temporary Protection of the Republic of Serbia.

minors is allowed. The Law on International and Temporary Protection of Foreigners Montenegro defines that the measure of accommodation in the reception centre for foreigners for unaccompanied minors may be imposed for a maximum of 30 days.<sup>14</sup> Unaccompanied minors, who have been sentenced to accommodation in the reception centre, are accommodated separately from adults. However, according to the Law on Foreigners of Montenegro, foreign unaccompanied minors (regardless of age) and minor foreigners under the age of 14 cannot be accommodated in a reception centre, but in an appropriate institution,<sup>15</sup> while only minors over 14 years of age can be accommodated in a reception centre for foreigners accompanied by a family member or legal representative.<sup>16</sup>

In North Macedonia, foreign unaccompanied minors (both migrants and asylum seekers) may be accommodated in a reception centre for foreigners within the same timeframe as adults. As a rule, accommodation of unaccompanied minors is determined as the last possible option for the shortest possible period of time.<sup>17</sup> They are accommodated separately from adults and are immediately assigned a legal representative. During 2020, 7 of them were accommodated, while the total number of juveniles was 13.<sup>18</sup> The number of days juveniles spent in the reception centre during 2020 was on average 20, during a maximum of 55 days, which is much longer compared to 2019 when the average was 10 days, during the maximum of 19 days.<sup>19</sup>

## Rights and obligations of persons accommodated in the reception centre

Persons accommodated in a reception centre for foreigners in all three countries have certain guaranteed rights which are regulated by national laws on foreigners and elaborated in more detail in the rulebooks on house rules. All persons in the reception centre in all three countries are guaranteed the enjoyment of basic rights of persons deprived of their liberty, such as the right to contact with family, access to a lawyer and a doctor, the possibility of contacting a diplomatic mission or consular post, information on rights in a language the foreigner understands, etc. However, in practice, there are certain difficulties in their realisation.

Although in all these countries the exercise of the right to a lawyer is guaranteed, in practice it can still be thwarted, especially bearing in mind that migrants accommodated in a reception centre for foreigners do not know the language and regulations of the country, nor do they have enough information on whether

14 Article 63, paragraph 8.

15 Home-type social protection institution - Centre Ljubović.

16 Article 134, paragraphs 1 and 2.

17 Article 159, paragraph 7 of the Law on Foreigners.

18 Response of the Ministry of the Interior of North Macedonia No. 16.1.2-208 / 1 from 12 February 2021 upon request of Macedonina Young Lawyer Association (MYLA) for free access to information of public importance.

19 MYLA Immigration Detention Report Jan-Sep 2020, available at: <https://bit.ly/3zE0Pnd>.

and which lawyers are specialised for work on these cases, as well as that they generally do not have enough material resources to engage them. In all three countries, the right to free legal aid is guaranteed only to asylum seekers, but not to persons residing illegally in the territory. Additionally, when informing about the rights, there are difficulties in understanding and language barriers due to the lack of translators/interpreters.

Exercising the right to access a doctor is also quite difficult, and in none of the three countries medical examinations are not performed upon the reception or persons have medical examinations before removal, but medical examinations are performed only upon request. In terms of the availability of doctors, the situation is currently the most favourable in North Macedonia because the Red Cross medical staff is constantly present in the reception centre and provides primary health care, while for other types of health services people are referred to health institutions based on the findings and opinions of the doctor who works in the reception centre. There is no permanently hired medical staff in the reception centres in Serbia and Montenegro. In Montenegro, a doctor from the health centre of the Ministry of the Interior is hired, while in Serbia, if necessary, the emergency service is called or foreigners with expressed health problems are taken to health institutions.<sup>20</sup> In Serbia, it was previously the practice that the doctor of the Penitentiary Facility in Padinska Skela, next to the reception centre, also provided services in the reception centre for foreigners, but after the disapproval of the Ministry of Justice, this practice stopped.

During the stay in the reception centre for foreigners, it is possible to express the intention to apply for asylum in all three countries. After submitting an asylum application, the practice is to transfer these persons to open asylum centres, unless there is some legal basis for the person to continue to be accommodated in the reception centre, in accordance with the asylum law, in which case a new decision should be made about determining accommodation in the reception centre.

In addition to the rights, the persons accommodated in the reception centre also have the obligation to comply with the house rules, and in case of their violations, certain sanctions may be imposed on them. According to the house rules in force in North Macedonia, in case of violation of house rules and causing material damage, the person is obliged to compensate for that damage.<sup>21</sup> In case of violation of house rules and rules of stay in reception centres in Serbia and Montenegro, a measure of intensified (stricter) police supervision can be imposed for up to 7 days.<sup>22</sup> In Montenegro, it is planned to automatically revise the decision

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20 For more details on health care, see: NPM report on the visit to the Reception Centre for Foreigners in Padinska Skela, July 2019, No. 415–11 / 19 of 2 July 2019, p. 7–10, available at: <https://www.ombudsman.rs/attachments/article/6419/lzvestaj%201.pdf>.

21 Article 37 of the Rulebook on the House Rules in the Reception Centre for Foreigners, "Official Gazette of North Macedonia", No. 93/20, available at: <https://mvr.gov.mk/Upload/Documents/prifaten%20centar%20pravilnik.pdf>.

22 Rulebook on House Rules in the Reception Centre for Foreigners, "Official Gazette of RS", No. 42/18 and Rulebook on Rules of Stay and House Rules in the Reception Centre for Foreigners, "Official Gazette of MNE", No. 53/18.

on determining stricter police supervision, so that this decision, which is usually made by the head of the reception centre, is submitted to the Ministry of the Interior immediately after its adoption, together with the case files. The Ministry decides on the abolition or extension of the implementation of stricter police supervision no later than the first following working day from the day it received the decision. Furthermore, against this decision, a lawsuit can be filed with the Administrative Court within 5 days from the day of delivery. In Serbia, minor procedural guarantees are envisaged, and the person to whom this measure was imposed can address in writing the head of the Border Police Department or relevant institutions that have the right to supervise and control the work of the reception centre. In Serbia, in addition to this measure, a reprimand also can be imposed.

## Short term detentions

The laws on foreigners in all three countries also provide for shorter detentions of foreigners. In Montenegro, a foreigner may be detained for up to 24 hours if necessary to ensure his/her presence in the procedure of cancellation of stay for up to 90 days and the procedure of annulment of temporary postponement of forced removal, while he/she may be detained for forced removal up to 48 hours.<sup>23</sup> The decision on detention is made by the police, and a lawsuit can be filed against it with the Administrative Court, which must decide in an urgent procedure. In North Macedonia, a person can be detained for up to 24 hours to ensure removal.<sup>24</sup> Additionally, a foreigner who refuses or is unable to prove his / her identity may be detained for the purpose of establishing his / her identity for a maximum of 12 hours.<sup>25</sup> The Law on Foreigners of the Republic of Serbia also stipulates that a foreigner may be detained in the premises of the competent authority<sup>26</sup> for: 1) establishing identity or 2) determining the legality of his/her stay on the territory of RS, as well as 3) for her/his escorting to the border crossing if reasons for ensuring forced removal require so, in which case it is necessary that a decision on return has already been made.<sup>27</sup> However, these provisions have not been further elaborated, so it has not been determined how long the detention can last, which body is competent to determine the detention, in which procedure, by which act, and other important issues.

Short term detentions are envisaged not only by the law on foreigners but also by the laws on border control. Pursuant to the Law on Border Control of Montenegro, during the border check of a person, the police officer is authorised to detain

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23 Article 124, of the Law on Foreigners of Montenegro.

24 Article 158 of the Law on Foreigners of North Macedonia.

25 Article 183 of the Law on Foreigners of North Macedonia.

26 The competent authority implies the organisational unit of the Ministry of the Interior, the Police Directorate - outside the headquarters, which performs tasks related to the movement and stay of foreigners.

27 Article 86 of the Law on Foreigners of the Republic of Serbia.

the person for the time necessary for the check, for a maximum of six hours.<sup>28</sup> The Law on Border Control of North Macedonia stipulates that in order to conduct border control, a person may be detained for a maximum of 24 hours, which includes detention at the airport border crossing (Skopje Airport).<sup>29</sup> If persons are detained for more than 24 hours, they must be accommodated in a reception centre for foreigners. The practice is similar in the Republic of Serbia. Foreigners who do not meet the conditions for entry into the country are kept in the transit zone of the airport waiting for the appropriate flight to be returned or transferred to another destination for which they meet the conditions for entry, but if it takes more than 24 hours, they are transferred from the transit zone to the Reception Centre for Foreigners in Padinska Skela.<sup>30</sup> Moreover, in the Republic of Serbia, there are possibilities for shorter detentions of persons during border checks,<sup>31</sup> but without specifying procedures and maximum durations.

## Implementation of the border asylum procedure

The laws on asylum and international protection of Serbia and Montenegro envisage the implementation of the entire asylum procedure at the border crossing, i.e., in the transit area of the airport.<sup>32</sup> In both countries, it is prescribed that this procedure can last for a maximum of 28 days, and if it is not carried out within the given deadline, the person is allowed to enter the country. An appeal against the decision of the first instance body may be filed with the Asylum Commission in Serbia within five days, i.e., a lawsuit may be filed with the Administrative Court in Montenegro. However, this procedure is still not applied in either of these two countries, as there are no adequate conditions for accommodating persons at the airport.

## Monitoring of the reception centre and forced removals

In all three countries, independent monitoring of conditions in reception centres for foreigners is carried out by national mechanisms for the prevention of torture, in accordance with the Optional Protocol to the UN Convention against Torture

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28 Article 31, paragraph 1, point 8 of the Law on Border Control of Montenegro, "Official Gazette of MNE", No. 72/2009, 20/2011 – other law, 40/2011 – other law, 39/2013 and 17/2019).

29 Article 13 of the Law on Border Control of North Macedonia, "Official Gazette of North Macedonia", No. 171/10 ... 64/18).

30 For more on this procedure, see NPM Report on the visit to the reception centre for foreigners 2019.

31 Article 36, paragraph 1, point 7 and Article 43 of the Law on Border Control. "Official Gazette of RS", No. 24/18).

32 Art. 41 of the Law on Asylum and Temporary Protection of the Republic of Serbia ("Official Gazette of RS", No. 24/18) and Art. 36 and 37 of the Law on International and Temporary Protection of Foreigners ("Official Gazette of Montenegro", No. 2/17 and 3/19).

(OPCAT).<sup>33</sup> In addition, in Serbia and Montenegro, national mechanisms for the prevention of torture also supervise forced deportations in accordance with the provisions of the Law on Foreigners.

Civil society organisations are allowed access to the reception centre in all three countries, but their visits are usually limited to providing free legal assistance to persons who express their intention to seek asylum in the reception centre for foreigners.

## Alternative measures to detention

Under the provisions of the law on foreigners in all three countries, migrants may be ordered to stay in a certain place, which is a lenient measure than accommodation in the reception centre for foreigners. In Serbia, this is the only alternative to detention that can be imposed in accordance with the said law, while the laws on foreigners of Montenegro and North Macedonia also provide for: deposit of travel documents, travel documents and travel tickets; deposit of certain financial assets; reporting to the police at a specified time.<sup>34</sup> Pursuant to the regulations governing the asylum procedure, a ban on leaving the asylum centre, a certain address, or a certain area may also be imposed. Moreover, according to this legal basis in Serbia, persons in the asylum procedure can be imposed two more measures, and they are: regular reporting at a certain time to the regional police department, i.e., the police station according to the place of residence; temporary confiscating of a travel document.<sup>35</sup>

## Conclusion

Although the detention of migrants is similarly regulated in all three countries, there are certain differences, which can be identified as good practices or as solutions that need to be improved. Having in mind the similar legal heritage and the context in which mixed migration flows move through these three countries, it is advisable to comparatively look at the situation and draw certain conclusions about the most favourable solutions that can reconcile both security and protection of basic human rights of migrants.

As the most favourable regulation regarding the maximum duration of accommodation in a reception centre for foreigners, migration regulations in Serbia can be singled out, which envisage the shortest maximum duration, which is above the European standard, while in the other two countries it is at the level of EU standards. On the other hand, shorter detentions are regulated in more

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33 OPCAT is available at: <https://www.ohchr.org/en/professionalinterest/pages/opcat.aspx>.

34 Article 126, paragraph 1 of the Law on Foreigners of MNE and Article 157, paragraphs 7 and 8 of the Law on Foreigners of North Macedonia.

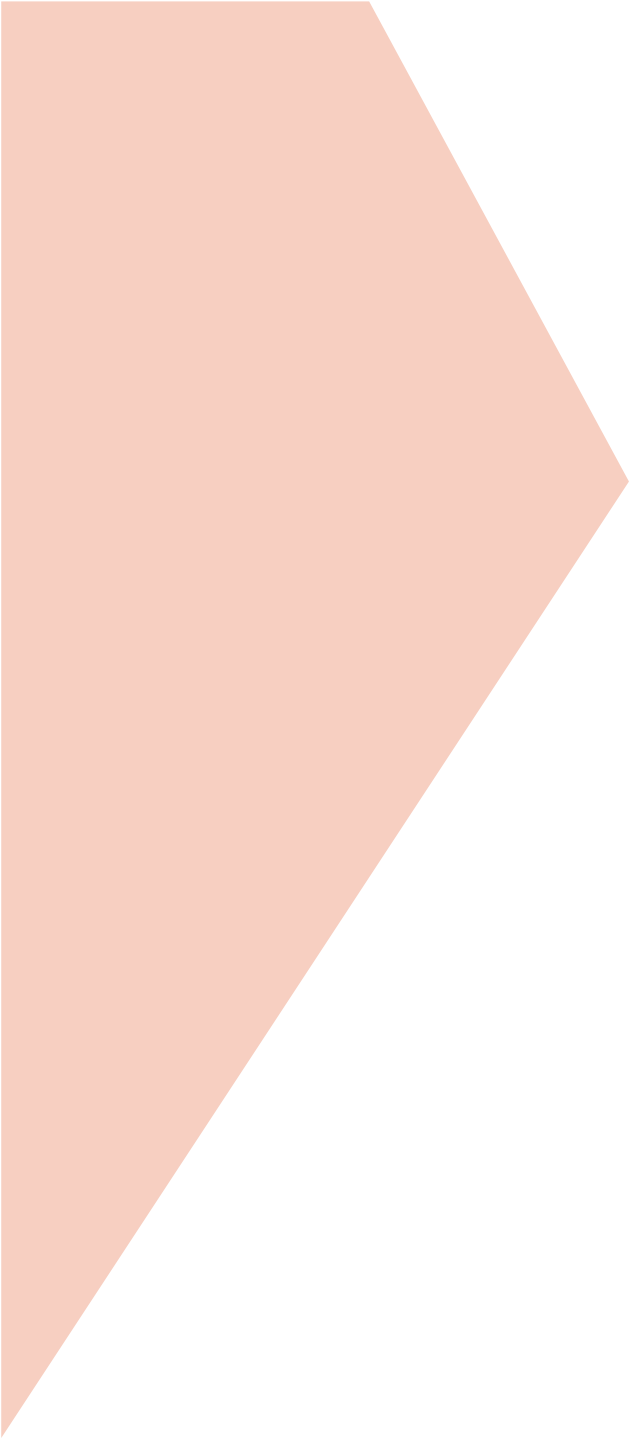
35 Article 78 of the Law on Asylum.



detail in Montenegro and North Macedonia, and in Serbia, there are legal gaps in this area that should be filled. In Serbia and Montenegro, a border procedure for deciding on asylum applications has been prescribed, but due to the lack of adequate accommodation capacities at border crossings, it is not implemented in either of these two countries.

Regarding the position of particularly vulnerable groups of migrants, among whom are certainly minors, from the above review we can conclude that the most favourable position is that of unaccompanied minors in Serbia, because they cannot be accommodated in a reception centre for foreigners. The most unfavourable position of minor foreigners is in North Macedonia, since they can be deprived of their liberty for a very long period of time, which can significantly adversely affect their development and endanger the best interests of the child. In Montenegro, there is an uneven approach to depriving unaccompanied minors of their liberty, with their situation being less favourable if they are asylum seekers, as they may be deprived of their liberty for up to 30 days. Additionally, minors who are accompanied by a parent or guardian are not in the same position, because if they apply for asylum, they can be deprived of liberty regardless of age, and if they are not asylum seekers, they cannot be deprived of liberty if they are under 14. Such regulations can potentially discourage unaccompanied minors and minors over 14 accompanied by a parent or a guardian from seeking asylum in Montenegro, as in that case they may be accommodated in a reception centre for foreigners.

Finally, we can conclude that in all three countries access to an effective legal remedy against decisions on accommodation in reception centres is problematic, because there is no fast court procedure that includes verbal hearing and interpretation if necessary, and migrants without sufficient funds are not provided with free legal aid.



# Detention of Migrants under Migration Regulations – A review of legislation and practice in the Republic of Serbia

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## 2. Detention of Migrants under Migration Regulations – A review of legislation and practice in the Republic of Serbia

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### Introduction

Within the so-called “Balkan routes” of migrants to Western European countries, Serbia is still a current transit country through which migrants pass intensively. Even last year, when we faced the COVID-19 pandemic for the first time and when the state of emergency was in force in the country for almost two months, with significant restrictions on movement, 24,250 migrants entered Serbia.<sup>36</sup> Of that number, only 2,830 were registered as expressing their intention to seek asylum in the Republic of Serbia (*hereinafter*: RS), and only 144 persons<sup>37</sup> submitted an asylum application. The above figures show that as many as 22,263 migrants resided without a regulated legal status and legal basis, which were not even registered by the police. All of them could potentially be deprived of liberty in various procedures (e.g., in the procedures of preparation for return, execution of forced removal, serving a prison sentence and/or police detention for up to 24 hours due to the committed offence, etc.).

In addition to migrants residing illegally in Serbia, for certain reasons prescribed by law, persons in the asylum procedure may also be temporarily deprived of their liberty. Additionally, foreigners who have been denied entry to the country may be deprived of their liberty at border crossings and transit zones of the airport. Places of detention of migrants, asylum seekers and other categories of foreigners

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36 UNHCR Serbia Monthly Update, December 2020, available at: <https://reliefweb.int/report/serbia/unhcr-serbia-monthly-update-december-2020>.

37 Belgrade Centre for Human Rights (BCHR): Right to Asylum in the Republic of Serbia 2020, p. 15, available at: <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2021/02/Pravna-azil-u-Srbiji-2020.pdf>.

may be different depending on the legal grounds for detention (reception centre for foreigners, airport transit zone, police station, prison, detention unit, etc.). However, in this paper we will primarily deal with the administrative detention of migrants<sup>38</sup> under migration regulations, the Law on Foreigners<sup>39</sup> (*hereinafter: LoF*) and the Law on Asylum and Temporary Protection<sup>40</sup> (*hereinafter: LoA*), which is usually carried out in the reception centre for foreigners. Without entering into the theoretical consideration of qualifications and differences between deprivation of liberty and restriction of freedom of movement, the main goal of this paper is to qualitatively present the current situation in the Republic of Serbia and offer recommendations for improvement.

