



**PERMANENT MISSION OF THE REPUBLIC OF MACEDONIA
TO THE UNITED NATIONS OFFICE AND OTHER INTERNATIONAL
ORGANIZATIONS IN GENEVA**

8 July, 2015

Via fax no.: 022 917 9008

**ATT TO: Mr. Karim Gherzraoui
Chief, a.i.
Special Procedures Branch
OHCHR– Geneva**

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COVER LETTER

The e-version of the attachments will be sent by mail, as well.

HoM's letter and attachment are enclosed.



**PERMANENT MISSION OF THE
REPUBLIC OF MACEDONIA
Geneva
Head of Mission**

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Geneva, 8 July, 2015

Dear Special Rapporteurs,

I have to honor to refer to your letter dated 20 June 2015, related to Joint Communication regarding alleged arbitrary detention of migrant and asylum seekers at the Reception Centre for Foreigners "Gazi Baba" in the Republic of Macedonia.

I would like to inform you that your communication was carefully considered by all in line ministries of the Government of the Republic of Macedonia. Please, find enclosed the Response by the Government to the Joint Communication on all matters requested in your letter.

On behalf of the Permanent Mission of Macedonia, I would like to reassure you of our readiness for further open, constructive and fruitful cooperation.

Dear Special Rapporteurs, please accept the assurances of my highest consideration.

Dusko Uzunovski
Minister Counsellor
Charges d'Affaires a.i.

Mr. Mads Andenas

Chair-Rapporteur of the WG on Arbitrary Detention

Mr. Dainius Puras

Special Rapporteur on the right to everyone to the enjoyment of the highest attainable standards of physical and mental health

Mr. François Crépeau

Special Rapporteur on the human rights of migrants

Mr. Juan E. Méndez

Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment

GENEVA

**RESPONSE BY THE GOVERNMENT OF THE REPUBLIC OF
MACEDONIA TO THE JOINT COMMUNICATION FROM SPECIAL
PROCEDURES ON THE RECEPTION CENTER FOR FOREIGNERS**

1.The Reception Centre for Foreigners in Gazi Baba has been established and operates in accordance with the applicable law, i.e. the Law on Foreigners and the Rulebook on Foreigners (Articles 108, 109, and 112 of the Law on Foreigners). According to Article 108, paragraph 2 of this Law, the Reception Centre for Foreigners of the Ministry of Internal Affairs is established for placement of foreigners who may not be deported for any reasons within the time limit as laid down in paragraph 1 of this Article. According to paragraph 4 of the same Article *“In the Reception Centre a foreigner may also be temporarily detained if there is a decision on his/her expulsion but s/he does not possess a valid or recognized travel document”*, while according to Article 109, paragraph 2, in case of a foreigner for whom there is a decision on his/her expulsion but s/he does not possess a valid or recognized travel document, s/he shall be detained in the Reception Centre until s/he obtains such a document from the country whose citizen s/he is or is issued a passport as of Article 119 paragraph 2 of this Law.

Furthermore, in accordance with Article 108, paragraph 3, the Ministry of Internal Affairs shall bring a decision on temporary detention of the foreigner as of paragraph 2 of this Article in the Reception Centre, while the right to appeal is regulated by Article 108, paragraphs 5, 6 and 7.¹ Finally, Article 109, paragraph 1 regulates the maximum period within which a foreign national may be detained at the Reception Centre for Foreigners.² Despite the fact that the Law on Foreigners envisages that a foreigner may be kept at the Reception Centre for Foreigners up to 12 months, there have been no such cases registered in practice. Even cases of

¹ According to Article 108 paragraphs 5,6 and 7:

Against the decision as of paragraph 3 and 4 of this Article a foreigner has a right to lodge a complaint with the competent Commission of the Government of the Republic of Macedonia within 8 (eight) days as from the date of receipt of such a decision. The complaint shall not have a suspension effect on such a decision.

The decision of the competent Commission of the Government shall be brought within 15 (fifteen) days as from the date of lodging the complaint.

Against the decision of the competent Commission of the Government an administrative dispute may be initiated before a competent court in accordance with the Law on Administrative Disputes.

² Article 109, paragraph 1 - A foreigner shall be temporarily detained in the Reception Centre until reasons preventing his/her deportation from the Republic of Macedonia cease to exist, but not longer than 12 (twelve) months.

detaining persons for more than 5 months (and realistically there have been such cases) are more of an exception than a regular practice.

