**Submission to the Special Rapporteur on the human rights of migrants**

 **Macedonian Young Lawyers Association**

February, 2022

The Macedonian Young Lawyers Association (MYLA), supported by the United Nations High Commissioner for Refugees Office in North Macedonia (UNHCR) since 2011 provides free legal aid and represents the asylum seekers and persons under international protection in the procedures before the state bodies and courts.

In North Macedonia (NM) there are two Transit Centers (TCs) on the southern (TC Vinojug) and northern border (TC Tabanovce) for accommodation of migrants, which were set and opened in 2015 during the refugee crisis, in order for the state to respond to the massive arrival of migrants. Both of the centers are managed by the Crisis Management Center (CMC). The Assembly announces the crisis condition every six months up to 30.06.2022, due to which this is the longest-lasting crisis condition since the announced independence of the country. In the TCs, since 2015, MYLA has daily presence aiming to provide free legal aid for the migrants regarding their right to apply for asylum and the asylum procedure in NM and to monitor the migration movements. Additionally there is one Reception center for asylum seekers in Skopje under authority of the Ministry of Labor and Social Policy (MLSP).

At the moment, the procedure for accessing the TCs is not defined and it is up to the discretion of the border police. Since there is no formal procedure for assessment, the method of selection is not clear.[[1]](#footnote-1) In essence, entry was/is usually allowed for unaccompanied children, families and persons with health issues, i.e. for the vulnerable categories. However, throughout the past years people not belonging to these categories were also often accommodated here, but most importantly – people that needed to be accommodated - were not. Besides the issues regarding accommodation, what remains unclear is the status of the persons residing in the transit centers, in particular when it comes to the rights they enjoy in this country, which places them in an unsecure position.

1. The situation in Republic of North Macedonia

The Western-Balkan route was closed in March, 2016, and it remains closed up to the day of submission of this report. Even though the route was closed, the migrants continue to use irregular means to reach the desired destination. The number of persons that transited irregularly however has decreased in the last two years.[[2]](#footnote-2) According to MYLA statistics, in 2021, 20.033 migrants have entered irregularly in NM.

Most of persons caught by the Macedonian police near the southern border were returned to Greece, without any formal legal procedure. Before the pandemic, small part of them were transferred to the Reception center for foreigners, in order to provide their presence as witnesses in the procedure against the smugglers. Since the pandemic, witnesses are unlawfully detained also in TC Vinojug and in some cases in TC Tabanovce (in 2021). Such grounds for detention are not envisioned in any law, nor did the authorities issue decisions which can be challenged. Prior to their transfer before the Public Prosecutor they were also in unlawful quarantine for 14 days because of the virus. Since 2022, this practice has change and it is assessed on case by case whether someone will be placed in quarantine or not, without having clear rules and adopted operative procedures.

For most of the migrants, after the border police registers their personal data and fingerprints, they are returned to certain unofficial border points with Greece. Usually, the migrants express their wish to return to Greece. However, cases without any form of registration are also noted, where the persons are automatically returned by the police. In 2020, during the Covid-19 pandemic, the migrants weren’t registered by the police and they were immediately returned to Greece.[[3]](#footnote-3) However, since January 2021, the registration process has resumed.

During 2021 migrants from India and Cuba who have entered irregularly in NM from Serbia, who were apprehended within the territory of the NM or detained in TC Vinojug, were afterwards transported to TC Tabanovce. For the persons, the police issued decisions for expulsion from the country and they were obliged to pay a fee. However they were either returned outside of a formal procedure in Serbia or they were left in TC Tabanovce.[[4]](#footnote-4)

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The common practice of unlawful returns deprives migrants from access to territory and the asylum procedure, and are consequently deprived from individual assessment of each individual case. Additionally, there is lack of referral mechanisms for persons with protection needs. As per the discussions led by MYLA field counselors with the migrants, the police don’t inform the migrants about their right to asylum, and often there is no interpreter speaking the language that they understand. On the other hand, the country interprets this as prevented illegal entry of foreigners in the country, even though de facto these persons entered the territory of NM. According to MYLA data, in 2018, 6997 migrants were returned to Greece outside of a formal procedure. In 2019 - 20.511 migrants, in 2020 - 29.706 migrants and in 2021 - 17.280 migrants[[5]](#footnote-5).