## Legal grounds and procedures of administrative deprivation of liberty of migrants

Pursuant to the Law on Foreigners, a foreigner may be assigned to stay in a reception centre for foreigners exclusively in the return procedure for two alternatively set reasons: for the purpose of preparing the return or for the purpose of forcible removal.<sup>41</sup> Accommodation of foreigners in a reception centre is determined if it is assessed that a lenient measure cannot be applied - mandatory stay in a certain place, provided that: 1) there is a risk that the foreigner will not be available to the competent authority for forced removal<sup>42</sup> or 2) the foreigner avoids or obstructs preparation for return or forced removal.<sup>43</sup> Therefore, the competent authority is first obliged to see if it is possible to apply a lenient measure, and only then to determine the stay in the reception centre, which should be explained in the decision on the accommodation of foreigners in the reception centre.

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38 Administrative detention of migrants is defined as deprivation of liberty *de jure* or *de facto* determined by the executive power and under its exclusive competence, even when judicial review of such a decision is possible later, in: Marko Davinić and Ivana Krstić, A Guide to the Implementation of Relevant Asylum and Migration Regulations, Group 484, Belgrade 2019, p. 136.

39 "Official Gazette of RS", No. 24/2018 and 31/2019.

40 "Official Gazette of RS", No. 24/2018.

41 Article 87.

42 According to the wording of the Law on Foreigners, there is a reason to suspect that the foreigner will not be available to the competent authority in the following cases: 1) does not have documents for establishing identity; 2) does not cooperate in the return procedure or obstructs his/her removal; 3) has not left RS voluntarily; 4) does not cooperate in the procedure of establishing identity or citizenship or has given false or contradictory information about himself/herself; 5) uses or has used false or falsified documents; 6) attempts or has already entered the Republic of Serbia in an illegal manner; 7) has not complied with the obligations from the decision on compulsory residence in a certain place; 8) has no relatives or social ties in RS; 9) has no resources for ensuring accommodation, i.e., subsistence.

43 It is considered that a foreigner avoids or obstructs preparations for return or forced removal if his/her identity cannot be established, i.e., if a foreigner does not have a travel document.

The legal basis for the accommodation of a foreigner in a reception centre is also provided by LoA, so that a person who is in the asylum procedure, the Asylum Office (*hereinafter*: AO) may, for certain reasons, temporarily restrict movement by passing a decision on staying in a reception centre for foreigners. Movement may be restricted when necessary for the purpose of: 1) establishing identity or citizenship; 2) establishing the essential facts, evidence and circumstances on which the asylum application is based, which cannot be established without restricting the movement of the applicant, especially if there is a risk of absconding; 3) ensuring the presence of the applicant in the asylum procedure when it can be reasonably assumed that he/she submitted an asylum application in order to avoid deportation; 4) protection of RS security and public order in accordance with the law; 5) deciding, within the procedure, on the right of the applicant to enter the territory of RS.<sup>44</sup> According to the same article, the movement of applicants and foreigners whose intention to seek asylum is registered may be restricted by an AO decision in case of non-compliance with the house rules of the asylum centre or other facility (e.g., reception centre) and if he/she does not cooperate with authorised officials. Additionally, Article 58 of the same law, in addition to the above two reasons, stipulates that the authorised official of the asylum centre or other accommodation facility for applicants will inform AO, which takes measures to restrict movement even if the asylum seeker does not leave the asylum centre or other facility for accommodation of asylum seeker upon the finality of the decision on the asylum application.

In addition to accommodating foreigners in a reception centre for foreigners, a foreigner may be detained on the premises of the competent authority<sup>45</sup> for: 1) establishing identity or 2) determining the legality of his/her stay in the territory of RS, and 3) for his/her escorting to the border crossing if required by reasons for forced removal, in which case it is necessary that a decision on return has already been made.<sup>46</sup> However, **the provisions of LoF do not stipulate how detention is determined or how long it can last, as well as the rights of the detained person and the obligations of the competent authority towards the detained person.** As it is stated that the detention is carried out in accordance with the law and other regulations, the question arises whether it refers to LoF or the Law on Police<sup>47</sup> (*hereinafter*: LoP). If this referring norm refers to LoF, then the answers to the mentioned questions could be sought in Art. 87 and 88 of LoF, which regulates the stay in a reception centre for foreigners. However, having in mind the material and accommodation capacities of the competent police authorities (police stations), it would hardly be feasible in practice for persons to stay in other police facilities for more than a few hours. If, on the other hand, we rely on Art. 86 of LoP, these provisions return us to LoF, because they state that a police officer detains a person in the case when it is prescribed by another law, as well as that the decision on detention and acting on the appeal against the decision

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44 Article 77 of the Law on Asylum.

45 The competent authority is the organisational unit of the Ministry of the Interior, the Police Directorate - outside the headquarters, which performs activities related to the movement and stay of foreigners.

46 Article 86 of the Law on Foreigners.

47 "Official Gazette of RS", No. 6/16, 24/18 and 87/18.

is made in accordance with by the law on the basis of which the detention was determined.

In order to improve the conditions in the detention facilities, in the first half of 2020, with the help of donor funds, the renovation of 20 detention rooms in police stations was completely completed, and adaptations of another 120 rooms are planned.<sup>48</sup> However, since these premises are mainly intended for detention for up to 24 or 48 hours, in practice it would be difficult to keep persons in them for a longer period of time, so we assume that amendments to the law, similar to the existing legislation legal framework of North Macedonia and Montenegro, should go in the direction of determining shorter detentions that would be defined by hours.

LoF and LoA precisely determine the maximum duration of accommodation in a reception centre for foreigners, which is much shorter than that provided by the EU Return Directive (6 + 12 months)<sup>49</sup>, so that domestic regulations in this regard provide solutions that are above European standards. A foreigner who is in the process of returning can be accommodated in a reception centre for up to 90 days, with the possibility of extension for another 90 days, i.e., a maximum of 180 days, while according to LoA, the restriction of movement can last a maximum of 3 months and can be extended for an additional 3, i.e., a total of 6 months. We can conclude that these deadlines are quite similar, and that the main difference between the deadlines for foreigners and the deadlines for asylum seekers is that in the first case the timeframes are set in days, and in the second in months.

According to LoF, a lawsuit can be filed against the decision on accommodation in the reception centre within 8 days to the Administrative Court, which is obliged to decide about it within 15 days at the latest. Unlike LoF, the provisions of LoA<sup>50</sup> stipulate that a person has the right to file an appeal against the said decision to the competent higher court within 8 days. **Given that in both cases there is an identical measure of restriction of freedom of movement, for more efficient and uniform treatment of the legal remedy, as well as for the purpose of harmonising court practice, it would be good to harmonise these two legal solutions and opt for one competent court and appropriate legal remedy and judicial protection procedure.**

In the period from 1 January 2019 to 30 November 2020, 8 cases were resolved in the Administrative Court regarding the accommodation of foreigners in the reception centre, while one case was resolved on the occasion of the extension of accommodation in the reception centre.<sup>51</sup> Of the stated number of judgments, three were rendered within the legal deadline of 15 days, while the rest were rendered after the expiration of this deadline, and in some cases only after a few

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48 UNOPS Republic of Serbia: Support of the Kingdom of Norway to the Ministry of the Interior of the Republic of Serbia, Second Semi-Annual Report for the period from 1 January to 30 June 2020, p. 6.

49 Directive 2008/115/EC, Art. 15, paragraphs 5 and 6, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008L0115>.

50 Article 78.

51 Response of the Administrative Court of the Republic of Serbia No. Su II-17a 108/2020 dated 22 December 2020 regarding the request for free access to information of public importance.



months. Inspecting the court judgments, it can be concluded that no verbal hearing was held in any dispute, although according to international standards, judicial review would imply a verbal hearing.<sup>52</sup> In 7 cases, the lawsuit was upheld, and the decision was annulled and returned to the first-instance body for a new procedure. The most common reasons for annulling the decision on determining the stay in the reception centre for foreigners were the following: lack of explanation; decisions were not made by an authorised person; decision number and the date it has been passed are missing; the proceedings are conducted in a language that the party does not understand; the data on the name and surname of the person in the first instance decision differ from the data in the identification card issued by the asylum centre; the dispositive of the decision does not specify the duration of the stay in the reception centre.

## Institutions for accommodation of migrants during administrative deprivation of liberty

There is currently one reception centre in the Republic of Serbia, the Reception Centre for Foreigners in Padinska Skela, which is a closed institution under increased police supervision, and is located within the Border Police Department of the Ministry of the Interior (*hereinafter*: BPD Mol). The current accommodation capacities of the reception centre are for about 50 people, but the construction of another facility is underway, with a capacity of 60 places, so that the total accommodation capacities by the end of 2021, when the completion of works is planned, will be for 110 people.<sup>53</sup> During 2020, a total of 200 foreign nationals were accommodated in the Reception centre, most of whom were citizens of Afghanistan (73), followed by Turkey (39), Syria (13), Pakistan (12), Iran (12), Iraq (9), and North Macedonia. (6), BiH (4), Libya (3), Algeria (3), Palestine, Somalia, Croatia, and Montenegro (2 foreign nationals each), nationals of India, Tunisia, Morocco, Slovakia, Germany, Romania and Bulgaria (one person each).<sup>54</sup> With the existing accommodation capacities, it has not happened so far that this reception centre is overcrowded. The reception centre has two separate annexes - male and female. The material conditions of the accommodation are generally satisfactory, and various adaptations and improvements are constantly being made.<sup>55</sup> At the

52 Excerpt from the 19th General Report, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), point 86, available at: <https://rm.coe.int/16806cce8b>.

53 Report on the implementation of the revised Action Plan for Chapter 24, point 1.3.1, available on the website of the Ministry of the Interior: [http://mup.gov.rs/wps/wcm/connect/6158b60e-d734-4b25-85f42012a3ee2fe2/Final\\_SRB+I+izvestaj.pdf?MOD=AJPERES&CVID=nzgAW85](http://mup.gov.rs/wps/wcm/connect/6158b60e-d734-4b25-85f42012a3ee2fe2/Final_SRB+I+izvestaj.pdf?MOD=AJPERES&CVID=nzgAW85).

54 Report on the implementation of the Strategy for Combating Irregular Migration for the period 2018-2020, June 2021, p. 24, available at: <http://www.mup.rs/wps/wcm/connect/cf979b30-12ae-42dd-89dc-4d1734ec6025/Irregularne++izve%C5%A1taj+18-20-cir.pdf?MOD=AJPERES&CVID=nEp4Se->.

55 NPM Report on the visit to the Reception Centre for Foreigners in Padinska Skela, July 2019, No. 415-11 / 19 of 2 July 2019, p. 19 to 21, available at: <https://www.ombudsman.rs/attachments/article/6419/izvestaj%201.pdf>.

moment, 37 police officers are systematised and deployed in the reception centre, but after the expansion of the capacity, the expansion of the systematisation of jobs is also planned, so that the facility could function smoothly.<sup>56</sup>

Mobile centres for registration and short-term accommodation of irregular migrants have been established near the border with Romania and Bulgaria - the Reception Centre in Plandište and the Reception Centre in Dimitrovgrad, which are also under the jurisdiction of the BPD Mol, with a capacity of 100 beds each. At the moment, they are primarily recognised as pre-reception centres for the registration of migrants, but it is planned that at the end of 2021 they will be placed in the regime of intensified police supervision,<sup>57</sup> i.e., to have the same purpose as the Reception Centre for Foreigners in Padinska Skela. So far, migrants have not been accommodated in these centres, because they do not function due to minor technical shortcomings and the lack of police officers.<sup>58</sup> When their repurposing is completed and when they start working, they will be able to accommodate persons who are in a shortened readmission procedure, and who are currently transported and accommodated in the Reception Centre for Foreigners in Padinska Skela, which is quite far from the stated borders.<sup>59</sup>

## Safeguards upon admission to the reception centre for foreigners

According to the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (*hereinafter*: CPT), detained irregular migrants should enjoy three basic rights from the outset of their deprivation of liberty, as should other categories of detainees: (1) access to a lawyer, (2) access to a doctor, and (3) notifying a relative or third party of their choice of deprivation of liberty.<sup>60</sup> In addition to these three basic rights, international treaties also recognise the right of a detained irregular migrant to seek consular assistance, but only of his or her own choice.<sup>61</sup> Finally, it is important that newly arrived irregular migrants are immediately provided with information about these rights in a language they understand, and to this end, it is necessary to provide a document explaining the procedure applicable to them and clearly and simply setting out their rights.<sup>62</sup>

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56 *Op. cit.* Report on the implementation of the revised Action Plan for Chapter 24, point 1.3.2.

57 *Op. cit.* Report on the implementation of the revised Action Plan for Chapter 24, point 1.3.1.

58 Response of Mol No. 26-174/20 dated 30 September 2020 to NPM report, available at: <https://npm.rs/attachments/article/971/odgovor%2020.pdf>.

59 This information was obtained from NPM representatives at the online discussion forum organised by Group 484 on 13 April 2021.

60 Excerpt from the 19th General Report, published in 2009, CPT / Inf (2009) 27-part, point 81, available at: <https://rm.coe.int/16806cce8b>.

61 *Ibid.* point 83.

62 *Ibid.* point 84.

## Access to a lawyer

Legal aid in the reception centre for foreigners is provided by lawyers and specialised civil society organizations. However, access to a lawyer is not systematically regulated, as finding a lawyer is largely left to foreigners themselves. Civil society organizations that visit the reception centre provide legal assistance only to persons who express their intention to seek asylum or are already in the asylum procedure, while other foreigners are not represented. In addition, the Law on Free Legal Aid<sup>63</sup> does not recognise this category of persons as potential beneficiaries of free legal aid, which is below the standards established by the EU Directive on the conditions of admission,<sup>64</sup> which in the provisions of Article 9 stipulates that migrants in detention should in principle be guaranteed the right to access free legal aid and that this should be prescribed by national law.

In practice, hired lawyers are usually announced the day before, and they are allowed to talk to a foreigner even when they come unannounced. Additionally, if the lawyer came because of one foreigner, and the others want to have an interview with him, they are allowed to do so. Interviews are conducted in a common room or, if the lawyer requests the privacy of the interview, in one of the official offices. The confidentiality of the interview is ensured by the police officer standing in front of the office where the interview is taking place.<sup>65</sup>

In order to improve access to a lawyer, the Ministry of the Interior proposed to the Bar Association of Serbia (*hereinafter*: BAS) to make an inquiry to all lawyers who would be interested in providing services to foreigners, based on which a list of lawyers would be formed and submitted to the reception centre or to find a way with the Ministry of Justice to provide this category of persons with free legal aid.<sup>66</sup> As none of the above has been met, the National Preventive Mechanism (*hereinafter*: NPM) has recommended that the BAS establishes a list of lawyers with sufficient knowledge and experience to represent foreigners assigned to the Padinska Skela Reception centre for Foreigners in the return process and to submit it to the reception centre.<sup>67</sup>

## Access to a doctor

Although medical examination on admission to any closed institution is one of the very important guarantees that a person has not been previously subjected to torture or other forms of inhuman or degrading treatment, there are no conditions

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63 "Official Gazette of RS", No. 87/2018.

64 Directive 2013/33/EU, Art. 11, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0033>.

65 *Op. cit.* NPM Report on the visit to the Reception Centre for Foreigners in Padinska Skela, July 2019, p. 5 and 6.

66 NPM Report on supervision of forced removals of foreigners - January - March 2020, No. 4115-62 / 20 dated 29 June 2020, available at: <https://www.ombudsman.rs/attachments/article/6765/izvestaj%201.pdf>.

67 This information was obtained from NPM representative at the online discussion forum organised by Group 484 on 13 April 2021.

in the Reception Centre for Foreigners for the persons to be systematically examined on admission to this institution. Due to this shortcoming, if a person could subsequently complain about injuries inflicted by officials, it would be very difficult or almost impossible to determine whether they were caused by officials during their deprivation of liberty and placing the reception centre or after that, during their stay in the reception centre. Additionally, medical examinations upon admission are important for screening for infectious diseases, which has become increasingly important since the emergence of the COVID-19 pandemic.

### *Notifying a relative or third party*

Upon admission, foreigners are allowed to call a relative or third party of their choice either from their mobile phone or free of charge from the reception centre's official phone.<sup>68</sup> The reception centre has two mobile phones from which foreigners can make phone calls twice a week at their own expense, and official notes are made about the use of the phone and the made communications, which are kept in the foreigners' files.<sup>69</sup>

### *The right to consular assistance*

During the accommodation in the reception centre, the foreigner has the right to one free telephone conversation with the diplomatic-consular mission (*hereinafter*: DCM) of the country of which he /she is a citizen. However, according to NPM findings, some interviewees indicated that they would contact the embassy but did not know how to do so.<sup>70</sup> The Ministry of the Interior informs the Ministry of Foreign Affairs about the admission of foreigners to the reception centre, which then forwards that information to the DCM of the country of which he/she is a citizen, and in practice, it may happen that the DCM is notified even though the foreigner does not want it, in connection to which the NPM passed a recommendation.<sup>71</sup>

### *Informing about rights and obligations in a language that the foreigner understands*

Pursuant to LOF<sup>72</sup>, a foreigner whose stay in the reception centre is ordered is informed as soon as possible, in writing, in a language he/she understands or is

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68 This information was obtained at the online discussion forum organised by Group 484 on 13 April 2021.

69 Response of MoI to NPM report on forced removals, April-September 2020, p. 7 and 8, available at: <https://npm.rs/attachments/article/1012/Odgovor.pdf>.

70 *Op. cit.* NPM Report on the visit to the Reception Centre for Foreigners in Padinska Skela, July 2019, p. 11.

71 *Op. cit.* NPM Report on the visit to the Reception Centre for Foreigners in Padinska Skela, July 2019, p. 12.