The statements that some of the persons detained at the Reception Centre for Foreigners are witnesses in procedures against migrant smugglers are correct. However, in light of the above stated, it is considered that statements alleging that “persons are arbitrarily detained”, then that “there are no clear procedural regulations regarding the detention of foreigners” and that “non-citizens are allegedly detained without any legal order or justification” are completely unfounded.

2.The prevention and detection of illegal migration and of trafficking in human beings is one of the tasks of the border control (Article 2 of the Law on Border Control). The entire procedure for detection and further proceedings with respect to foreigners who have illegally entered or who are illegally staying in the Republic of Macedonia are in accordance with the applicable national law, including the procedure for detaining foreign nationals at the Reception Centre for Foreigners. The legal grounds for their detention are stated under item 1 of this reply.

Furthermore, taking into consideration the situation in the region, wherefrom illegal migrants most often come, the Ministry of the Interior of the Republic of Macedonia: does not undertake measures for their return to the countries of origin, and does not pronounce a misdemeanour sanction, as envisaged under Article 153 of the Law on Foreigners, despite the fact that the national legislation provides for legal grounds for both types of measures.

All legislation relating to border operations (Law on Foreigners, Law on Border Control, Law on Asylum and Temporary Protection and relevant secondary legislation) has been to the greater extent harmonized with the European legislation, while all novelties applied within the European Union are continually followed and are transposed into the national legislation. In drafting the relevant laws and in their practical enforcement, the following instruments have been taken into consideration: the provisions of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the 1951 Convention relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees.

Currently, there are activities finalized for the drafting of a new Law on Foreigners, which will *inter alia* implement several EU Directives, including the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. Under the new legislative

solutions the maximum period of detention at the Reception Centre for Foreigners will be reduced from the presently applicable 12 months to 6 months.

3.The conditions and procedure for granting asylum to foreigners or to stateless persons, and the conditions under which the Republic of Macedonia may grant temporary protection are regulated by the Law on Asylum and Temporary Protection. This Law envisages the right to protection for categories of "a recognized refugee" (refugee under the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees) and "a person under subsidiary protection."

The Republic of Macedonia is one of the first countries in the region that has taken an efficient, coordinated, synchronized and multisectoral approach towards combating human trafficking by establishing and putting into operation the National Commission on Combating Trafficking in Human Beings and Illegal Migration. In that regard, it is particularly worth underlining that each activity is coordinated at a multisectoral level by involving a number of relevant bodies, international organizations and citizen associations providing direct assistance and protection services to victims, hence supplementing the government's comprehensive efforts aimed at combating human trafficking. A large number of national laws have been aligned with international documents regulating this issue and concerning the identification and protection of victims of human trafficking, as well as the criminal prosecution of perpetrators of human trafficking-related crimes.

Furthermore, a Referral Mechanism for Victims of Human Trafficking has been devised in the country, laying out the procedures that all relevant bodies need to follow, as well as the way in which they are to be coordinating their efforts. Indicators for identifying victims of trafficking in human beings/children have also been formulated and training courses on this matter are regularly organized for relevant staff, hence ensuring in the broadest sense that all measures necessary are taken to adequately act upon the recommendations put forward by the Commission of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings. In keeping with the procedures established, neither identified, nor presumed victims of human trafficking are detained at the Reception Centre for Foreigners. Instead, immediately upon being reported as presumed victims by the relevant authorities, the latter are referred to the Centre for Victims of Human Trafficking.

4.As regards procedural protection, in keeping with Article 108 of the Law on Foreigners, foreign nationals have the right to file an appeal with the relevant Commission of the Government of the Republic of Macedonia against a decision to be detained at the Reception Centre for Foreigners within eight days from the date of receiving such a decision, whereas, in line with the Law on

Administrative Disputes, they are also allowed to file an administrative lawsuit against the decision of the relevant government commission with a competent court.

Immediately after being admitted to the Reception Centre, foreign nationals are informed about their rights and obligations as laid down by the House Rules of the Reception Centre for Foreigners. The Ministry of Foreign Affairs (for purposes of informing their country of origin) and the Public Health Centre are informed about their detention thereupon and - in cases of unaccompanied minors the Ministry of Labour and Social Policy and the Social Work Centre is also informed with a view to urgently assign guardians for unaccompanied minors.

Detained individuals have the right of receiving visits, conducting telephone conversations and receiving packages and money under the conditions set out by the House Rules of the Reception Centre for Foreigners.