During 2021 and 2022, in TC Vinojug only migrants who are detained as witnesses in criminal procedures were/are accommodated.[[6]](#footnote-6) In few cases vulnerable persons were also allowed to be accommodated, but only injured migrants in need of medical assistance, and in rare cases single parents with specific needs. In TC Tabanovce the migrants were accommodated according to the assessment of the police without an established system for admission, but great number of them were allowed to stay for few days.

The state hasn’t made any progress in developing independent border monitoring mechanism at the national level. Only the National Preventive Mechanisms within the Ombudsman office operates as a monitoring authority which has the competence to monitor the situation at the border points where persons can be detained, and centers for accommodation and detention of migrants and asylum seekers including the TCs at the border, among other places.

1. Legal frame and access to asylum

*Lex specialis* in the field of asylum is the Law on International and Temporary Protection[[7]](#footnote-7)(LITP). Additionally, according to LITP, from the day of expressing intention and submission of application until the day of taking a final decision, the Law on Foreigners shall not be applied. In December 2021, the Parliament of NM adopted amendments on the Law on foreigners, but there weren’t any significant changes important for the essence of the report. There are no recent changes in the domestic legislation in respect of border entry, asylum and other international protection procedures for non-nationals since May 2021.

In practice, the asylum seekers are sometimes facing obstacles in submitting their asylum request. The migrants detained in the Reception center for foreigners and in TC Vinojug were limited in their access to submit asylum request prior to the proceeding before court in which they are witnesses. In other cases for persons accommodated in TC Tabanovce and Vinojug there was a delay in processing the requests[[8]](#footnote-8) or for the transport to the police station to submit the request. In few cases the border police asked for the reasons for seeking asylum and according to the statement they decided whether their request would be eligible in order to register it, which it’s not in their competence.

1. Covid-19 pandemic and specific cases

During the Covid-19 pandemic the Government brought a conclusion on 25.03.2020 declaring that all asylum seekers and persons who are staying irregularly in NM, and are found on its territory, will be in 25-day quarantine in the TC "Vinojug" during the state of emergency. However, the authorities continued to accommodate them in the center after the state of emergency ended without legal grounds for such illegal detention violating their freedom of movement. Afterwards, it was decided by the Ministry of Labor and Social Policy that the quarantine accommodation will be limited in 14 days, except in cases of submitting negative PCR test.

However, in March 2021, MYLA received a positive judgment from the Administrative court in NM in which it ruled that the quarantine accommodation due to the virus COVID-19 for an asylum seeker in the TC Vinojug was unlawful contrary to the Constitution of North Macedonia, the LITP and the European Convention on Human Rights. With this judgment, the Administrative court quashed the decision for quarantine accommodation issued by the Center for Social Work Gevgelija, MLSP. After this judgment, the practice of accommodating asylum seekers in quarantine has ceased.[[9]](#footnote-9)

In TC Vinojug the persons’ right to legal aid was restricted. Most of these people were unofficially returned to Greece after giving a statement to a competent court, without being granted free legal aid and not all asylum seekers had access during their quarantine. For some migrants while in quarantine, the legal aid was provided through different mobile applications, thus sometimes putting in question the quality of the legal advice. Moreover, in 2021, among them there were unaccompanied children, to whom a guardian was appointed who still did not have unlimited access to the children. This practice was contrary to the national child protection system, thus putting in question the best interest of the child and its assessment. In 2021, TC Tabanovce also served as a detention center in some cases of witnesses or victims in incidents. Until September 2021, 55 unaccompanied children and 40 women were detained in both TCs. The detainees in both TCs were not issued a decision, nor were the reasons for detention orally explained.[[10]](#footnote-10) MYLA received messages from relatives of detainees seeking for help and answers as to why their freedom of movement was restricted.