72 Article 87, paragraph 6.

reasonably presumed to understand, of the reasons for his/her stay. Following the repeated recommendations of the NPM, this type of notification was compiled and translated into several languages, while other documentation, such as the certificate of temporarily confiscated items, remained in Serbian.<sup>73</sup> No translators/interpreters are hired at the reception centre, which has been repeatedly pointed out by the NPM.<sup>74</sup>

## Rules during the stay in the reception centre for foreigners

The rules of conduct in the reception centre are regulated by the Rulebook on House Rules and Rules of Stay in the Reception Centre for Foreigners<sup>75</sup> (*hereinafter*: Rulebook on House Rules), which is available in English, French, German, Spanish, Romanian, Bulgarian, Macedonian, Arabic, Albanian, Pashto, Urdu, Farsi.<sup>76</sup>

### *Contact with the outside world - visits, correspondence, receiving packages*

At the Padinska Skela Reception Centre for Foreigners, there are three ways of communicating with the outside world: by regular mail, by telephone conversations and by receiving visits. Letters are handed over to the police officers, who record them and send them by mail. Mobile phones are confiscated from people, but foreigners have two mobile phones at their disposal, which are given to them by police officers, and they are obliged to pay prepaid credit.<sup>77</sup>

The Rulebook on House Rules stipulates that the warden or a person designated by him may deny the confidentiality of conversations, in order to obtain information about the identity or provide other information related to the return of the foreigner to the country of origin, and that in that case telephone conversations are conducted in the presence of the reception centre's police officer.<sup>78</sup> However, the question arises as to whether this provision, as well as the provision on derogation from the confidentiality of letters<sup>79</sup>, is in accordance with the provisions of the RS Constitution,<sup>80</sup> according to which derogation from the confidentiality

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73 This information was obtained at the online discussion forum organised by Group 484 on 13 April 2021.

74 NPM Report on forced removals, April-September 2020, p. 5-6, available at: <https://www.ombudsman.rs/attachments/article/6989/izvestaj.pdf>.

75 "Official Gazette of RS", No. 42/2018.

76 Response of Mol-BPD to the recommendations of the NPM, available at: <https://www.ombudsman.rs/attachments/article/6419/odgovor%20MUP.pdf>.

77 NPM Report on forced removal of foreigners - January - March 2020, available at: <https://www.ombudsman.rs/attachments/article/6765/izvestaj%201.pdf>.

78 Art. 24, para. 3 of the Rulebook on House Rules.

79 Art. 23, para. 1 of the Rulebook on House Rules.

80 "Official Gazette of RS", No. 98/2006.

of letters and other means of communication are allowed only on the basis of a court decision if necessary to conduct criminal proceedings or protect the security of RS, in the manner prescribed by law.<sup>81</sup> This shortcoming was pointed out by the NPM in the report.<sup>82</sup>

Foreigners have the right to two regular visits a week for up to 60 minutes, in a specially designated room.<sup>83</sup> During the state of emergency introduced last year, no visits or packages were allowed at the reception centre for foreigners.<sup>84</sup>

### *Food, hygiene, access to the fresh air*

All persons are provided with dry meal packages and cooked meals, and during Ramadan fasting, persons are allowed to carry meals to the dormitories and eat when they want.<sup>85</sup> Access to hot water and conditions for maintaining personal hygiene are adequate, and persons can spend time outside, in the yard.<sup>86</sup>

During the state of emergency declared due to the COVID-19 pandemic, masks, gloves, and hygiene packages were provided for employees and persons in the reception centre. All rooms were cleaned several times during the day, quarantine was provided in which people would stay for 14 or 28 days, and in that case, they would go for a walk separately and use the living room separately. The obligation to regularly check body temperature with non-contact thermometers was introduced for all employees, as well as for all other persons who come to the reception centre on any basis.<sup>87</sup>

### *Health care during the stay*

According to the provisions of the House Rules, during the stay in the reception centre, the foreigner has the right to primary health care and basic psychological support.<sup>88</sup> If the police officer of the reception centre notices that the foreigner has health problems, i.e., if the foreigner complains that he/she has health problems, the police officer in the reception centre immediately takes further measures and actions related to solving the foreigner's health problem, in accordance with health care regulations. The foreigner is obliged to take the prescribed therapy properly, in accordance with the doctor's recommendation.

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81 Article 41 of the Constitution.

82 NPM Report on the visit to the Reception Centre for Foreigners in Padinska Skela, pp. 14 and 15.

83 Art. 22 of the Rulebook on House Rules.

84 Thematic report: Implementation of the CPT principles on the treatment of persons deprived of liberty during the coronavirus pandemic, May 2020, p. 7, available at: <https://www.ombudsman.rs/attachments/article/6630/Izvestaj.pdf>.

85 *Op. cit.* Thematic report: Implementation of the CPT principles on the treatment of persons deprived of liberty during the coronavirus pandemic, May 2020, p. 7.

86 *Ibid.*

87 *Ibid.*, page 5.

88 Art. 14 of the Rulebook on House Rules.

However, the practice of providing health care and access to a doctor in the reception centre has been unsatisfactory for years, and lately even worsened.<sup>89</sup> There is no medical staff in the reception centre, so all medical examinations, including the first examination upon admission, are performed only when necessary, i.e., at the request of a foreigner or at the assessment of a police officer that someone needs an examination. The doctor's examination is performed in the room where the person is accommodated, but without other persons accommodated in that room attending the medical examination/ The police officer is at the door of the room during the examination, so that he can see but not hear the conversation. If the examination is performed in a health institution, it is attended by a police officer, which endangers the privacy and confidentiality of the examination.<sup>90</sup>

### *Exercise of religious rights*

Foreigners have the right to hold religious rites, but with respect for the religious rights of other foreigners who are accommodated there.<sup>91</sup> The existence of a special room for religious purposes is also prescribed, but the ritual can also be performed in a room, provided that others in the room are not disturbed. Rituals can also be performed in groups, and on request, they can be attended by a religious elder with the approval of the warden. However, if the performance of religious rites would endanger security, order and peace, the warden may temporarily prevent their performance. The religious rights of foreigners are generally respected in practice.

### *Applying for asylum during the stay in the reception centre*

The intention to apply for asylum may be expressed to the police officer in the reception centre for foreigners as well. Since the Reception Centre for Foreigners in Padinska Skela has the equipment for registration, foreigners register there immediately and are issued a certificate of registration of intent to seek asylum in the RS. AO is then notified, which provides information on the free capacity of the centres within the Commissariat for Refugees and Migration, on the basis of which it is determined where the foreigner will be sent. During 2019, eight certificates were issued, and during 2020, none.<sup>92</sup>

### *Disciplinary proceedings for violations of house rules*

To a foreigner who violates house rules and rules of stay in the reception centre during his/her stay in the reception centre, the warden may impose a reprimand

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89 Earlier, the doctor of the Penitentiary Facility in Padinska Skela also provided services in the Reception Centre for Foreigners, but after the objection of the Ministry of Justice, this practice stopped.

90 *Op. cit.* NPM Report on the visit to the reception centre for foreigners 2019, pp. 7-10.

91 Art. 21 of the Rulebook on House Rules.

92 *Op. cit.* NPM Report on forced removals, April-September 2020, p. 12.

or a measure of intensified police supervision, which may not last longer than seven days continuously. Intensified police supervision ceases with the expiration of the time for which it was imposed, i.e., when the warden revokes the measure because he estimates that the purpose of imposing the measure has already been achieved.<sup>93</sup>

### *Complaint procedure*

Twice a week, a foreigner may request an appointment with a warden or a person he/she authorises to express his/her dissatisfaction by pointing out irregularities in the procedure, poor treatment, and neglect by police officers of the reception centre, to complain about a reprimand or increased police supervision, and make other complaints indicating poor accommodation conditions.<sup>94</sup> If he/she is not satisfied with the decision to the complaint of the warden or the authorised person, the foreigner may, in the written form, contact the head of the BPD or the relevant institutions that have the right to supervise and control the work of the reception centre for foreigners. A foreigner has the right and obligation to report every violation of house rules and rules of stay in the reception centre of other foreigners to the nearest police officer on a daily basis, especially bad attitude and inappropriate behaviour towards him/her or third parties, or towards other people's property or reception centre property. Complaints are generally very rarely submitted, and during 2018, one complaint was submitted directly to the Ministry of the Interior and related to food in the reception centre.<sup>95</sup>

## Accommodation conditions of vulnerable groups

Family members are accommodated together.<sup>96</sup> However, in practice, it happened that married couples with or without children are allowed to stay together in the women's annex during the day, while male family members stay in the men's annex at night, but after the NPM recommendations, this practice was discontinued.<sup>97</sup> Females who are alone are accommodated separately from males, while minor foreigners are accommodated in the same room with their parent, guardian, or legal representative.<sup>98</sup> During 2020, a total of 11 females were accommodated, while a total of 7 minors were accommodated.<sup>99</sup>

Unaccompanied minors cannot be accommodated in the reception centre. According to LoA, they can be ordered to stay in a social protection institution for

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93 Art. 30 of the Rulebook on House Rules.

94 Art. 31 of the Rulebook on House Rules.

95 *Op. cit.* NPM Report on the visit to the Reception Centre in Padinska Skela from 2019, p. 16.

96 Art. 9 of the Rulebook on House Rules.

97 *Op. cit.* NPM Report on the visit to the Reception Centre in Padinska Skela from 2019, p. 17.

98 Art. 12 of the Rulebook on House Rules.

99 *Op. cit.* Report on the implementation of the Strategy for Combating Irregular Migration for the period 2018-2020, p. 24.



minors with increased supervision,<sup>100</sup> but they are not deprived of their liberty in those institutions. This legal solution and practice are above the standards of the EU Reception Conditions Directive,<sup>101</sup> which stipulates that unaccompanied minors may in exceptional cases, as soon as possible, be in detention (but not in prison conditions) and must be separated from adults.

A foreigner who has health or mental problems is accommodated in a special room, where he/she stays until the doctor determines his/her health condition, i.e., for a maximum of 48 hours from the moment of admission.<sup>102</sup> Foreigners with disabilities have not lately been in the Reception Centre for Foreigners in Padinska Skela.<sup>103</sup>

## Preparation for return and implementation of return from the reception centre for foreigners

If the foreigner does not leave RS within the set deadline, he/she is forcibly removed, and until the removal, he/she can be placed in a reception centre for foreigners. During the procedure of preparation for forced removal, if the foreigner does not have a valid travel document, the travel document necessary for crossing the border is obtained through the competent DCM. However, in practice, it happens that the Ministry of the Interior has not allocated specially earmarked funds for these needs, so police officers face difficulties in this procedure.<sup>104</sup> However, for those who enter the assisted voluntary return programme, the International Organization for Migration (*hereinafter*: IOM) obtains a travel document, not reception centre officials.

As a rule, foreigners are notified of the removal no later than 24 hours before the removal.<sup>105</sup> Medical examinations on the basis of which the medical capability for the travel would be determined are performed sporadically, i.e., not all foreigners pass them in the process of preparation for removal.<sup>106</sup> Since foreigners have their mobile phones confiscated during accommodation in the reception centre, it happened that foreigners who were to be removed did not have the opportu-

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100 Art. 78, para. 1, pt. 4.

101 Directive 2013/33/EU, Art. 11, available at: <https://eur-lex.europa.eu/legal-content/EN/TX/?uri=celex%3A32013L0033>.

102 Art. 14 of the Rulebook on House Rules.

103 *Op. cit.* NPM Report on the visit to the Reception Centre for Foreigners in Padinska Skela from 2019, p. 18.

104 NPM Report on supervision of forced removal of citizens of North Macedonia, No. 415–55 / 19 dated 30 December 2019, p. 3, available at: <https://www.ombudsman.rs/attachments/article/6688/izvestaj%20drz%20S.%20Makedonije.pdf>.

105 NPM Report on supervision of forced removals of foreigners - January - March 2020, No. 4115–62 / 20 dated 29 June 2020, available at: <https://www.ombudsman.rs/attachments/article/6765/izvestaj%20I.pdf>.

106 NPM Report on supervision of forced removals of foreigners, No. 415–80 / 19 dated 30 December 2019, p. 8, available at: <https://www.ombudsman.rs/attachments/article/6689/izvestaj%20grupni.pdf>.

nity to inform a third person about the upcoming removal, but this problem was recently solved.<sup>107</sup> Regarding the verification of the circumstances in the country to which the foreigner is removed in terms of the danger of torture and inhuman or degrading treatment or punishment, the police officers of the Reception Centre for Foreigners in Padinska Skela do not pay attention to them, because in their opinion their job is only to execute forced removal, and that these circumstances were already verified during the procedure in which the decision on return was made.<sup>108</sup> The Reception Centre for Foreigners in Padinska Skela did not systematically organise the provision of psychological help and support, in connection with which the NPM sent recommendations.<sup>109</sup>

If the foreigner who is removed from the reception centre is in the programme of assisted voluntary return and reintegration, the IOM is also included, which procures air tickets if the foreigner does not have its own funds, as well as a travel document.<sup>110</sup> If necessary, an IOM representative comes to the reception centre to talk to the foreigner.<sup>111</sup> At the entrance to the airport, an IOM officer greets the foreigners who are removed from the reception centre and, with the help of the documentation handed over to him/her by the police officers, checks the foreigner in for the flight.<sup>112</sup> During 2020, only two persons (one from Ukraine and one from Afghanistan) were returned to the country of origin through the programme of assisted voluntary return from the reception centre.<sup>113</sup>

During the state of emergency declared due to the COVID-19 pandemic, all forced removals were suspended, and the number of foreigners in the reception centre was reduced. Those whose stay had expired were transferred to migrant reception centres,<sup>114</sup> which were also closed. Given that due to strict restrictive measures and the closure of borders, there was not enough prospect that forced removals could be carried out, there was no purpose or legal basis for further detention of these persons in the reception centre. For the purpose of temporary regulation of their legal status on the territory of the Republic of Serbia, decisions on the postponement of forced removal could be made.<sup>115</sup>

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107 *Ibid.* page 9.

108 *Ibid.* page 12.

109 *Op. cit.* NPM Report on supervision of forced removals of foreigners, April - September 2020, pp. 9 - 11.

110 Report on supervision of forced removal of an Indian citizen, No. 415-61 / 19 of 30.12. 2019, p. 3, available at: <https://www.ombudsman.rs/attachments/article/6687/lzvestaj%20drz%20Indije.pdf>.

111 *Ibid.*

112 *Op. cit.* NPM Report on supervision of forced removals of foreigners - January - March 2020, No. 4115-62 / 20 dated 29 June 2020, p. 10 and NPM Report on supervision of forced removals of foreigners, No. 415-80 / 19 dated 30 December 2019, p. 11.

113 *Op. cit.* Report on the implementation of the Strategy for Combating Irregular Migration for the period 2018-2020. year, p. 25.

114 *Op. cit.* Thematic report: Implementation of the CPT principles on the treatment of persons deprived of liberty during the coronavirus pandemic, May 2020, p. 8.

115 Article 84, paragraph 1, point 2 of the Law on Foreigners.

## Other grounds for administrative deprivation of liberty of migrants

### *Detention of foreigners at the border or in the transit zone of the airport*

Foreigners who do not meet the conditions for entry into the country may be detained in the transit zone of the airport until they wait for the flight that will take them back to the destination from which they came or to another destination for which they meet the conditions for entry.

If the foreigner does not meet the conditions for entry into the country, a decision on refusal of entry is issued, stating the reasons for refusal. The decision form is made in Serbian and English and contains the reasons for rejection provided by LoF,<sup>116</sup> and the police officer only circles the reason for rejection in the specific case on the form.<sup>117</sup> The decision is signed by the authorised police officer and the person who was denied entry. Since it is made on the prescribed form, the decision does not contain an explanation in terms of stating the facts and circumstances, but only contains legal reasons for refusal. **In the following period, it should be considered to change the form of the decision so that it would contain appropriate space for filling in the facts and circumstances of a particular case, as well as linking the facts with legal reasons.**

An appeal against the decision to refuse entry may be lodged to Mol within 8 days. As a rule, the appeal does not delay the execution, unless there are reasons for prohibiting the forced removal.<sup>118</sup> Exceptionally, a foreigner who is found to have some of the obstacles to entering the country may be granted entry into the RS if there are humanitarian reasons, the interest of RS, or the international obligations of RS so require.<sup>119</sup>

In practice, a foreigner who is denied entry to the country, until returning to the destination from which he/she came or to another destination for which he/she meets the conditions of entry, is kept in closed premises located in the transit zone of the airport and which are secured by the airport security. However, due to the humane treatment of persons deprived of their liberty and given that the conditions in the said premises in the transit zone are not suitable for longer detention, it happens that persons denied entry at Belgrade “Nikola Tesla” Airport are transferred to the Reception Centre for Foreigners in Padinska Skela, where they wait for a flight back. This is practised if it is estimated that a foreigner should

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<sup>116</sup> Article 15 of the Law on Foreigners.

<sup>117</sup> The appearance and content of the form are regulated in the Rulebook on the appearance of the form on refusal of entry into RS, on the appearance of the form on approval of entry into RS and the manner of entering data on refusal of entry into a foreigner’s travel document, “Official Gazette of RS”, No. 50/18.

<sup>118</sup> Article 83 of the Law on Foreigners.

<sup>119</sup> Article 15, paragraph 3 of the Law on Foreigners.

spend more than 24 hours in the transit zone.<sup>120</sup> For these foreigners who have been denied entry into the country, in addition to the decision to refuse entry, decisions are made to determine the stay in the reception centre for foreigners by direct application of Art. 104 para. 1 of LoP.<sup>121</sup> An administrative dispute may be initiated against the decision on accommodation in the reception centre on this basis. **Considering that LoF does not envisage as one of the conditions of accommodation in the reception centre a case when a foreigner who cannot be removed immediately is not allowed to enter the country, it is necessary to harmonise the provisions of Art. 104 of LoP and the provisions of Art. 87 LoF and so that Art. 87 is amended with this additional condition. The aforementioned amendment would mutually harmonise the provisions of LoF, given that the provisions of Article 1, paragraph 1, point 28 of LoF, define the reception centre for foreigners also as a facility intended for accommodation of foreigners who are not allowed to enter the country.**

In addition to foreigners who have been denied entry to the country on the basis of LoF, LoA envisages that foreigners who have submitted an asylum application may also be accommodated in the transit zone of the airport. In the transit zone, i.e., at the border crossing, the asylum procedure must be carried out within 28 days.<sup>122</sup> This procedure can be carried out only if the request can be rejected or denied. It is explicitly prescribed that the asylum procedure cannot be conducted at the border or in the transit area at the request of an unaccompanied minor. Access to legal aid must be provided in this procedure as well. If AO does not make a decision within 28 days, the applicant is allowed to enter the territory in order to conduct the procedure upon the submitted asylum application. An appeal against the decision may be filed with Asylum Commission within five days from the date of submission. The Commission is obliged to decide on the appeal within 15 days, and the appeal postpones the execution of the decision.