Under the Rulebook Amending the House Rules of the Reception Centre for Foreigners adopted on 21 May 2013, instead of the prior 30 minutes, the duration of visits has been extended to 60 minutes with a possibility of being extended even further if necessary. Aside from receiving visits by members of their families and friends, individuals detained at the Reception Centre for Foreigners also have the right to be visited by their legal representatives, whereas visits by representatives of foreign embassies in the Republic of Macedonia, the Office of the Ombudsman, international and local non-governmental organizations, etc, are also regularly allowed. In the short time span since 1 January 2015 only, the Reception Centre for Foreigners has been visited by delegations of the IOM, the UNHCR, Doctors without Borders, the OSCE, the Delegation of the European Commission to the Republic of Macedonia, the Ombudsman's Office, as well as by representatives of the European Committee for the Prevention of Torture.

As regards medical care and public health protection, they are provided in cooperation with other in-line government bodies (the Ministry of Health) and other organizations such as the Skopje Red Cross and the UNHCR. The specific set of services, including the medical ones, that the Skopje Red Cross provides to individuals accommodated at the Reception Centre for Foreigners has been outlined and defined in a Memorandum of Understanding between the Ministry of the Interior of the Republic of Macedonia and the Skopje Red Cross.

Owing to this cooperation, as well as using the support of the UNHCR Office in Skopje, two medical doctors have been assigned to the Reception Centre for Foreigners hence ensuring that healthcare professionals are present at the Reception Centre for Foreigners 7 (seven) days a week. The doctors assigned to

the Centre have been designated a special office within the facilities of the Reception Centre, where access to police officers is not allowed. Providing primary healthcare falls entirely under the authority of the healthcare professionals who also have an exclusive right to decide which individuals and when need to be referred to clinical examinations at specialized medical facilities. Secondary and tertiary healthcare is afforded at medical facilities, being accessible to all individuals accommodated at the Reception Centre for Foreigners. All costs deriving from clinical examinations and hospital treatments provided to illegal migrants were until recently covered by the Ministry of the Interior, whereas under a decision of the Government of the Republic of Macedonia dated 28 April 2015, the Ministry of Health has been officially instructed not to charge any costs deriving from medical services and interventions provided to migrants.

The duty of maintaining hygiene in the facility, on the other hand, has been assigned to a privately owned company, while the protection against the spread of contagious diseases and epidemics, as well as vaccination, are pursued in conjunction with public healthcare institutions.

Moreover, since the Reception Centre for Foreigners was open and started operating, not a single case of emerging mass illness or contagious disease epidemics has been registered at the facility.

The materials containing information about rights and obligations of detained individuals have been translated into several languages including Arabic, whereas one of the medical doctors assigned to the Reception Centre is of Syrian origin and the presence of interpreters is allowed at all times when legal representatives pay visits to the detained. Nevertheless, the above listed are merely temporary solutions. Due to the lack of available interpreters as one of the major problems that a number of countries in the region are simultaneously facing, the relevant authorities make all efforts to find an adequate and long-term solution to this issue by dealing with it at a regional rather than local level.

5. Over the course of the entire 2011, only as few as 211 individuals were accommodated at the Reception Centre for Foreigners, 460 in 2012, 584 in 2013, while in 2014 their number reached 896. The projections for 2015 speak that the record number of individuals accommodated at the Reception Centre in 2014 will already be surpassed even as early as the first half of this ongoing year.

In parallel with the stark increase in the overall number of individuals accommodated at the Reception Centre on a yearly basis, a significant shift in the variety of different nationalities they belong to has also become apparent, while a large proportion of them have also been registered to not be able to present any type of document for personal identification. All these factors cause

problems in the normal functioning of the Reception Centre for Foreigners, such as problems in establishing the identity and the country of origin, which on its part ultimately results in longer average stay of the concerned persons in the Reception Centre. Until recently, the average period of stay of foreigners in the Reception Centre has been between two weeks and one month. Of course, one of the greatest shortcomings is the capacity of the facility, which in the newly arisen situation causes problems in fulfilling some of the standards for accommodation of this category of foreign nationals.

With a view to overcoming this situation, possibilities have been considered to relocate the Reception Centre for Foreigners into a building with greater capacity. The activities to this end will be implemented in the nearest future.

In the meantime, a transitional solution has been found to provisionally increase the capacities and improve the accommodation conditions. Thus, another building was temporarily designated for the Reception Centre for Foreigners – Gazi Baba. This building is part of the compound of the Reception Centre for Asylum Seekers in Vizbegovo, and is under the competences of the Ministry of Transport and Communication. The building is physically separated and secured from the rest of the buildings of the Reception Centre for Asylum Seekers (which is of open type) and only persons belonging to vulnerable categories are accommodated in the said building. Consequently, the accommodation capacity of the Reception Centre for Foreigners has been increased, i.e. additional 100 persons can be accommodated, and better conditions for stay of this category of persons have been provided.