1. “Safe third country” concept and agreements

In North Macedonia there isn’t a "safe third country" list with the view to expedite border immigration and asylum procedures. However, according to article 17 (4) from the LITP, the Ministry of Interior together with the Ministry of Foreign Affairs prepared a “safe country of origin“ list.[[11]](#footnote-11) This list includes all EU member states and 11 other countries.

During the years, North Macedonia has signed 26 bilateral and multilateral agreement on re-admission with Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Denmark, France, Germany, Hungary, Iceland, Italy, Kosovo, Moldova, Montenegro, Norway, Poland, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Benelux countries and Croatia and the agreement with the EU.

In 2021, North Macedonia and Serbia ratified the Agreement on Cooperation in the Field of Combating Smuggling of Migrantsand Аgreement on Cooperation in the field of Combating Human Trafficking.

Law enforcement authorities and other competent state institutions, assisted from the foreign police officers located in NM under bilateral agreements, mainly coming from EU member countries, continued to perform border activities striving to intercept irregular migrants and prevent illegal border crossing along the border with Greece and with less intensity in border lines with other countries.[[12]](#footnote-12) They also conduct regular surveillance and visits to surrounding border areas, including villages and towns through which migrants might transit.

1. [The state of asylum in the Republic of North Macedonia 2020, MYLA,](https://myla.org.mk/wp-content/uploads/pdf/English-%D0%A1%D0%BE%D1%81%D1%82%D0%BE%D1%98%D0%B1%D0%B0%D1%82%D0%B0-%D1%81%D0%BE-%D0%90%D0%B7%D0%B8%D0%BB%D0%BE%D1%82-%D0%B2%D0%BE-%D0%A0%D0%A1%D0%9C-2020_compressed.pdf) pg.22; [↑](#footnote-ref-1)
2. MYLA’s field report 2021, and quarterly field reports for 2020 and 2021 available on [www.myla.org.mk](http://www.myla.org.mk) [↑](#footnote-ref-2)
3. For the overall situation in the TCs in 2020, please consider quarterly field reports available on [www.myla.org.mk](http://www.myla.org.mk) [↑](#footnote-ref-3)
4. Field report 2021, MYLA, available on [www.myla.org.mk](http://www.myla.org.mk) [↑](#footnote-ref-4)
5. The statistics are available in MYLA Field reports and quarterly reports for 2019, 2020 and 2021, available on [www.myla.org.mk](http://www.myla.org.mk) [↑](#footnote-ref-5)
6. Please find more information for the detention character of TC Vinojug during 2021 in the [MYLA Immigration detention report in North Macedonia for 2021.](https://myla.org.mk/wp-content/uploads/pdf/Immigration-detention-in-North-Macedonia-compressed.pdf) [↑](#footnote-ref-6)
7. Official Gazette of NM, no. 64/18 from 11.04.2018. [↑](#footnote-ref-7)
8. For example the absence of the police commander at the current time to process the requests. [↑](#footnote-ref-8)
9. <https://myla.org.mk/wp-content/uploads/pdf/Field-Report-Q2-2021-2.pdf> [↑](#footnote-ref-9)
10. [Immigration Detention in North Macedonia through numbers, January – September 2021, MYLA](https://myla.org.mk/wp-content/uploads/pdf/Immigration-detention-in-North-Macedonia-compressed.pdf).This is also confirmed in the Report of the National Preventive Mechanism within the Ombudsman office in NM, 2020, pg.32 [↑](#footnote-ref-10)
11. Official Gazette of Republic of North Macedonia no.56/19 from 15.03.2019. [↑](#footnote-ref-11)
12. Common Western Balkan Migration Policy: Borders and Returns Regional Policy Paper II, pg.7 [↑](#footnote-ref-12)