During 2020, 44 intentions to seek asylum in RS were registered at Belgrade “Nikola Tesla” Airport and all persons were released on the territory,<sup>123</sup> because in order to carry out the border procedure, it is necessary to provide the asylum seeker with adequate accommodation and food, for which there are still no conditions. Works on the preparation of adequate premises at “Nikola Tesla” Airport are in progress<sup>124</sup>, while at “Konstantin Veliki” Airport in Nis, one container is provided which is suitable only for short stays of persons who do not meet the conditions for entering the country.<sup>125</sup>

120 For more information on this procedure, see NPM Report on the visit to the Reception Centre for Foreigners.

121 A foreigner who is not allowed to enter the country ... and who cannot be removed immediately, may, in accordance with the law governing affairs related to foreigners, be ordered to stay under the supervision of the Police, in a facility designated for those purposes during the time necessary for his/her removal from the country.

122 Article 41 of the Law on Asylum.

123 Data on the number of registered intentions was obtained by NPM representatives during the online discussion forum organised by Group 484 on 13 April 2021.

124 The information is available in the airport's response to NPM recommendations: <https://npm.rs/attachments/article/966/odgovor%20aerodrom%201.pdf>.

125 NPM Report on the visit of BPS Nis and Constantine the Great Airport in Nis, No. 415-83 / 19 of 27 March 2020, available at: <https://npm.rs/attachments/article/951/Izvestaj.pdf> and the airport's response to NPM recommendations, available at: <https://npm.rs/attachments/article/951/odgovor%20aerodrom.pdf>.

Moreover, the Law on Border Control<sup>126</sup> indirectly introduces *de facto* detention at the border in certain articles. Article 36, paragraph 1, point 7 prescribes that during the border check of a person, the police officer is authorised not to allow the person to leave the border crossing until the end of the border checks, which in fact represents a restriction of freedom of movement. As it is prescribed in paragraph 2 of the same article that the performance of the border check is not limited in time, such a solution is quite problematic, because the restriction of freedom of movement is not limited in time, it is not conducted in a formal procedure, the person cannot appeal the detention decision and his/her position is not prescribed in any way during the detention. Additionally, Article 43 of the Law on Border Control stipulates that a person when crossing the state border is obliged to undergo a border check and not to leave the border crossing area until the border check is performed, and a person driving a vehicle crossing the state border is obliged to stop in the area of the border crossing during the border check.

### *Extradition detention*

Extradition detention is regulated by the Law on International Legal Assistance in Criminal Matters (LILACM).<sup>127</sup> Pursuant to the aforementioned regulation, the extradition procedure is court-administrative, i.e., after the court decision, the final decision on extradition is passed and signed by the Minister of Justice. Extradition detention may last until the implementation of the decision on extradition, but not longer than one year from the day of detention of the person whose extradition is requested, and it is determined: 1) if there are circumstances indicating that the person whose extradition is requested will hide or flee in order to obstruct the procedure or extradition, or 2) if there are circumstances that indicate that the person whose extradition is requested will interfere with the collection of evidence.<sup>128</sup> Starting from the date of finality of the decision on detention, every two months the court *ex officio* examines whether there are reasons for extension or termination of detention. The final decision on the fulfilment of the preconditions for extradition is submitted with the documents to the minister in charge of justice, and he/she issues a decision by which he/she allows or does not allow extradition.

In practice, a person in extradition detention states that he/she fears that his/her life will be endangered in the country to which he/she is to be extradited or that he/she will be subjected to torture or other inhuman and/or degrading treatment and/or punishment. If this person declares intention to seek asylum in the RS, AO is summoned to conduct the appropriate procedure, and in such cases deciding on the asylum application is practically a priority issue over the extradition procedure and the person should not be extradited before his/her claim is examined and his/her application is decided upon. However, a special problem arises if a person has not submitted an asylum application or the asylum application has been rejected, without going into the merits, because the LILACM does not pro-

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126 "Official Gazette of RS", No. 24/18.

127 "Official Gazette of RS", No. 20/09.

128 Art. 22 of LILACM.

vide for the court's obligation to examine allegations of persecution in the country of origin, so Article 7 of LILACM should be amended in that direction.<sup>129</sup>

In the previous period, in the Republic of Serbia there have been several cases of asylum seeking by persons in extradition detention, most often citizens of Turkey, Bulgaria, and Romania. One of the positive examples is the case of refusing to extradite a Romanian citizen because he was granted asylum in RS.<sup>130</sup>

## Monitoring accommodation facilities and implementing forced removals

### *Competences and activities of the Protector of Citizens/National Mechanism for the Prevention of Torture*

Pursuant to the Law on Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>131</sup> (*hereinafter*: the Law on Ratification of OPCAT), in order to determine the accommodation conditions and treatment of foreigners in the Reception Centre for Foreigners in Padinska Skela, since 2014, the NPM has made a total of 8 visits to this institution. "Nikola Tesla" Airport has been visited 10 times, while "Constantine the Great" Airport in Nis twice so far. "Morava" Airport in Kraljevo has not been visited by the NPM, given the low frequency of passengers, of which a very small number of foreigners (during 2020, out of 400 passengers, there were only 20 foreigners).<sup>132</sup>

In addition, pursuant to Article 82 of LoF<sup>133</sup>, the NPM supervised the forced removal, and also visited the Reception Centre for Foreigners in Padinska Skela. By the first half of 2021, seven NPM reports on forced removals have been published on the website of the Protector of Citizens. In 2019, eight forced removal operations were monitored, in which a total of 22 foreigners were removed; in 2020, 18 operations were monitored, in which 40 foreigners were removed, while for the first three and a half months of 2021, two operations were monitored in which two foreigners were removed. Only one removal was done by air, but the NPM team was present only until the person boarded the plane, while the other removals were by road and were mostly about the readmission procedures.<sup>134</sup>

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129 *Op. cit.* Marko Davinić and Ivana Krstić: Guide for the implementation of relevant regulations in the field of asylum and migration, Group 484, Belgrade 2019, p. 164.

130 Available at: <https://www.bg.vi.sud.rs/vest/1441/odluka-o-molbi-ministarstva-pravde-ru-munije-za-izrucenja-ghita-sebastian-aureliana.php>.

131 "Official Gazette of SCG – International Agreements", No. 16/05 and 2/06.

132 Data obtained from NPM representatives at the online discussion forum organised by Group on 13 April 2021.

133 The Protector of Citizens, in line with the competencies from the Law on the Protector of Citizens and the Law on Ratification of OPCAT, supervises the procedure of forced removal of a foreigner.

134 This information was collected by NPM representative at the online discussion forum organised by Group 484 on 13 April 2021.

## *Visits by nongovernmental organisations*

The access of nongovernmental organisations to the reception centre for foreigners is also prescribed in Article 16, paragraph 2 of the Rulebook on House Rules by stating that organisations will be allowed unhindered visits to the reception centre. In practice, NGOs visit the Reception Centre for Foreigners in Padinska Skela mainly in situations when one of the persons in the reception centre wants to express an intention to seek asylum or if one of the accommodated foreigners is already in the asylum procedure, so it is necessary to consult with the client or the presence of a legal representative, an NGO representative, is necessary due to certain legal actions in the procedure. As executive partners of the UNHCR, lawyers of the Belgrade Centre for Human Rights (*hereinafter*: BCHR) go to the reception centre upon invitation. Psychologists from the nongovernmental organisation PIN also occasionally go to the reception centre for foreigners, who occasionally provide psychological help and support to the persons accommodated there.<sup>135</sup> In addition to *ad hoc* visits, on call and as needed, BCHR conducts regular monitoring once a month.<sup>136</sup> This organisation also has a permit for access to the transit zone of “Nikola Tesla” Airport, so in case a person who is detained at the airport wants to seek asylum in RS, he/she can get in direct contact with the lawyers of BCHR.

## *Visits by international bodies (CPT, UN SRT)*

The CPT so far visited the Padinska Skela Reception centre for Foreigners in 2004.<sup>137</sup> During its visit in 2015, the CPT visited the detention facilities of the Belgrade Border Police Station (BPS) at Belgrade “Nikola Tesla” Airport and the facilities for detaining foreigners in the transit zone at the same airport.<sup>138</sup> In the report on the visit, the CPT recommended to the RS authorities that it was necessary for BPS Belgrade’s premises at “Nikola Tesla” Airport to have access to daylight, that it was necessary to provide clean bed linen for the stay during the night, and that foreign nationals should be provided with a minimum of one hour of exercise outside in case they stay in these rooms for 24 hours or longer. With regard to the conditions of detention in the transit zone, the CPT recommended that it is necessary to provide foreigners with a minimum of one hour a day to exercise outdoors if they remain in the transit zone for 24 hours or longer, to obtain information on their legal status and rights in appropriate language, as well as to have access to health care if they request it.

The premises at the airport were also visited by the UN Special Rapporteur on Torture (*hereinafter*: UN SRT) during his visit to RS in 2017.<sup>139</sup> In his report on the visit, he recommended to the government of RS to provide adequate conditions in transit zones for the accommodation of persons waiting to be returned, as well as to ensure that the border police carefully records decisions on the refusal of entry and depor-

135 BCHR: Right to Asylum in RS in 2020, p. 98.

136 The findings of the BCHR on the situation in the reception centre for foreigners in 2020 were published in: Right to Asylum in RS in 2020, pp. 94 to 99.

137 Report on the visit is available at: <https://rm.coe.int/1680697c8f>.

138 Report on the visit is available at: <https://rm.coe.int/1680697c94>.

139 UN SRT Report available at: <https://platforma.org.rs/wp-content/uploads/2019/03/Report.pdf>

tation decisions, as well as that these decisions are subject to independent judicial review, and that persons subject to such measures are informed on their rights, including the right to a remedy and legal remedy aid in a language they understand.<sup>140</sup>

## Alternative measures to detention

Under the provisions of LoF, as a lenient measure of restriction of freedom of movement, the competent authority may impose a mandatory stay in a certain place.<sup>141</sup> According to LoA, measures alternative to accommodation in the reception centre for foreigners are: 1) a ban on leaving the asylum centre, certain addresses, or certain areas; 2) regular reporting at a certain time to the regional police department, i.e., the police station in the place of residence; 3) temporary confiscation of a travel document.<sup>142</sup>

## Conclusion and recommendations

Having in mind the lack of knowledge of local language, regulations, and other circumstances, which makes them especially vulnerable, it is very important to precisely regulate the position of migrants deprived of their liberty and provide them with adequate support and protection in exercising their rights. At the same time, it is necessary to meet the requirements of public order and security, but also to provide humane, professional, and fair treatment during various types of restrictions and deprivation of liberty of migrants. In this regard, certain changes, amendments and harmonisation of regulations are needed, and some of the most significant would be the following:

- The provisions of LoF and LoA should be harmonised regarding the legal remedy against the decision on determining the stay in the reception centre for foreigners in terms of opting for a unified solution regarding the court that would have jurisdiction (administrative or higher court).
- Due to the existence of legal gaps pointed out earlier in the text, the provisions of Article 86 of LoF relating to detention in the premises of the competent authority must be amended in the direction of determining the complete procedure, the duration of detention, the legal remedy against the decision on detention, and other important issues.
- The provisions of Article 87 of LoF should be amended by refusing to enter the country as one of the grounds for determining stay in the reception centre for foreigners.
- In order to provide access to a lawyer, it is necessary to amend the provisions of the Law on Free Legal Aid, which would include persons deprived of their liberty in the context of migration regulations, as

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140 UN SRT Report, point 108, paragraphs a) and b).

141 Article 93 of the Law on Foreigners.

142 Article 78 of the Law on Asylum.

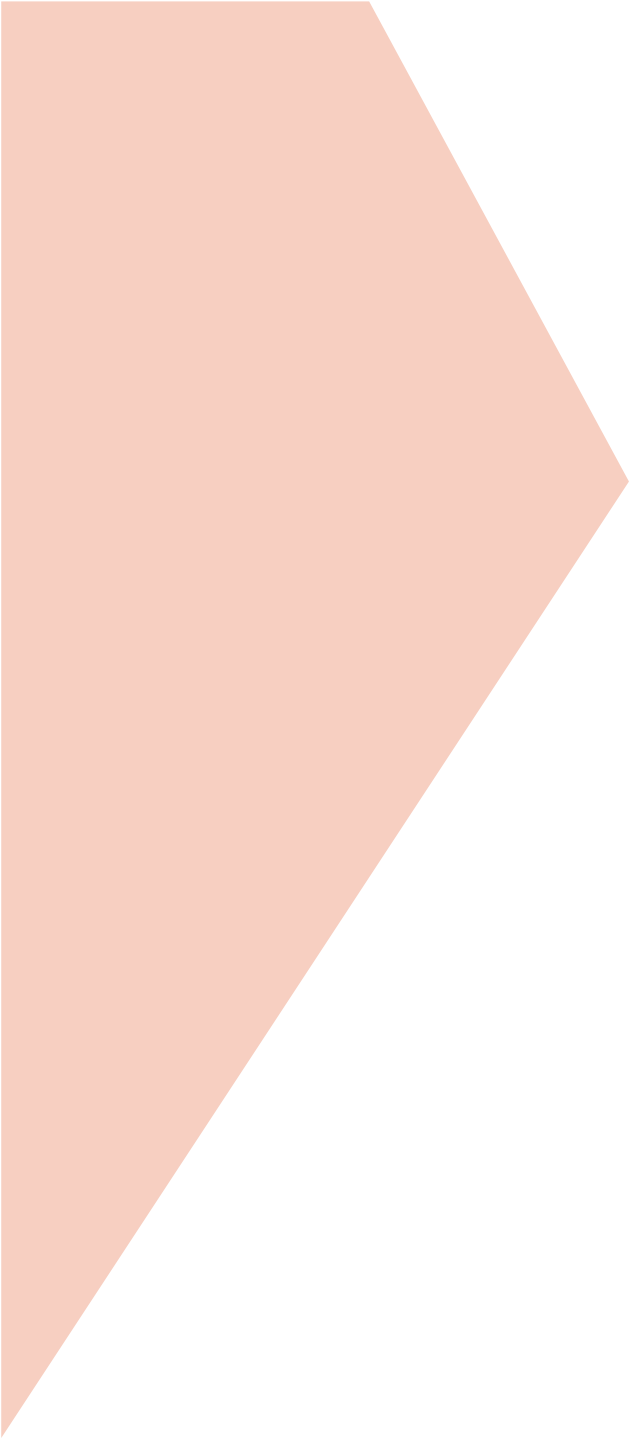


well as persons sentenced to more lenient measures since they can be altered into a measure of accommodation in the reception centre.

- The Law on Border Control needs to be supplemented with provisions that would regulate the procedure, maximum duration, legal remedies, and other important issues in case of restriction of freedom of movement at the border crossing.
- LILACM needs to be supplemented with provisions that oblige the judge to examine the existence of grounds for suspicion that a person is threatened with persecution in the country of origin, and that if this is established, the person cannot be extradited.
- It is necessary to examine the constitutionality and legality of the provisions of the House Rules relating to derogation from the confidentiality of letters and other means of communication.

In addition to normative changes and additions, improvements in practice are also necessary, and the following is especially important:

- Migrants deprived of their liberty should be given the right to an effective and efficient legal remedy against the decision to deprive them of their liberty, for which it is necessary to provide appropriate professional and accessible legal assistance, as well as the participation in oral hearings and translation if needed.
- Judges deciding on legal remedies submitted, as well as legal representatives, should attend continuous professional training on the status of migrants, the prohibition of violations of the principle of non-refoulement, refugee law, and other important areas.
- In the reception centre for foreigners, it is necessary to improve the provision of health care and psychological help and support.
- In order to facilitate daily communication with migrants deprived of their liberty, as well as communication during various types of processes and procedures, it is necessary to ensure the continuous presence of interpreters/translators in the reception centre for foreigners.
- Employees of the reception centre for foreigners must be trained to recognise the danger of torture and inhuman or degrading treatment or punishment in the country of origin of migrants awaiting forced removal.
- Without further delay, it is necessary to provide conditions for the operation of reception centres for foreigners in Dimitrovgrad and Plandište.
- In order to be able to make short terms detentions in the premises of the competent authority, it is necessary to further improve the conditions and adapt the detention facilities.
- It is necessary to create conditions for the accelerated procedure at the border and to provide adequate premises for accommodation of persons who are in the border asylum procedure, as well as for appropriate accommodation of persons who are not allowed to enter the country at Belgrade "Nikola Tesla" Airport.



**Detention of Migrants  
under Migration  
Regulations – A review of  
legislation and practice in  
Montenegro**

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***Author: Milan Radović***



### 3. Detention of Migrants under Migration Regulations – A review of legislation and practice in Montenegro

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#### Introduction

This document deals with the conditions and procedure of detention for migrants and the special focus is on the legal basis and procedure of deprivation of liberty of migrants in the context of migration regulations. The document also refers to extradition detention, as well as to the detention of migrants in the reception centre for foreigners, at border crossings, and in the transit zone of the airport. Additionally, it also deals with the readmission of minors and other vulnerable categories of migrants, and partly with the issue of monitoring the reception facilities. The document does not contain information on migrants deprived of their liberty in misdemeanour or criminal proceedings, in terms of police detention, as well as migrants serving prison sentences.

The Law on Foreigners<sup>143</sup> regulates the conditions for entry, exit, movement, stay, and work of foreigners in Montenegro. Under the conditions prescribed by the said law and according to the procedure carried out by the inspector for foreigners, a foreigner may be prohibited from entering the country and restricted from moving through the territory of Montenegro. Due to forced removal, a foreigner may be deprived of liberty, arrested, and detained for a maximum of 48 hours. The Protector of Human Rights and Freedoms of Montenegro monitors the implementation of forced removal and the undertaking of measures for the protection of human rights and freedoms of a foreigner who is forcibly removed.

A foreigner who cannot be forcibly removed or cannot be returned by applying lenient measures, the police will restrict the freedom of movement by accommodation in the reception centre for foreigners, especially if there is a risk of avoiding the obligation to leave Montenegro or if the foreigner prevents forced removal and return. Last year, 418 people were deprived of their liberty on this basis (most

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143 The Law on Foreigners, ("Official Gazette of Montenegro", No. 012/18, 003/19).

of them were citizens of the surrounding countries, and 123 people were citizens of Turkey).<sup>144</sup> Additionally, in connection with the application of alternative measures (“reporting to the police at a certain time”), 14 cases were recorded, of which 9 were pronounced by inspectors for foreigners, while 5 were pronounced in proceedings conducted in the reception centre for foreigners. Lenient measures were applied to citizens of Serbia (7), Kosovo (2), Albania (1), Great Britain (1), FR Germany (1), as well as to stateless persons (2). In the period 1 January – 31 March 2021, pursuant to Article 126 of the Law on Foreigners, 1 decision on lenient measures was issued with the measure “reporting to the police at a certain time”.