6 and 7. The Law on Foreigners envisages specific rules for unaccompanied minors- foreign nationals who have illegally entered the territory of the Republic of Macedonia (Article 112, Article 113³). The procedure for this category of persons

³ **Article 112 of the Law on Foreigners** -In case a minor person, who is a foreigner under 18, enters the territory of the Republic of Macedonia contrary to the provisions of this law and is unaccompanied by his/her parents or a guardian, or, upon his/her arrival in the Republic of Macedonia s/he is left unaccompanied and does not apply for asylum, the authorized officials of the Ministry of Internal Affairs shall immediately inform the diplomatic or consular mission of the country whose citizen s/he with a view to establishing his/her close family members.

In case it is impossible to deliver such a minor immediately to the authorities of the country whose citizen s/he is due to objective reasons, s/he shall be accommodated in the special unit for minors within the Reception Centre and the Centre for Social Affairs shall be informed to that effect.

The minor as of paragraph 1 of this Article shall be provided with a guardian in accordance with the Law on Family.

During his/her accommodation in the Reception Centre, the minor shall be provided with legal aid, social support and medical and psychological care and shall have a right to education in the educational institutions of the Republic of Macedonia.

at the Reception Centre for Foreigners is in accordance with Article 112 and is under the guidance of guardians appointed by Social Work Centres for unaccompanied minors.

Article 110 of the Law on Foreigners envisages the possibility, i.e. the conditions under which foreign nationals do not need to be placed at the Reception Centre for Foreigners. In addition, the new Law on Foreigners, which is now drafted, will contain provisions envisaging that unaccompanied minors and families with minors are detained only as the last resort and within the shortest possible period.

Social Work Centres that appoint guardians for each unaccompanied minor are guided in their work by the best interest of the child. Thus, following an assessment by a professional team at the relevant Social Work Centre, appropriate accommodation is proposed for the child- either in an institution or with a foster family.

The guardian exerts due care for the best interests of the child, without being burdened by legal procedures. In this respect, the guardian may authorize another person that will serve as a legal representative of the unaccompanied minor in legal procedures in which unaccompanied minors may not represent themselves.

The new Law on Foreigners, which is now drafted, will contain provisions envisaging that unaccompanied minors and families with minors are detained only as the last resort and within the shortest possible period.

Taking into consideration the current situation in the Region and the difficult situation of migrants, the Ministry of the Interior attaches the highest of priorities to successfully managing illegal migration and to improving the conditions for foreign nationals who are illegally staying on the territory of the Republic of Macedonia.

In this regard, cooperation at the operative level has been established with other in-line Ministries and relevant institutions (Ministry of Health, Ministry of Transport and Communications, Ministry of Foreign Affairs, Ministry of Justice, Ministry of Labour and Social Policy, the Red Cross, etc). As a result of this

Article 113- A minor person who is a foreigner may not be returned to his/her country of origin or to a third country which agrees to accept him/her, until appropriate conditions for his/her admission are not provided in that country. The minor person may not be returned to a third country where his/her return would be contrary to the Convention on the Rights of the Children, the Convention of Protection against Torture, Inhuman or Degrading Treatment or Punishment or the Convention on Protection of the Human Rights and Fundamental Freedoms.

cooperation, the number of persons staying at the Reception Centre for Foreigners has been significantly reduced, then the existing facilities of the Centre are regularly maintained and repaired. Furthermore, there are an increased number of health care and sanitary inspections, special dietary regime is provided during the Muslim fasting, etc.

In parallel, there have been legislative amendments adopted under which persons who have illegally entered the territory of the Republic of Macedonia are allowed 72 hours legal stay and within this 72 hour period they are to file an application for asylum, without having to be detained in closed institutions.

Thus, the Law Amending and Supplementing the Law on Asylum and Temporary Protection (Official Gazette of the Republic of Macedonia No. 101, dated 18 June 2015) entered into force on 18 June 2015. Under this new Law, persons who have illegally entered the territory of the Republic of Macedonia are given the possibility to express their intention to file an asylum application. Consequently, the Law allows for 72 hours within which such foreign nationals are to file an application for an asylum or to transit through the territory of the Republic of Macedonia, to which end they are granted the right to use public transport. Persons are vaccinated (on voluntary basis). Hence, the need for their detention is avoided.