In 2020, 3,149 migrants were registered, of which 2,829 expressed an intention for international protection, 218 were returned under readmission agreements (208 to Albania, 9 to Kosovo, and 1 to Serbia), while 102 migrants were forcibly removed. In 2020, according to the Law on Foreigners, entry for 556 foreigners was prohibited.<sup>145</sup>

When it comes to extraditions, last year 29 foreigners were detained in the Administration for the Enforcement of Penal Sanctions (AEPS)<sup>146</sup>, mainly for committing criminal offences of criminal association and theft, as well as for criminal offences related to the production and distribution of narcotics, and in one case it was a criminal offence of fraud and forgery of documents.

## Legal basis and procedure for deprivation of liberty of migrants in the context of migration regulations

There are several grounds for deprivation of liberty under the Law on Foreigners and under the Law on International and Temporary Protection. According to the Law on Foreigners<sup>147</sup>, a foreigner may be deprived of liberty, arrested, and detained for a maximum of 24 hours, only if this is necessary to ensure his/her presence in the procedure of cancellation of stay up to 90 days and the procedure of annulment of temporary postponement of forced removal. Due to forced removal, a foreigner may be deprived of liberty, arrested, and detained for a maximum of 48 hours. A foreigner is released as soon as the reasons for deprivation of liberty and detention cease to exist, and no later than after the expiration of 24 or 48 hours, unless action is taken to carry out the forced removal or a decision on placement in the reception centre has been made. These are the only two cases where the Law on Foreigners provides for deprivation of liberty as a measure restricting freedom of movement. Paragraph 3 of the same article stipulates that the decision on deprivation of liberty of a foreigner in the aforementioned cas-

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144 Data obtained from the Ministry of the Interior during the online discussion forum held on 16 March 2021.

145 Response of the Border Police Sector, Police Department of Montenegro, dated 17 March 2021.

146 Responses submitted by the director of the Police Department, dated 17 March 2021.

147 Article 124.

es is made by the police. The Law on Foreigners does not explicitly define when this decision is made, before or after deprivation of liberty, but the logic of things dictates that this decision is served on the foreigner at the time of deprivation of liberty, and thus to be passed before deprivation of liberty. The competent centre for social work and the diplomatic-consular mission of the state of which he/she is a citizen is immediately notified of the deprivation of liberty of an unaccompanied minor foreigner. An appeal may be lodged with the Administrative Court against the decision on deprivation of liberty. The procedure before the Administrative Court is urgent.

After deprivation of liberty, the foreigner is immediately informed of the reasons for deprivation of liberty, as well as of the right to file a lawsuit with the Administrative Court against the decision on deprivation of liberty and that he/she may request that the deprivation of liberty be notified to the diplomatic-consular mission of the country of which he/she is a national, unless otherwise specified by an international treaty.

The second ground is provided in Article 125 of the Law on Foreigners - a foreigner who cannot be forcibly removed or his/her return cannot be secured by applying lenient measures, will be restricted the freedom of movement by the police, by being accommodated in the reception centre for foreigners, especially if there is a risk of avoiding the obligation to leave Montenegro or if the foreigner prevents the execution of forced removal and return, or if he/she has not complied with the obligations specified in the decision on the implementation of lenient measures and if he/she refuses to provide personal data and documents required for forced removal, or if the provided data is fake.

Thus, a foreigner's freedom of movement may be restricted when return cannot be ensured by applying more lenient measures and when the foreigner cannot be forcibly removed. The competent authority is obliged to consider the possibility of applying more lenient measures.

The decision on the accommodation of a foreigner in a reception centre is made by the police. Accommodation in the reception centre may last only for the time required for the forced removal and while the activities for forced removal are in progress, for a maximum of six months. An appeal against this decision may be filed with the Administrative Court, within five days from the day of delivery of the decision. The procedure before the Administrative Court is urgent. According to Article 128 of the Law on Foreigners, accommodation in the reception centre may be shortened or extended for a maximum of 12 months, if the foreigner refuses to cooperate or is late in obtaining the necessary documents from another state. The decision on shortening or extending the time of accommodation in the reception centre is passed by the police. Therefore, a foreigner may be in the reception centre for a maximum of 18 months. An appeal against such a decision may be filed with the Administrative Court, within five days from the day of delivery of the decision. The procedure before the Administrative Court is urgent.

In accordance with the Law on Foreigners, the police issue a decision on deprivation of liberty of a foreigner. Article 124 defines that a lawsuit can be filed against this decision with the Administrative Court. The procedure before

the Administrative Court is urgent. However, the concept of “urgency” is not defined, i.e., the deadline within which the court should decide. After the ruling of the Administrative Court, extraordinary legal remedies may be submitted to the Supreme Court on the basis of the Law on Administrative Disputes (Article 40), as follows: a) request for review of the court decision within 20 days from the day of receipt of the final decision of the Administrative Court, and b) a request for retrial within 30 days from the day when the party learned of the reason for the retrial.

On the other hand, Article 62 of the Law on International and Temporary Protection of Foreigners<sup>148</sup> defines that a foreigner seeking international protection may be restricted in his / her freedom of movement, if based on the facts and circumstances of the specific case it is assessed necessary to establish the facts and circumstances on which the request for international protection is based, which cannot be established without restriction of movement, especially if it is assessed that there is a risk of absconding given previous attempts to leave Montenegro arbitrarily, earlier refusal to verify and establish identity, concealment or provision of false identity or citizenship, gross violation of rules of stay and house rules in the reception centre, as well as the results the Eurodac System by applying the Regulation (EU) No. 603/2013; establishing and verifying identity or citizenship; protection of national security and public order of Montenegro, but also in order to prevent abuse of the procedure when there is a reasonable suspicion that he/she expressed the intention to submit a request for international protection during the procedure to prevent forced removal.

The same article defines that the foreigner in the transfer will be restricted in freedom of movement for the purpose of transfer to another state responsible for deciding on the request for international protection, if it is assessed that there is a risk of absconding, especially taking into account his/her opposition to the transfer. Measures imposed on the foreigner in transfer may last for a maximum of six weeks from the determination of the state responsible for deciding on the application for international protection or from the finality of the decision to reject the application for international protection. The decision to impose measures is made by the Ministry of the Interior. An appeal against the decision may be filed with the Administrative Court within three days from the day of delivery of the decision. This article does not prescribe urgency in the decision-making of the Administrative Court, but the prescribed deadline of three days for filing a lawsuit with the Administrative Court is shorter than the usual deadline of 20 days and prescribed by the Law on Administrative Disputes (Article 17).

Article 63 of the same law prescribes measures to restrict freedom of movement. Thus, in order to restrict freedom of movement, a foreigner seeking international protection or a foreigner in transfer may be imposed measures that include a ban on moving outside the reception centre, a certain area, then a ban on leaving the accommodation at the address he/she reported. One of the measures is the obligatory accommodation in the reception centre or in the reception centre

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148 The Law on International and Temporary Protection of Foreigners, “Official Gazette of Montenegro”, No. 002/17, 003/19.



for foreigners (which he/she cannot leave until the end of the procedure on the request for international protection), but they can also be temporarily deprived of travel documents that are kept while there are reasons for detention, of which a certificate is issued.

Furthermore, this article defines that the measure of accommodation in the reception centre for foreigners may be imposed on a foreigner who has been provided with special procedural guarantees, exceptionally when it is enabled by his/her personal characteristics and circumstances, i.e., needs, especially health condition. Measures imposed on a foreigner seeking international protection under this law may last as long as there are reasons prescribed by law, for a maximum of three months and may be extended for another three months, when there are justified reasons for doing so.

Under the Law on International and temporary Protection, the Ministry of the Interior (Moi) passes a decision on imposing measures to restrict freedom under Article 63 of this Law. An appeal against this decision may be filed with the Administrative Court within three days from the day of delivery of the decision. However, the deadline for the Administrative Court to decide is not prescribed here either.

**It follows from the above that the deadlines for the Administrative Court to act on the submitted legal remedies against the decisions of the Police Department and the Ministry of the Interior on the restriction of freedom of movement according to the above regulations are not adequately normatively regulated.**

In the case of minors, the Law on Foreigners (Art. 134) defines that an unaccompanied minor foreigner and a minor foreigner under the age of 14 may be placed in an appropriate institution only if forced removal cannot be provided in any other way. Additionally, a minor foreigner over 14, who is accompanied by a family member, can be accommodated in the reception centre only if the forced removal cannot be provided in any other way. In both cases, this law stipulates that a minor may be accommodated in premises that are suitable for the accommodation of a minor. This article also defines that stricter police supervision can be ordered for a minor foreigner only if he/she is accompanied by a parent or legal representative, taking into account the best interests of the child and the minor foreigner will be provided with age-appropriate conditions, as well as the right to education in accordance with regulations in the field of education.

Article 63 of the Law on International and Temporary Protection defines that the measure of accommodation in the reception centre for foreigners for unaccompanied minors may be imposed for a maximum of 30 days. An unaccompanied minor who has been sentenced to accommodation in the reception centre for foreigners must be accommodated separately from adults. This law does not prescribe the procedure after the expiration of the 30-day period.

## Detention of foreigners at the border or in the airport transit zone, refusal of entry in the country and implementation of the asylum procedure at the border crossing

Pursuant to the Law on International and Temporary Protection of Foreigners (Article 36), a foreigner who expresses an intention to apply for international protection at a border crossing may be detained at the border crossing or in the transit area of the airport and seaport, where he/she will be allowed to apply for international protection. Article 37 of the same law also defines that a decision on a request for international protection or a subsequent request for international protection is passed as soon as possible, and no later than within 28 days from the day of submitting the request. If the decision is not passed within 28 days from the day of submitting the request for international protection or subsequent request for international protection, the foreigner seeking international protection is allowed to enter Montenegro to conduct the procedure of granting international protection, on which the ministry makes a decision. Furthermore, a foreigner will be allowed to enter Montenegro in the event that during the procedure, it is assessed that there are conditions for granting international protection. An appeal against the decision made by the ministry may be filed with the Administrative Court of Montenegro, within five days from the day of delivery of the decision. The procedure before the Administrative Court is urgent.

Since 1 January 2019, when Civic Alliance started providing free legal aid to asylum seekers, there has not been a single case of representation of asylum seekers at the border and consequently of refusal to enter the country. Based on Civic Alliance knowledge, there are no adequate conditions in terms of providing accommodation and food in the zone of border crossings, and the procedures have been conducted through regular procedures before the Asylum Directorate.

The procedure for persons who do not meet the conditions for entering the country, and who tried to enter through the airport, is defined by the Law on Foreigners. Thus, Article 125, defines that a foreigner who cannot be forcibly removed or whose return cannot be secured by applying lenient measures, the police will restrict the freedom of movement by accommodation in the reception centre for foreigners. In the practice of Civic Alliance, the case of a foreign citizen who was supposed to be detained at Tivat Airport, and due to the lack of conditions, she was accommodated in the Reception Centre for Foreigners in Spuž.

In the case of applying for asylum, a person who has previously been deprived of liberty and who is in the reception centre for foreigners, and expresses an intention to apply for international protection, or apply for international protection, may not leave the reception centre for foreigners until the end of the procedure.

## Extradition

The Law on International Legal Assistance in Criminal Matters<sup>149</sup> defines that international legal assistance includes extradition of defendants and convicts, transfer and taking over of criminal prosecution, execution of foreign court decisions in criminal matters, as well as other forms of international legal assistance prescribed by this law, and it is necessary, *inter alia*, that the requesting state brings up the facts and evidence for the existence of reasonable suspicion that the person whose extradition is requested has committed a criminal offence or that there is a final court decision. Extradition is not permitted for a political offence, an offence connected with a political offence, or a military offence regarding the European Convention on Extradition. If according to the law of the requesting state the death penalty is proscribed for the offence for which execution is sought, extradition may be granted only if that state provides guarantees that the death penalty will not be imposed or carried out. The conditions for extradition at the request of the requesting state are regulated in more detail by the said law.

The Law on International and Temporary Protection of Foreigners (Article 12) defines that the procedure for granting international protection does not prevent the extradition of a foreigner seeking international protection for whom a European Arrest Warrant has been issued or a decision made on extradition to a member state or the International Criminal Court.

The procedure for granting international protection (Article 12) does not prevent the extradition to a third country of a foreigner for whom an international arrest warrant has been issued, and who seeks international protection, unless the decision on extradition violates the principle of non-refoulement.

The competent authorities are: 1. The Ministry of Justice, as the central body in the field of international legal assistance, is in charge of all incoming legal requests; 2. State prosecutor's offices, at the level of the state before which criminal proceedings are conducted, may request the provision of legal assistance through a request<sup>150</sup> and 3. The courts for the provision of international legal assistance; according to their functional jurisdiction, two investigating judges of the High Court of Podgorica and one in the High Court in Bijelo Polje are held responsible.

The Law on International Legal Assistance in Criminal Matters regulates the jurisdiction to provide international legal assistance with a focus on courts, and in practice, most letters rogatory are executed by courts. When we talk about specific cases in Montenegro, we can emphasise the case of an asylum seeker we could call X, who was in prison from September 2019 to the beginning of November 2020. The decision of the High Court in Bijelo Polje ordered his extradition to the country of origin. In addition to the legal actions taken in 2019 and during 2020,

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149 The Law on International Legal Assistance in Criminal Matters, "Official Gazette of Montenegro", No. 004/08, 036/13, 067/19.

150 In cases where the Law on International Legal Assistance in Criminal Matters can be applied to letters rogatory of judicial authorities, state prosecutor's offices are competent only in the matter of taking over criminal prosecution.

Civic Alliance filed five appeals with the Appellate of Montenegro against the decisions of the High Court regarding extradition and extension of detention until the execution of the decision on extradition. The appeals pointed out that such decisions of the High Court and especially the Court of Appeals, which upheld the decisions of the High Court, were not in accordance with the Constitution of Montenegro and international standards and especially the European Convention on Human Rights, which was later confirmed by the Constitutional Court in two of its decisions because there was reason to suspect that there would be a violation of Article 3 of the Convention.

## Conditions in facilities intended for accommodation of migrants under migration regulations - material and personnel capacities

Foreigners deprived of their liberty can be accommodated in the Reception Centre for Foreigners in Spuž, as a unit of the Police Department. Furthermore, foreigners may be deprived of their liberty for up to 48 hours due to forced removal, in which case they are accommodated in the detention units of the centre, ie., Police security departments. Detention units within the centre and Police security departments are under the jurisdiction of the police of general jurisdiction, while the reception centre for foreigners is under the jurisdiction of the Border Police Sector - Department for Foreigners and Suppression of Illegal Migration. Foreigners are not accommodated in AEPS under migration regulations.

The Reception centre for foreigners has a capacity of 46 people, 418 migrants were accommodated last year. According to the police, these capacities are sufficient for now. 42 police officers are engaged in the Reception centre for foreigners, while the Border Police Sector has an agreement on the provision of medical services with the Medical Centre of the Ministry of the Interior. IOM Arabic translators/interpreters are also present at the reception centre.

## Safeguards during deprivation of liberty

According to Article 16, paragraph 2 of the Rulebook on Rules of Stay and House Rules in the Reception Centre for Foreigners<sup>151</sup>, the foreigner will be provided with adequate contact with family, close relatives and diplomatic-consular mission of the state that issued the foreigner the travel document with which the foreigner

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151 "Official Gazette of MNE", no. 53/18.

entered Montenegro or the state in which the stateless person was born.<sup>152</sup> The competent centre for social work and the diplomatic-consular mission of the state of which he/she is a citizen is immediately notified of the deprivation of liberty of an unaccompanied minor foreigner.<sup>153</sup>

According to Article 124 of the Law on Foreigners, after deprivation of liberty, the foreigner is immediately notified of the reasons for deprivation of liberty and also that he/she may request that the diplomatic-consular mission of the state of which he/she is a citizen be notified about the deprivation of liberty, unless otherwise provided by an international agreement.<sup>154</sup> As Civic Alliance was informed by the police if it is an applicant for international protection, the diplomatic-consular mission will not be notified.

Pursuant to Article 47 of the Rulebook on Rules of Stay and House Rules in the Reception Centre for Foreigners, a foreigner in the reception centre has the right to unhindered communication with a legal representative, if he/she has one.<sup>155</sup>

The representatives of state bodies and foreign diplomatic-consular missions whose citizens are accommodated in the reception centre and representatives of international and nongovernmental organisations dealing with the protection of human rights of persons with limited freedom of movement are allowed to visit the reception centre to check the accommodation conditions and the respect for human rights.

Free legal aid in administrative proceedings is provided exclusively by nongovernmental organisations pursuant to Article 69 paragraph 8 of the Law on International and Temporary Protection of Foreigners<sup>156</sup>, while in administrative disputes and other disputes it is possible to hire a lawyer pursuant to Article 30 of the Law on Free Legal Aid.<sup>157</sup>

For the needs of the reception centre for foreigners, a doctor from the health centre of the Ministry of the Interior is hired, but there is no permanently employed doctor. Pursuant to Article 7 of the Rulebook on Rules of Stay and House Rules in the Reception Centre for Foreigners, if a police officer in the reception centre determines upon admission that the foreigner needs medical assistance, he will inform the doctor at the reception centre and the head of the reception centre. Similarly, in accordance with Article 14 of the same Rulebook, upon admission to the reception centre, and no later than within 24 hours of admission, a medical examination of the foreigner is performed, and a health card is drawn up.

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152 Article 16, paragraph 2 of the Rulebook on Rules of Stay and House Rules in the Reception Centre for Foreigners, "Official Gazette of MNE", No. 53/18.

153 The Law on Foreigners, Article 124.

154 Article 124, paragraph 4 of the Law on Foreigners, "Official Gazette of MNE", No. 03/19.

155 Article 47 of the Rulebook on Rules of Stay and House Rules in the Reception Centre for Foreigners.

156 "Official Gazette of MNE", No. 02/17.

157 "Official Gazette of MNE", No. 20/11.

## Rules of stay in facilities for accommodation of migrants under migration regulations

The conditions of stay and accommodation are prescribed by the Rulebook on Rules of Stay and House Rules in the Reception Centre for Foreigners and we can conclude that the conditions are satisfactory. A stay in the part of the reception centre intended for walking, in the open air for 2 hours a day, is provided. During the walk, foreigners move freely and can talk, while not disturbing the order and peace, nor violating the rules of discipline in the reception centre. Police officers at the reception centre keep daily records of the presence and activities of foreigners in the open. The stay in the open space is organised in such a way that the foreigner, in accordance with the previously determined schedule, is informed by the police officer about when he/she should start the activities in the open space.

The reception room is equipped with beds, wardrobes, hangers, bedside tables, and a table with chairs. Additionally, the living rooms, separate for women and men, are equipped with tables and chairs and TV sets. Rooms have large windows, but there is also artificial lighting, with central heating and cooling. Upstairs are bathrooms with separate compartments for men and women, and they are freshly painted and tidy.

A foreigner who does not have the funds and does not have personal hygiene items will be provided with soap, a toothbrush, a plastic cup, hair shampoo, a comb, a nail clipper, and female foreigners will also be provided with hygiene products for maintaining female hygiene. The foreigner is obliged to maintain daily personal hygiene and the hygiene of the room in which he resides.

Pursuant to Article 43 of the same Rulebook, if a foreigner does not have funds, the reception centre is obliged to enable him/her to call his/her family or closest relatives, as well as to write submissions in order to protect his/her rights and legally protected interests. The foreigner will be allowed to use the telephone at his/her own expense, only through telephone booths within the reception centre, at a time and in a manner determined by the daily schedule. When required for security reasons or when it interferes with the purpose for which the foreigner is placed in the reception centre, the foreigner may be restricted or deprived of the right to telephone conversations. Telephone conversations are conducted under the supervision of a police officer at the reception centre. If during the conversation it is suspected that the foreigner is using the telephone conversation in a way that endangers or may endanger the security of the reception centre, the police officer may terminate the telephone conversation, of which he is obliged to inform the head. A foreigner is entitled to one hour during the day when using a mobile phone.<sup>158</sup>

**However, the question arises whether this provision is in accordance with the Constitution of Montenegro, according to which the principle of inviola-**

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158 Article 43 of the Rulebook on Rules of Stay and House Rules in the Reception Centre for Foreigners.

**bility of confidentiality of letters, telephone conversations and other means of communication can be deviated only on the basis of a court decision, if necessary for criminal proceedings or for security reasons in Montenegro.<sup>159</sup>**

Pursuant to Article 38 of the same Rulebook, a foreigner has the right to a previously announced visit lasting up to 60 minutes, with the approval of the head of the reception centre or a person designated by him/her. The head of the reception centre determines at least one day a week and the time on that day when visits to foreigners will be made. Visits are carried out in a special room, under the supervision of a police officer appointed by the head of the reception centre.<sup>160</sup>

A foreigner may correspond at his/her own expense with a person outside the reception centre, with the consent of the head of the reception centre. The reception centre is obliged to deliver to the foreigner all mail received in the name of the foreigner, and to send the mail intended for sending to the specified address. The foreigner will be allowed to obtain funds for correspondence at his/her own expense.<sup>161</sup>

When it comes to the situation with the prevention of infection with the COVID-19 virus, we were told from the reception centre for foreigners that they follow the instructions and measures passed by the competent institutions, and owing to that, a small number of employees were infected. Only one accommodated person was positive after testing. The Police Department informed us that prevention measures are being implemented and that there are isolation rooms.

A foreigner accommodated in the reception centre may be subject to stricter police supervision if he/she leaves the reception centre without permission or if there is a justified doubt that he/she will try to leave the reception centre; physically assault other foreigners, police officers or other employees of the reception centre; attempted self-harm; behaves inappropriately, rudely insults and depreciates other foreigners, police officers, or other employees of the reception centre, on any grounds; prepares or makes items for assault, self-harm, or escape from the reception centre; deals with making narcotic substances in the reception centre; intentionally damages clothing and other items and means received for use in the reception centre; intentionally damages technical and other equipment in the reception centre; intentionally interferes with the operation of technical equipment installed in the premises for physical and technical protection; persistently refuses the orders of police officers and does not respect the applicable legal regulations or otherwise grossly violates the rules of stay in the reception centre.

Stricter police supervision includes restrictions on the foreigner's freedom of movement in the reception centre and can be imposed for a maximum of seven days. The decision on determining stricter police supervision is made by the head of the reception centre. Immediately after the decision is made, the police shall, on the same day or, if the decision was made on a non-working day, on the first

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159 The Constitution of Montenegro, Article 42.

160 Article of 38 of the Rulebook on Rules of Stay and House Rules in the Reception Centre for Foreigners.

161 *Ibid*, Article 42.

following working day, submit to the ministry the case files on stricter police supervision. The ministry will, no later than the first following working day from the day of delivery, decide on the abolition or extension of the implementation of stricter police supervision. The decision is served on the foreigner who may file a lawsuit against that decision with the Administrative Court, within five days from the day of delivery. The procedure before the Administrative Court is urgent.

## Accommodation conditions for vulnerable groups of migrants

Pursuant to Article 134, paragraph 1 of the law on Foreigners, an unaccompanied minor foreigner and a minor foreigner under the age of 14 may be placed in an appropriate institution only if the forced removal cannot be provided in any other way.<sup>162</sup> Based on the information of Civic Alliance, minor foreigners can be accommodated in the Ljubović Centre, but in that case they are not deprived of their liberty, because this institution is of an open type.<sup>163</sup> In Centre Ljubović, in 2020 and in the first four months of 2021 there were no cases of reception and accommodation of minor migrants.<sup>164</sup>

Under Article 134, paragraph 4 of the Law on Foreigners, members of the same family are accommodated in the reception centre in a special common room. When accommodating a foreigner in the reception centre, sex, age, and citizenship are taken into account, so that foreigners of the same sex are accommodated in the same premises, minor foreigners over 14 years of age together with a family member, and the family in a separate room. According to Article 15 of the Rule-book on Rules of Stay and House Rules in the Reception Centre for Foreigners, sex, age, and citizenship are taken into account, so that foreigners of the same sex are accommodated in the same premises, minor foreigners over 14 years of age together with a family member, and the family in a separate room. A minor foreigner over 14, accompanied by a family member, may be accommodated in the reception centre only if the forced removal cannot be provided in any other way. In that case, the foreigner will be accommodated in rooms that are suitable for accommodating minors. Members of the same family will be accommodated in a separate common room. The minor foreigner will be provided with conditions appropriate to his/her age, as well as the right to education in accordance with the regulations in the field of education.<sup>165</sup>

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<sup>162</sup> Article 134, paragraph 1 of the Law on Foreigners.

<sup>163</sup> In the Ljubović Centre there are seven rooms with 14 beds, which can be used for these purposes (two triple, three double and two single rooms). All rooms have access to bathrooms and toilets. Minor foreigners are provided with food, health care if needed, and psychological and social support of professionals in the institution. One educator per shift works with beneficiaries, during 24 hours; there are four of them in total and one coordinator. All educators are professional workers (social workers, special pedagogues, psychologists).

<sup>164</sup> Response of the Ljubović Centre, dated 21 April 2021.

<sup>165</sup> Article 134, paragraph 3 of the Law on Foreigners.



## Preparation for return and implementation of return

The Protector of Human Rights and Freedoms also performs the tasks of the National Preventive Mechanism against Torture (NPM). The NPM, supervising the procedures of forced removal of foreigners<sup>166</sup>, concluded that these actions went smoothly. The NPM report states that police officers acted professionally with full respect for the physical and mental integrity of foreigners, as well as their dignity. It was also stated that the foreigners, in whose case the NPM supervised the forced removal, waived their right to appeal.

The same report states that all persons against whom the measure of forced removal was applied, were informed, that medical examinations were performed and that third parties were informed, i.e., a family member, especially bearing in mind that foreigners are allowed to use the telephone every day and that the reception centre keeps records of calls made.

When foreigners decide to return voluntarily with the support of the International Organization for Migration, the competent institutions do not limit the process to any period. This is especially important in circumstances caused by the COVID-19 pandemic. IOM's Assisted Voluntary Return and Reintegration (AVRR) includes organisational and financial assistance for return and, where possible, reintegration assistance offered to a person returning voluntarily. This is comprehensive support in the country of reception, transit, and country of origin, before, during, and after the return.

## Monitoring

The Law on Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>167</sup> obliges Montenegro that the National Mechanism for the Prevention of Torture (NPM) has the right to visit institutions where persons deprived of their liberty are or may be found.

The NPM continuously visits the facilities where migrants deprived of their liberty are or can be found. The recommendations given by the NPM to the institutions mainly referred to the Police Department, in the sense that when police officers find migrants at the border with visible injuries, they always photograph them and keep special records of these cases. The recommendations also refer to making certain repairs in the reception centre, as well as to defining procedures in case of death in the reception centre for foreigners. Some of the recommendations were related to the need to form special written records on readmission at the relevant

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166 Report of the Protector of Human Rights and Freedoms, NPM: [https://www.ombudsman.co.me/img-articles\\_npm/56/izvje--taj-o-nadzoru-nad-prinudnim-udaljenjima-stranaca.pdf](https://www.ombudsman.co.me/img-articles_npm/56/izvje--taj-o-nadzoru-nad-prinudnim-udaljenjima-stranaca.pdf).

167 The Law on Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, "Official Gazette of Serbia and Montenegro - International Agreements", No. 016/05, 002/06.

border crossings, in which all data related to readmission at that border crossing would be recorded. In his report<sup>168</sup> from 2019, the Protector of Human Rights and Freedoms states that there is no full-time doctor in the reception centre, and that due to the large number of migrants who were previously accommodated in the reception centre for foreigners, a constant presence of doctors should be ensured during their reception and discharge. Although the building is relatively new, it was noticed that it would be necessary to invest funds to ensure the following: repair of beds, chairs, painting of the building, repairs of plumbing and ceilings.

Since the beginning of 2019, Civic Alliance, as a partner of the UNHCR, has been providing free legal aid to asylum seekers, so its representatives had the opportunity to organise talks with migrants who were deprived of their liberty in order to prepare certain acts, such as appeals on detention or preparatory interviews, as well as other matters in the regular procedure for asylum seekers before the institutions. The presence of NGOs was neither denied nor restricted with the full respect of epidemiological measures. The conclusions of both the NPM and NGOs indicate that the rights of migrants are respected and that there is no torture or inhuman treatment.

The CPT also concluded that the culture of police ill-treatment has not been effectively suppressed and that persons deprived of their liberty in Montenegro continue to be at serious risk of being ill-treated by police officers; that harassment by police officers in Montenegro is an accepted practice within the existing police culture, especially among criminal inspectors; that the authorities must show determination in combating ill-treatment, and in all possible ways ensure that police officers at all levels receive the message that any abuse will not be tolerated and that the direct perpetrators, as well as their superiors, will be punished accordingly.<sup>169</sup> Conditions in police establishments are generally poor and require significant material investments. It often happens that detainees are not even provided with food.

## Implementation of alternative measures

Pursuant to Article 126, paragraph 1 of the Law on Foreigners, lenient measures are: deposit of travel documents, travel papers and travel tickets; deposit of certain financial assets; ban on leaving accommodation at a certain address; reporting to the police at a specified time.<sup>170</sup>

The decision on the application of lenient measures is also made by the police. The decision determines the obligations on the basis of the pronounced lenient measure, which are appropriate to the circumstances of the specific case, and which last until the forced removal. An appeal against the decision on the application of lenient measures may be filed with the Administrative Court, within

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<sup>168</sup> Report of the Protector of Human Rights and Freedoms, available at: [https://www.ombudsman.co.me/img-articles\\_npm/30/izvje--taj-o-postupanju-prema-migrantima-u-crnoj-gori.pdf](https://www.ombudsman.co.me/img-articles_npm/30/izvje--taj-o-postupanju-prema-migrantima-u-crnoj-gori.pdf).

<sup>169</sup> CPT Report, page 13, available at: <https://rm.coe.int/1680925987>.

<sup>170</sup> Article 126, paragraph 1 of the Law on Foreigners.

five days from the day of delivery of the decision. Unlike the procedure before the Administrative Court when imposing detention under Article 124, the Law on Foreigners, in this case, does not provide for urgency as one of the characteristics of an administrative dispute. During the application of lenient measures, the police may provide the foreigner with accommodation and support, financial resources, and other material benefits, or conclude agreements with international organisations and nongovernmental organisations regarding these measures. In case of a mass entry or illegal stay in Montenegro, the decision to provide temporary accommodation for foreigners to whom lenient measures are applied is made by the Government.

## Conclusions and recommendations

Since the beginning of 2018, Montenegro has recorded another drastic increase in the number of migrants entering the country. Due to the increased migratory pressure, the competent institutions have faced a challenge in terms of lack of human and financial resources, as well as certain challenges in terms of implementation of protection standards and access to rights prescribed by the current legislative framework.

In recent years, Montenegro has implemented legislative reform with the aim of harmonising its migration policy with international and EU standards in this area, which aimed, among other things, to limit the use of immigration detention, especially when it comes to the most vulnerable categories of migrants. The implemented reform was based on the premise that immigration detention should be a measure of last resort and that in any case when there is a basis for it, lenient measures are applied that are an alternative to detention, bearing in mind that this type of restriction of freedom can turn into rights violation, if not justified.

The amended Law on Foreigners introduced, for the first time, alternative measures to restrict the freedom of movement and detention of migrants, in accordance with the directives of the European Parliament and the recommendations of the relevant bodies of the Council of Europe. The police may restrict the freedom of movement of a foreigner by placing him/her in the reception centre for foreigners, especially if there is a risk of evading the obligation to leave Montenegro or if the foreigner prevents the forced removal and return. "Lenient measures" have been defined, which in fact represent an alternative to the accommodation of foreigners in the reception centre for foreigners. **Judicial control in the proceedings on the lawsuit has been provided**, so that a lawsuit can be filed against the decision on imposing lenient measures with the Administrative Court, within five days from the day of delivery of the decision.

The Law on International and Temporary Protection of Foreigners defines, *inter alia*, the reasons why a foreigner seeking international protection may be restricted in his or her freedom of movement, as well as the measures that may be imposed to restrict freedom of movement. Standardised classification of foreigners has been conducted, with a clear distinction made between persons seeking in-

ternational protection and persons with approved protection. **Persons with approved protection are normatively guaranteed the enjoyment of all rights that Montenegrin citizens have (social protection, health care, right to education, employment...).**

Within the normative framework, and in practice, there are still certain shortcomings related to case management and case support by an authorised person, alternative accommodation based on family ties, housing, open and semi-open accommodation centres, reception centres/centres for return, deposits, guarantees, insurance, as well as the application of electronic surveillance, which still do not have an adequate place in the Montenegrin legal framework, in the context of migration regulations.

**The deadlines for the Administrative Court to act on the submitted legal remedies against the decisions of the Police Department on deprivation of liberty of a foreigner and the Ministry of the Interior on restricting freedom of movement according to the above regulations are not adequately regulated despite the fact that the law stipulates that these proceedings are urgent, there are no defined deadlines within which the court should decide.**

With regard to extradition detention, the so-far experience of Civic Alliance indicates a certain discrepancy in the implementation of international standards, in particular Article 3 of the European Convention on Human Rights, regarding the rights of migrants in extradition detention, among different courts at the national level. For example, the decisions of the Constitutional Court of Montenegro revoked the judgments of the higher courts, confirmed by the Court of Appeals, regarding the extradition and extension of detention for asylum seekers until the execution of the decision on extradition. The relevant decisions of the Constitutional Court established that the extradition of the complainant would violate Article 3 of the European Convention on Human Rights, which indicates the **need to strengthen the capacity of the judiciary to implement human rights standards in cases of extradition detention.**

The law stipulates that the restriction of freedom of movement is determined in cases when there is a risk of avoiding the obligation to leave Montenegro, and the **lack of sufficient financial resources and unsecured accommodation** is taken as a circumstance for that situation. This unjustifiably puts into a less favourable position the category of the so-called economic migrants who decide to leave their country of origin or the country in which they reside due to a very poor financial situation. In connection with the above, it would be advisable to **consider abolishing the legal possibility of restricting the freedom of movement of foreigners due to lack of financial resources or unsecured accommodation**, which unjustifiably puts foreigners leaving the country of origin or residence for economic reasons in a less favourable position.

When it comes to the conditions of reception and accommodation in institutions designated by law, according to the experience of the Civil Alliance and the Protector of Human Rights and Freedoms as the NPM, there is an evident improvement in terms of increasing accommodation capacity, technical equipment of institutions,

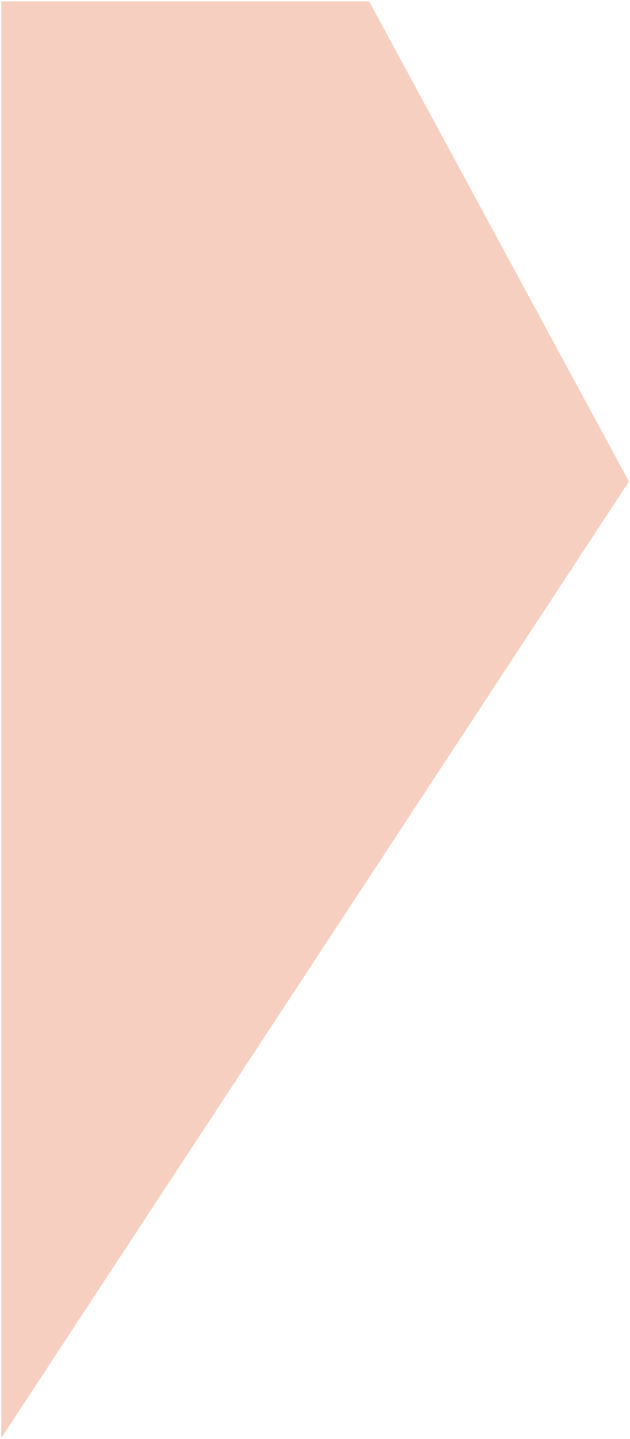
and strengthening the capacity of employees that work with migrants. However, as stated in NPM reports, **certain shortcomings are noted in terms of timely access to health care due to insufficient availability of medical staff, and in this regard, it is recommended to increase the number of doctors and nurses in institutions for accommodation and reception of foreigners and asylum seekers.**

An unaccompanied minor foreigner and a minor foreigner under the age of 14 may be placed in an appropriate institution only if the forced removal cannot be provided in any other way. **The Law on Foreigners, on the other hand, in the part of the provisions prescribing the placement of minors in reception centres does not prescribe that such accommodation will last only as long as the reasons for such accommodation last, respecting the best interests of minors in accordance with international standards.**

**It is necessary to strengthen the systemic implementation of legally prescribed alternatives to immigration detention.** Bearing in mind that the determination of alternative measures to the detention of foreigners is the responsibility of officers of the Border Police Sector, it is necessary to strengthen the capacity of inspectors for foreigners responsible for adopting alternative measures, with a clear definition of circumstances and procedures **in cases of “justified circumstances” in the procedure of passing lenient measures, and consider introducing new alternative measures to detention** (such as the opening of semi-open accommodation centres for foreigners). Furthermore, although the possibility is prescribed that accommodation and financial support for foreigners can be provided in connection with the implementation of lenient measures, it is not prescribed that centres for temporary accommodation and detention of foreigners may be established for that purpose, which is one of the international standards. Specifically, **the law envisages the possibility, but not the obligation of the competent authorities to provide adequate living conditions to a foreigner to whom an alternative measure has been imposed.**

Moreover, bearing in mind that during the visit of the NPM it was stated that there are cases in which foreigners deprived of liberty were not provided with an interpreter/translator in a timely manner, it is **necessary in each individual case to provide foreigners with proceedings in a language they understand, if they do not understand the official language of the procedure.**

Through the analysis of current practice, it would be advisable to **develop guidelines for the operationalisation of the principles of the best interests of the child in the procedures of admission and accommodation of unaccompanied minors**, in order to protect the rights of the child.



# Detention of Migrants under Migration Regulations – A review of legislation and practice in North Macedonia

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## 4. Detention of Migrants under Migration Regulations

### – A review of legislation and practice in North Macedonia

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#### Introduction

North Macedonia declared the crisis situation due to the increased influx of migrants in 2015 and since then it has been continuously extended for more than 6 years. Although the number of new arrivals has decreased compared to the 2015/2016 migration situation, there is no clear prediction of when and how the crisis situation will end.

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

Migration management in North Macedonia is mainly driven by the “security agenda” where police forces together with the army<sup>171</sup> and the foreign police officers<sup>172</sup> put a great effort into preventing irregular entry and stay of migrants on the territory of the country. During 2020, the number of migrants who entered the territory of North Macedonia remained large and resulted in a large number of pushbacks/deportations (29,355 persons pushed back/deported in

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171 In a crisis situation, according to the Law on Crisis Management, the president of the country can deploy the army as a support for the management of the crisis situation.

172 In 2020, a total number of 937 foreign police officials from 8 countries (Czech Republic, Hungary, Poland, Austria, Croatia, Slovenia, Serbia, and Slovakia) took part in a joint operation for surveillance of the southern border between North Macedonia and Greece.

2020).<sup>173</sup> The COVID-19 situation has raised many challenges for the PoC entering the country, the Reception Transit reCentre Vinojug (on the southern border with Greece) is used as a quarantine centre for witnesses in criminal procedures, asylum seekers and vulnerable PoCs.

Migrants who are not immediately deported to Greece and do not express their intention to seek asylum are accommodated in the reception centre for foreigners together with other foreigners who are in the extradition procedure. The presence of migrants as witnesses in the criminal proceedings against smugglers is still the main reason for immigration detention in North Macedonia, although according to positive legal provisions and norms, this is not a ground for detention. Migrants are usually not informed about the reason and duration of their detention. Immigration detention is still treated as part of an administrative procedure and it is not reviewed by a judge.

Due to various bureaucratic obstacles, the lack of readmission agreements and the lack of funds, return to the country of origin is only possible for foreigners originating from the region. According to the official statistics of the Ministry of the Interior, in 2020, there were 78 decisions on the return of foreigners accommodated in the reception centre for foreigners, and none of them was reviewed before the competent authorities.<sup>174</sup> According to official statistics, in 2020, a total of 119 people were accommodated in the reception centre for foreigners. Most were from Turkey (32), Afghanistan (19), Pakistan (17), Albania (12) and Bangladesh (11).<sup>175</sup>

This chapter aims to gain a deeper and more comprehensive insight into the circumstances of immigration detention in North Macedonia and its compliance with overall migration management. It will analyse the detention of migrants in the reception centre for foreigners, as well as at border points, reception-transit centres, airport transit zones, and extradition procedures. The document does not apply to migrants detained in misdemeanour or criminal proceedings, nor to migrants serving prison sentences.

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173 MYLA field reports: Q1 <https://myla.org.mk/wp-content/uploads/2020/07/Field-Report-Jan-Feb-Mar-2020.pdf>.

Q2 <https://myla.org.mk/wp-content/uploads/2020/07/Field-Report-Apr-May-June-2020.pdf>.

Q3 [https://myla.org.mk/wp-content/uploads/2021/01/Field-Report](https://myla.org.mk/wp-content/uploads/2021/01/Field-Report-July-August-September-2020.pdf)

-July-August-September-2020.pdf.

Q4 <https://myla.org.mk/wp-content/uploads/2021/01/Q4-Field-Report-October-November-December-2020.pdf>.

174 Free access to public information from the Ministry of the Interior.

175 Obtained by the Ministry of the Interior based on the request for free access to information of public importance.

# Legal framework and procedures for deprivation of liberty of migrants in the context of migration legislation

## 1.1 Migrants

The legal framework for depriving migrants of their liberty is regulated in several laws: the Law on Border Control<sup>176</sup>, the Law on Foreigners<sup>177</sup> and also the provisions of the Law on Criminal Procedure<sup>178</sup> where applicable.

Under the Law on Border Control, a person can be detained to enable border control procedures for up to 24 hours.<sup>179</sup>

According to the Law on Foreigners, a foreigner can be detained in North Macedonia for the purpose of establishing identity, after which forced removal may be ordered. The Law on Foreigners stipulates that Mol may detain a person for up to 24 hours to ensure his deportation.<sup>180</sup> A foreigner shall be temporarily detained in the reception centre until the reasons preventing his or her removal from the territory of the Republic of North Macedonia cease to exist, but no longer than six months.<sup>181</sup> Exceptionally, detention may be extended for a maximum of 12 months if the foreigner: refuses to provide personal or other information and documents necessary for his or her removal or has given false data; otherwise prevents or prolongs his or her removal, or if it is reasonably expected he or she to submit travel or other documents necessary for removal and requested by the competent authorities of other countries.

A person who refuses or is unable to prove his / her identity may be detained for the purpose of establishing identity. If the foreigner refuses or is unable to prove his/her identity, the authorised officers of the Ministry of the Interior may detain him/her for the purposes of establishing his/her identity for a period no longer than 12 hours.<sup>182</sup>

In the Republic of North Macedonia, there is only one reception centre for foreigners where migrants are accommodated due to immigration procedures. This institution is managed by the Ministry of the Interior (Mol), Sector for Border Affairs and Migration. All persons accommodated in this reception centre must be informed and have a decision for accommodation in the reception centre for for-

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176 The Law on Border Control, "Official Gazette of the Republic of North Macedonia", No. 171/10, 41/14, 148/15, 55/16 and 64/18.

177 The Law on Foreigners, "Official Gazette of the Republic of North Macedonia", No. 97/17 and 108/19, available at: <https://www.refworld.org/pdfid/44b2668a4.pdf>.

178 The Law on Criminal Procedure, "Official Gazette of the Republic of North Macedonia", No. 150/10, 100/12, 142/16 and 198/18.

179 Article 13, paragraph 9 of the Law on Border Control.

180 Article 158 of the Law on Foreigners.

181 Article 161 of the Law on Foreigners.

182 Article 183 of the Law on Foreigners.

eigners issued by Mol. The centre has house rules where all the rights and obligations of persons accommodated there are regulated.<sup>183</sup>

The grounds for immigration detention are not clearly prescribed by the laws. Even the relevant authorities cannot explain the legal grounds for the systematic deprivation of liberty of migrants detained as witnesses in criminal procedures. The written decisions themselves do not specify the legal grounds for detention. Detainees are not informed of the reasons for their detention. Most of them are apprehended by the police while travelling with migrant smugglers, and they are told that they had been detained as witnesses in criminal proceedings against the smugglers. Detention for the purpose of securing witnesses in criminal proceedings is not foreseen in any national law. In addition, it should be mentioned that the Law on Foreigners allows detention of a foreigner without a court order, despite the fact that the right of human freedom is constitutionally guaranteed: "No one can be restricted in freedom, except by a court decision and in conditions and procedures as prescribed by law".<sup>184</sup>

#### *1.1.1 Right to legal remedy for migrants*

According to the Law on Foreigners, the foreigner may initiate an administrative dispute against temporary detention before a competent court in accordance with the Law on Administrative Disputes.<sup>185</sup> The initiation of an administrative dispute will not postpone the enforcement of the decision. The procedure before the competent court is urgent.

Temporary detention terminates under the following circumstances: by removal of the foreigner; upon expiry of the deadline for which temporary detention is determined; if the stay of the foreigner becomes legal; if the decision on detention is quashed; if the reasons for which the decision on detention has been made cease, and by release from the reception centre.

In addition, the foreigner will be released from the reception centre if: the circumstances indicate that the removal cannot be made, and; the foreigner is temporarily detained in the reception centre and the identity cannot be determined, or a new decision on temporary detention in the reception centre is not adopted after the determination of identity. Moreover, the foreigner may be released from the reception centre in a case where removal of the foreigner is postponed due to the violation of the principle of non-refoulement and the fulfilment of the conditions of Article 162.

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183 The Rulebook of the House Rules of the Reception Centre for Foreigners, "Official Gazette of the Republic of North Macedonia", No. 93/2020, available at: <https://mvr.gov.mk/Upload/Documents/prifaten%20centar%20pravilnik.pdf>.

184 Article 12, paragraph 2 of the Constitution of the Republic of Macedonia.

185 Article 163 of the Law on Foreigners.

## 1.2 Asylum seekers

The legal framework for deprivation of liberty (limitation of freedom of movement) of asylum seekers is regulated in the Law on International and Temporary Protection.<sup>186</sup>

The provisions in the law restrict the freedom of movement of asylum seekers in the country in exceptional cases. Exceptional cases, in line with the law, are considered the determination of identity and citizenship, assessment of the facts under which the request for international protection has been made when there is a risk of absconding, protection of public order and national security, or detention for the purpose of removal of foreigners residing illegally in the country in accordance with the Law on Foreigners, for which an application for international protection is submitted with intent to delay or distract the removal decision.

The assessment of the risk of absconding of the applicant is made based on evaluation of facts in each individual case, taking into account background information, refusal for cooperation, or if the applicant has provided a fake identity. The limitation of freedom of movement is carried out in the reception centre for asylum seekers (open type centre) or the reception centre for foreigners (detention centre). These two measures will be imposed no later than three months from the date of delivery of the decision restricting freedom of movement.<sup>187</sup> By exception, measures may be subsequently extended for a maximum of three months, provided that the reasons for their imposing continue to exist.<sup>188</sup> The maximum duration of this measure cannot exceed six months.

According to MYLA, Articles 63 (limitation of freedom of movement) and 64 (measures for limitation of freedom of movement) from the law are contrary to the fundamental freedoms and rights of the person and citizen recognised by international law and determined by the Constitution, and especially with the right to freedom from Article 12 of the Constitution of the Republic of North Macedonia. Therefore, on 17 May 2018, an initiative<sup>189</sup> was submitted by MYLA to the Constitutional Court for initiating a procedure for assessing the constitutionality of Articles 63 and 64 of the Law on International and Temporary Protection. The Constitutional Court rejected the initiative.<sup>190</sup>

The specifics of the restrictions and the manners of performance of the limitation of freedom of movement are prescribed by a bylaw - the Rulebook on the Manner of Limitation of Freedom of Movement of an Applicant for International Protec-

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186 The Law on International and Temporary Protection, "Official Gazzete of the Republic of North Macedonia", No. 64/18, available at: <https://www.refworld.org/docid/5b55e5de4.html>.

187 Article 64, paragraph 2 of the Law on International and Temporary Protection.

188 *Ibid.*

189 Initiative to the Constitutional Court is available at MYLA website: <https://myla.org.mk/>.

190 Young Lawyers against the Constitutional Court, Prof. Svetomir Skarik available at: <https://myla.org.mk/>.

tion, adopted by the Minister of Interior on 25 December 2018.<sup>191</sup> The Rulebook prescribes the manner of limitation of freedom of movement of an applicant for international protection.

The rights of asylum seekers, who have been subjected to a decision limiting their freedom of movement are summarized in Article 66 of the LITP 2018. Most importantly, the asylum seeker, who has been subjected to a measure of limitation of his or her freedom of movement, has (i) the right to be immediately informed about the right to appeal and (ii) the right to free legal assistance in a language the applicant can reasonably be presumed to understand. With respect to vulnerable persons and unaccompanied asylum-seeking children, they will only be accommodated in a Reception Center for Foreigners on the basis of an individual assessment, as well as prior consent from the parent, i.e., the legally determined guardian, that such accommodation is suitable to their personal and special circumstances and needs, taking into consideration their health condition. This measure has to be prescribed with an act of the Reception Center for Foreigners.”<sup>192</sup>

### 1.2.1 *Right to legal remedy for asylum seekers*

The Ministry of the Interior issues a decision imposing a measure for limitation of freedom of movement for an applicant, determining the validity period of the measure. Against this decision, the applicant has the right to appeal before a competent court within five days of the day of reception of the decision. The appeal will not postpone the execution of the decision. The procedure before the competent court is accelerated.<sup>193</sup> The applicant that has had a measure of limitation of freedom of movement imposed has the right to be immediately informed about the right to appeal and the exercise of the right to free legal assistance in a language the applicant can reasonably be presumed to understand.

## Detention of foreigners at the border or airport transit zone

A foreigner can submit an application for asylum at any border point, including an airport. According to the Law on Foreigners, a foreigner who does not fulfil the entry requirements in accordance with this law will be refused entry into the Republic of North Macedonia.<sup>194</sup> The refusal of an entry will not be in prejudice

191 The Rulebook on the Manner of Limitation of the Freedom of Movement of Asylum Seekers, “Official Gazette of the Republic of North Macedonia”, No. 239/18, available at: <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5d35b5234>.

192 Legal framework on the detention of asylum seekers in North Macedonia and its compliance with EU law, MYLA 2018, Flip Schüller and Isa van Krimpen p. 21, available at: <https://myla.org.mk/wp-content/uploads/2020/01/The-right-to-freedom-versus-the-States-response-to-irregular-migration.pdf>.

193 Article 65 of the Law on International and Temporary Protection.

194 Article 17 of the Law on Foreigners.

of the application of special provisions on the right to international protection. There is also a provision in the Law of Foreigners<sup>195</sup> regarding special protection against refusal of entry which states that entry will not be refused to a foreigner who: has declared intention to seek international protection in the Republic of North Macedonia; has applied for international protection at border crossing points in the Republic of North Macedonia; or has been granted the right to international protection by the Republic of North Macedonia.

A foreigner has the right to appeal against the refusal of entry in accordance with the Law on Foreigners.<sup>196</sup> Refusal of entry is noted in the foreigner's travel document, as well as in the system for control of passengers and vehicles. The police officers competent for border control ensures that any foreigner who has been refused entry will not enter the territory of the Republic of North Macedonia. A foreigner has the right to lodge an appeal against the decision on refusal of entry, in writing in Macedonian language and its Cyrillic alphabet within eight days as of the day of receipt of the decision, to the State Second Instance Commission for Decision-Making in Administrative Procedures and Labour Relations Procedures, by paying administrative tax as prescribed by law. The appeal will not postpone the enforcement of the decision.

Under the Law on Border Control, a person can be detained to enable border control procedures up to 24 hours this includes persons arriving through the airport.<sup>197</sup> If there is a need for a longer stay then a person must be accommodated in a reception centre for foreigners.

A foreigner's detention at the international airport transit area in the Republic of North Macedonia, based on the visa, is not regarded as entry into the Republic of Macedonia and the foreigner must not leave such an area.<sup>198</sup> Skopje International Airport has a designated area for detention of foreigners in the transit zone, which, according to testimonies from individuals, is well equipped.

## Detention pending extradition

In the Macedonian legislation, extradition is regulated with the Law on International Cooperation in Criminal Matters.<sup>199</sup> Detention pending extradition can be issued by a judge on the basis of an international arrest warrant proposed by the public prosecutor. The judge of the previous procedure decides without delay on the proposal of the competent public prosecutor. The person whose extradition is requested, his/her defence counsel and the public prosecutor to the crim-

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195 Article 19 of the Law on Foreigners.

196 Article 18 of the Law on Foreigners.

197 Article 13 of the Law on Border Control.

198 Article 25 of the Law on Foreigners.

199 The Law on International Cooperation in Criminal Matters, "Official Gazette of the Republic of North Macedonia", No. 77/21, available at: <http://ldbis.pravda.gov.mk/PregledNaZakon.aspx?id=55651>.

inal council of the court, which decides within 48 hours, has the right to appeal against the decision within 24 hours from the hour of receiving the decision.

The judge of the previous proceedings, *ex officio* extends the detention until the extradition request is submitted to the competent authority, but not more than 40 days from the day of detention.<sup>200</sup> Every 30 days, the criminal council of the court *ex-officio* reconsiders the need to extend the detention measure for extradition. In the decision stating that the legal presumptions for extradition have been met, the court extends the measure of detention until the person is handed over, but not longer than 180 days from the day of deprivation of liberty. Alternatives to detention are also available in accordance with the Law on Criminal Procedure.

## Reception conditions in the facilities for accommodation of migrants under migration regulations

There is only one official detention centre in North Macedonia, the Reception Center for Foreigners in the Gazi Baba municipality in Skopje. The centre is a dedicated immigration detention facility operated by the police under the authority of the Ministry of the Interior (Sector for Border Affairs and Migration). The centre is difficult to access and, in that regard, in 2013 the Ombudsman already raised the alarm about the need for its relocation.<sup>201</sup> There are no other official long-term detention places, although numerous facilities are used to hold non-citizens for very short periods, including police stations and airport control rooms. However, there are a number of *ad hoc* detention sites near Macedonian borders, called “transit centres.”

This centre is an adapted facility since it was originally a kindergarten. The construction of a new facility for reception and accommodation of foreigners with unregulated stay has been postponed several times, and it is planned to start in 2021 with financial support from the European Union.

Although there is no official report about its capacity, unofficial reports put it at 150 people. In early 2015, as increasing numbers of refugees tried to pass through Macedonia, the detainee population in Gazi Baba skyrocketed. At its peak, there were reportedly some 400 held in the building. When delegations from Human Rights Watch and lawyers’ groups visited the detention centre in the summer of 2015, they were not allowed contact with any of the detainees. The sole purpose of the visits was to demonstrate the centre’s capacities.<sup>202</sup> At the time, officials rejected reports of severe overcrowding, claiming that there were no more than

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200 Article 63, paragraph 2, the Law on International Cooperation in Criminal Matters.

201 Ombudsman –NPM Report, 2013.

202 Global detention project, available at: [https://www.globaldetentionproject.org/countries/europe/macedonia#\\_ftn53](https://www.globaldetentionproject.org/countries/europe/macedonia#_ftn53).



250 people detained there at any given time. Independent observers repeatedly reported that during 2014 and 2015 the facility was continually overcrowded.

The NPM responded to the inhumane conditions in which detained foreigners resided, whilst in 2017 an improvement of the material conditions was noted. On several occasions, construction activities were undertaken to renovate the accommodation premises. The women's part/ wing of the reception centre was renovated with built-in air conditioning, new beds, and kitchens for self-catering. During December 2017, it was noted that construction activities were being carried out to refurbish a quarantine room to accommodate persons arriving at the centre, before being examined by a doctor. Regarding the material conditions in the men's wing, the NPM noted that in some rooms that were renovated in 2016, inventory was damaged, which, according to police officers, is a consequence of the attempts of the detained migrants to flee.<sup>203</sup>

According to MYLA, in the last five years, there has not been a case of overcrowding of the reception centre for foreigners.

## Protection guarantees during deprivation of liberty

The foreigner has a right to contact the legal representative and members of his or her family. In practice, the right to a phone call can be exercised once a week.<sup>204</sup> According to the CPT, however, its delegation in 2014 "met a number of detained persons who alleged that they had not been allowed to inform a third party of their situation. In some cases, persons could not inform a family member or a consular representative for weeks and even months."<sup>205</sup>

According to the Law on Foreigners, the foreigner will be immediately notified of the reasons for detention and of the possibility, upon his or her request, to inform the diplomatic mission/consular post of the state whose nationals he or she is.<sup>206</sup> In the event of detention of an unaccompanied minor, the diplomatic missions/consular post of the country whose national the minor is, will be immediately notified.

Access to legal counsel is guaranteed in the Law on Foreigners.<sup>207</sup> However, this access appears to have been limited or non-existent. According to the CPT, during the time of its 2014 visit, "it appeared that no automatic review of the detention was contemplated by the legislation. The vast majority of detained persons the

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203 The Situation of Foreigners Detained for Immigration Reasons in North Macedonia Anica Tomshikj Stojkovska available at: <https://myla.org.mk/wp-content/uploads/2020/01/The-right-to-freedom-versus-the-States-response-to-irregular-migration.pdf>.

204 MYLA immigration detention report [https://myla.org.mk/wp-content/uploads/2018/05/MKD\\_MYLA-Annual-Immigration-Detention-Report-2017.pdf](https://myla.org.mk/wp-content/uploads/2018/05/MKD_MYLA-Annual-Immigration-Detention-Report-2017.pdf).

205 CPT Report 2014: <https://rm.coe.int/16806974f0>, CPT had follow-up visit in North Macedonia in 2019, but did not include the Reception Centre for Foreigners in Gazi Baba.

206 Article 158, paragraph 2 of the Law on Foreigners.

207 Article 193 of the Law on Foreigners.

CPT's delegation had spoken to did not have access to legal aid at any stage of their proceedings." Migrants (foreigners without a regulated stay) are not entitled to free legal aid provided by the state.

The Law on Foreigners prescribes that when a procedure for expulsion from the Republic of North Macedonia, revocation of the right to residence or deprivation of liberty has been initiated against the foreigner or the foreigner needs to leave the Republic of North Macedonia in accordance with the return decision, he or she shall be informed on his or her right of legal assistance and court protection and the right to contact a representative of his or her country in the Republic of North Macedonia.<sup>208</sup> The costs of legal services are covered by the foreigners themselves.

The Rulebook on the House Rules of the Reception Centre for Foreigners contains a more detailed explanation of the manner of exercising the right to legal aid for persons accommodated in the reception centre. Article 32 of the House Rules states that the reception centre allows foreigners to have access to legal aid, as well as that a foreigner can hire a lawyer with whom he/she will be able to meet regularly. In addition to the possibility of hiring lawyers, the reception centre enables the presence of lawyers from civil society and international organisations that provide legal assistance in the reception centre. The days for legal aid of civil society and international organisations that provide legal aid are determined by the schedule of daily activities. If a foreigner has received a decision that has a deadline, he/she is allowed to meet with a lawyer outside the daily schedule.

According to Article 2 of the Rulebook on House Rules of the Reception Centre for Foreigners, all foreigners undergo a medical examination before their placement in the reception centre.

## Rules of stay in facilities for accommodation of migrants under migration regulations

Article 4 of the Rulebook on the House Rules of the Reception Centre for Foreigners regulates that a foreigner, once accommodated in the reception centre, receives a copy of the house rules and if a foreigner cannot read then the rules are explained verbally. If a foreigner does not understand any of the languages, he or she is provided with an interpreter. The reception centre can also use other written or audiovisual materials in which the rules are explained.<sup>209</sup>

After being placed in the reception centre for foreigners, foreigners are allowed to have three free of charge telephone calls with a maximum duration of 5 minutes each. During the stay in the centre, foreigners are allowed to use the telephone

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<sup>208</sup> *Ibid.*

<sup>209</sup> Article 4 of the Rulebook on the House Rules of the Reception Centre for Foreigners.

at their own expense. Mobile phones are not allowed. Foreigners are allowed to have visits two times per week upon prior request.

The Rulebook on the House Rules regulates most of the needs of the persons accommodated in the reception centre for foreigners as follows:

- Foreigners are accommodated in a room with persons of the same sex, with the exception of families. A foreigner can also ask for a change of room if there are justified reasons for that.
- Foreigners receive food three times a day.
- Foreigners have access to showers and other means for personal hygiene. They receive a hygiene package at least once a week.
- Foreigners are allowed supervised access to fresh air for at least two hours a day.
- Foreigners are allowed to practice their faith.
- Foreigners are allowed to have social activities (tv, radio, games, books, and other social activities)

In the event that the accommodated person violates the house rules and causes material damage, he/she is obliged to pay a fine in proportion to the costs of material damage.<sup>210</sup>

According to the Rulebook on House Rules of the Reception Centre for Foreigners, all foreigners accommodated in the reception centre have access to primary health care from the medical personnel in the reception centre.<sup>211</sup> In practice, this is provided at the request of a doctor from the Red Cross who has a daily presence. In case of emergency or serious medical condition, the foreigner can be accommodated in a specialised health institution with a recommendation of the medical personnel of the reception centre. Isolation is provided for persons who are contagious, with a recommendation from a doctor.

Under the Law on International and Temporary Protection, a foreigner can submit an application for asylum before any police officer including the police officers in the reception centre for foreigners.<sup>212</sup> If a foreigner submits an application for international protection in the reception centre for foreigners he or she must be transferred to an open centre for asylum seekers. However, based on certain provisions of the Law on International Protection, asylum seekers can be granted issued a decision on limitation of freedom of movement with a maximum duration of six months (three plus three months). This decision on limitation of freedom of movement can be challenged before the Administrative Court in an urgent procedure.

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210 Article 37 of Rulebook on the House Rules of the Reception Centre for Foreigners.

211 Article 19 of the Rulebook on the House Rules of the Reception Centre for Foreigners.

212 Article 26, paragraph 2 of the Law on International and Temporary Protection.

## Conditions for accommodation of vulnerable individuals

Minors and unaccompanied minors can be accommodated in the reception centre for foreigners. Unaccompanied minors are appointed with a legal guardian immediately. According to MoI official information in 2020, 13 minors were accommodated in the reception centre for foreigners including 7 unaccompanied minors. Unaccompanied minors are accommodated in special rooms separate from adults. The number of days children spent in detention has increased significantly (average 20 days, maximum 55 days) compared to the same period in 2019 (average 10 days, maximum 19 days). It should be borne in mind here that the EU Reception Conditions Directive states that detention of children will be carried out only as a last resort and after it has been established that other less coercive alternative measures cannot be effectively applied, and such detention may last for the shortest period of time and that every effort should be made to release detained minors and place them in minor-friendly accommodation.<sup>213</sup>

Families are also accommodated in the reception centre. In 2020, five families including women and children were accommodated. In these cases, the families are accommodated together in a separate room from the others. Foreigners are also accommodated in separate rooms based on gender. Persons with disabilities are accommodated in the same location as there are no special facilities for accommodation of foreigners with disabilities.

Besides immigration detention in the reception centre for foreigners, in 2020 (due to quarantine provisions) foreigners and asylum seekers were also detained for 25 days in the Reception Transit Centre Vinojug on the border with Greece.<sup>214</sup> As the pandemic situation has improved, this practice is not in place at the moment. Most of the detainees in RTC Vinojug, including children and women, did not have access to fresh air outside the centre, except during breaks for going to the toilet, when they were accompanied by a police officer. Considering the fact that RTC serves as a refugee camp, detained persons were not allowed to walk and go out on fresh air even in the camp, outside of their containers. Detainees in RTC Vinojug were not issued a detention decision. All unaccompanied children were timely appointed legal guardians by the Centre for Social Work. However, practices vary, the guardians of the children detained in TC Vinojug, unlike those detained in the RC for Foreigners, were not always given access to children. During their detention in RTC Vinojug, children were not involved in education, nor did they have access to educational and interactive programmes. Despite the active presence of MYLA in RTC Vinojug and the experience in working with and representing children, detainees in RTC Vinojug did not have the opportunity for legal

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213 Directive 2013/33 / EU of the European Parliament and of the Council of 26 June 2013 setting a standard for the reception of applicants for international protection available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0033>.

214 Conclusion of the Government Session held on 25 March 2020, where RC Vinojug was declared a quarantine centre for asylum seekers for a period of 25 days.

aid and consultation in the period until September 2020.<sup>215</sup> Some children who were kept in the Reception Center for Foreigners and RTC Vinojug were placed in a room together with other adults. The detention conditions for children in RTC Vinojug and the RC for Foreigners do not meet relevant domestic and international legislation and standards.

## Preparation for return of foreigners

IOM in North Macedonia provides support for the assisted voluntary return of foreigners. It consists of obtaining travel documents and covers the expenses of transportation to the country of origin. There is an established programme and foreigners are informed about this possibility. However, in practice, the voluntary return is used only occasionally and there is little interest among the foreigners in immigration detention.

According to the Law on Foreigners, police officers from the Ministry of the Interior escort the foreigner who should be removed from the country in accordance with this law, send him or her across the border, hand him or her over to the representatives of the foreign country the national of which the foreigner is or to the representatives of the foreign country where from he or she has arrived.<sup>216</sup> When carrying out the removal, the physical state and the mental capacity of the foreigner need to be taken into account. If during the removal the foreigner resists and the officials are forced to use coercive measures, such measures are applied in a proportionate and reasonable manner, in accordance with the law, respecting the fundamental rights, dignity, and physical integrity of the foreigner.

The expenses incurred as a result of the temporary detention of the foreigner in the reception centre, as well as other expenses that will be incurred as a result of his or her removal will be borne by the foreigner.<sup>217</sup> Foreigners accommodated in the reception centre should receive a return decision that defines the period of voluntary return during which the foreigner will be obliged to leave the territory of the Republic of North Macedonia.<sup>218</sup> The foreigner will be notified, by a decision, that if he or she does not voluntarily leave the territory of the Republic of North Macedonia within the defined period, he or she will be removed from the Republic of North Macedonia.

In 2020, 31 persons were returned to their countries of origin, Turkey (12), Albania (12), Kosovo (6), Germany (1). No one was forcefully deported under a readmission agreement.<sup>219</sup>

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215 MYLA Immigration Detention Report, available at: <https://myla.org.mk/wp-content/uploads/2020/12/ENG-Immigration-detention-in-North-Macedonia-through-numbers-January-September-2020-1.pdf>.

216 Article 155 of the Law on Foreigners.

217 Article 164 of the Law on Foreigners.

218 If foreigners decide to return voluntarily, they will be transferred to the airport or the border point prior their departure.

219 Official statistics of the Ministry of the Interior, free access to public information.

## Monitoring of the facilities for accommodation and forced return of foreigners

The National Preventive Mechanism (NPM), according to the competencies arising from the OPCAT,<sup>220</sup> makes unannounced visits to the detention centre every year. According to their reports, they have visited the centre 10 times since 2015. The NPM has repeatedly expressed concerns about detention decisions issued by the incompetent body; detention of children; the lack of access to asylum for detainees; the lack of respect for the right to fresh air; the absence of psycho-social support and the conditions for detention in general. In their latest report, they note that, although the improvement has been noted in terms of the right to seek asylum in detention, it is now again a matter of concern. In the same report, they also note that children are being detained despite their recommendations.<sup>221</sup>

In the last 4 years, the CPT delegation has conducted three visits to the country, however, according to the available reports, they have not visited the Reception Centre for Foreigners in Skopje since 2014.

NGOs do not have access to monitoring the conditions of persons accommodated in the reception centre for foreigners, except for the provision of free legal aid with prior approval from the authorities. MYLA has a weekly presence in the reception centre for foreigners limited to the provision of information and legal counselling to persons who have expressed intention to seek asylum in North Macedonia. Access to the reception centre for foreigners was restricted for a certain period due to the COVID-19 epidemics.

## Alternatives to detention

### 10.1 Migrants

The Law on Foreigners prescribes alternatives to detention but only in several situations. In the case of voluntary return, the foreigner who has been set a deadline for voluntary return may be accommodated in a particular place by the Ministry of Labour and Social Policy. The foreigner who has been set a deadline for voluntary return, in order to avoid the risk of absconding, may be imposed obligations for regular reporting to the Ministry of the Interior, for deposit of adequate financial guarantee, submission of documents, or an obligation to stay at a certain place.<sup>222</sup> Another alternative to detention is in the case when the foreigner is in the return procedure and has sufficient means to cover the expenses of private stay.

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220 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, available at: <https://www.ohchr.org/en/professionalinterest/pages/opcat.aspx>.

221 NPM Annual Report 2019, available at: <http://ombudsman.mk/upload/Godisni%20izvestaj/GI-2019/NPM%20Godisen%20izvestaj-2019-Ang.pdf>.

222 Article 152, paragraphs 7 and 8 of the Law on Foreigners.

A foreigner who cannot be removed, as well as a foreigner whom a decision on return has been adopted, but does not have a valid travel document and cannot voluntarily leave the Republic of North Macedonia, provided he/she has accommodation and means of subsistence in the Republic of North Macedonia and considering the circumstances of the case it may be assessed that he/she does not need accommodation in the reception centre, the Ministry of the Interior may adopt a decision limiting movement only in the place of accommodation and determine the obligation of his/her regular reporting in particular time periods to the Ministry of the Interior.<sup>223</sup> However, according to the available data, this alternative has not been used in practice.

## 10.2 Asylum seekers

In the case of asylum seekers, when imposing the measures for limitation of freedom of movement, there are alternatives to detention prescribed in the Law on International and Temporary Protection. According to the law, the detention (limitation of freedom of movement) can be carried out only if other less coercive alternative measures in accordance with the national legislation (confiscation of an identification document, regular reporting) cannot be applied effectively.<sup>224</sup> Freedom of movement may be limited by the following measures: prohibition of movement outside the reception centre for asylum seekers or another place of accommodation determined by the Ministry of Labour and Social Policy; or accommodation in the reception centre for foreigners.<sup>225</sup>

However, in practice, there is a number of cases noted by MYLA where the authorities decide to impose limitations of freedom of movement without applying less restrictive measures like confiscation of an identification document or regular reporting. In these cases, although procedures before the Administrative Court have been initiated, this mechanism is not functional. The procedures are urgent, but in some cases are decided after six months. MYLA has initiated an application before the Constitutional Court for the provisions of limitation of freedom of movement of asylum seekers.<sup>226</sup>

## Conclusions and recommendations

The Republic of North Macedonia has still not set up a fully-fledged protection-sensitive migration management system. This is also reflected in immigration detention. Migration movements remain high on an annual basis and registration should be followed by systematic protection-sensitive profiling and referring

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223 Article 162 of the Law on Foreigners.

224 Article 63 of the Law on International and Temporary Protection.

225 Article 64 of the Law on International and Temporary Protection.

226 Young Lawyers versus the Constitutional Court, Prof. Svetomir Skarić, page 85, available at: <https://myla.org.mk/wp-content/uploads/2020/01/The-right-to-freedom-versus-the-States-response-to-irregular-migration.pdf>.

anyone identified as being in need of international protection to national protection mechanisms. In the absence of a proper system for managing irregular movements, the practice of returning migrants outside of a legal and/or procedural framework has reportedly continued. There is also a practice of arbitrary detention of migrants without clear legal grounds or procedural guarantees for persons in immigration detention.

Further improvements to the asylum system are still needed. Although there are people in immigration detention that seek asylum, their asylum claims are not registered immediately. In general, migration management is not high on the government's agenda, developments are left mainly to the technical level in the relevant ministries and the support from international organisations and institutions. Children are still being detained in the reception centre for foreigners.

#### Recommendations:

- The reception centre for foreigners should be in an appropriate facility with the highest standards of accommodation.
- Detention conditions should comply with relevant domestic and international legislation and standards. Special attention should be paid to the conditions in which children are kept. Under no circumstances should children be placed with adults.
- In principle, no child should be detained, and alternatives to detention should be available in law and implemented in practice. Child detention can only be considered a last resort if all other alternatives are not appropriate and applicable. Even then, children have the right to education, interactive activities, and fresh air.
- Ensuring the presence of witnesses in criminal proceedings through their detention is illegal, and appropriate alternatives should be considered.
- Effective legal aid and the ability to effectively examine the legality of a decision are crucial to ensuring that the rights of detainees are respected and exercised.
- Even in the event of a state of emergency, there must be no discriminatory approach in determining the period of isolation of refugees and migrants. At the time of a pandemic, refugees are one of the most vulnerable groups, so an appropriate assessment of their needs and risks is necessary and plays a key role.





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