

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE: AL  
MKD 1/2015:

20 April 2015

Dear Mr. Uzunovski,

We have the honour to address you in our capacities as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the human rights of migrants; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 24/7, 24/6, 26/19, and 25/13.

In this connection, we would like to bring to the attention of your Government information we have received concerning the **alleged arbitrary detention of migrants and asylum seekers, including children, in overcrowded and unsanitary conditions at the Reception Centre for Foreigners “Gazi Baba” in Skopje.**

According to information received:

Although the reception centre “Gazi Baba” has an official capacity of up to 150 people it currently holds approximately 350 detainees. Migrants fleeing countries such as Syria are reportedly arbitrarily detained, sometimes for more than 6 months, without the possibility to challenge their detention in a court of law.

Allegedly, migrants, some of whom are Syrians, are detained at “Gazi Baba” so that law enforcement officials can gather evidence for criminal proceedings against those accused of human smuggling. The period of detention of the migrants lasts until the court’s final hearing or until a case is closed through settlement. In situations where the court case is settled –which occurs if the alleged perpetrator (the “smuggler”) admits guilt and accepts the sentence, the detention of the migrants lasts for up to two months.

In this context, the procedure through which a person becomes a “witness” poses further problems. If a migrant is apprehended together with a “smuggler”, he or she is automatically considered to be a “witness”. The apprehended migrant is

then detained as a result of a Public Prosecutor's Order for securing the physical presence of a witness as required by the Criminal Procedures Law. Such detention may last from the initial apprehension until the final court hearings. This Order, however, only applies to citizens. As there are no clear procedural regulations regarding the detention of foreigners, non-citizens are allegedly detained without any legal order or justification. To fill this legal loophole, authorities keep people in detention on the grounds of "ascertaining their identity". In more complex court cases and in cases where the defendant does not plead guilty, the detention of these apprehended individuals may last for six months or longer.

Furthermore, allegations were received about the detention conditions in Gazi Baba. According to the source, migrants detained at Gazi Baba have infrequent meals. In some cases they have to sleep on the floor. Furthermore, access to adequate sanitation and healthcare is extremely limited. Migrants and asylum seekers in detention suffer from medical problems caused or aggravated by the substandard conditions, the length of detention and the lack of consistent or adequate medical assistance. More specifically, overcrowding, substandard hygiene conditions, inadequate heating, insufficient quantities of hot water and the lack of ventilation were mentioned as factors that contribute to the outbreak and spread of respiratory, gastrointestinal and dermatological diseases.

Health risks to which detained migrants and asylum seekers are exposed are related not only to the substandard detention conditions, but also to the lack of medical screening. Limited and sporadic access to health services for detained migrants has been an ongoing problem. Frequent and sometimes lengthy gaps in the provision of healthcare in the mentioned immigration detention centre, as well as the lack of routine medical assessments resulted in neglect of patients with serious medical conditions and occasional interruption of their treatment. Overcrowding and substandard conditions have led to a number of health concerns, particularly for children and for pregnant and nursing mothers detained at the facility.

More specifically, children in immigration detention will often be psychologically traumatized and have difficulty understanding why they are being "punished" despite having committed no crime. On International Migrants Day, 18 December 2014, the National Ombudsperson recalled international standards which prohibit the detention of children and called for them to be provided with adequate social, medical and psychological assistance.

Serious concern is expressed concerning the alleged arbitrary detention of migrants, in particular migrant children, in overcrowded and unsanitary conditions at the Reception Centre for Foreigners "Gazi Baba" for an undetermined period of time, which could amount to torture or ill-treatment. Moreover, concern is expressed at the lack of medical screening in this migrant detention centre and the limited and erratic access to health services for detained migrants, which could have a detrimental impact on their right to the enjoyment of the highest attainable standard of physical and mental health.

In connection with the above alleged facts and concerns, please refer to the **Reference to International Law Annex**, attached to this letter which cites international human rights instruments and standards relevant to these obligations.

As it is your responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above mentioned observations.
2. Please provide information on the legal procedure and grounds invoked for the arrest and detention of migrants, and explain how these measures are compatible with the international human rights obligations of the former Yugoslav Republic of Macedonia.
3. What measures has your Government taken or does it intend to take to ensure an individual assessment of those subjected to detention prior to deportation; those who may be in need of international refugee protection; those who may have been trafficked, or who are in need of human rights protection for other reasons;
4. Please provide information with regard to the measures undertaken by your Government to ensure that procedural safeguards, such as prompt access to a lawyer, interpretation/translation services, necessary medical care, means of contacting family or consular representatives and ways of challenging detention are guaranteed.
5. Please provide information with regard to the measures undertaken by your Government to improve the detention conditions in Gazi Baba Reception Centre, including access to health care services.
6. What measures has your Government taken or does it intend to take to ensure that the principle of the best interests of the child has been guaranteed in each case where a child is involved and that children are never detained but provided with appropriate alternatives to detention.
7. What alternatives to detention, especially for migrant children and their families, has your Government considered for those individuals irregularly entering the country, bearing in mind that alternatives have been found to be significantly more cost-effective than traditional detention regimes.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the

investigations support or suggest the allegations to be correct, to ensure the accountability of any persons responsible for the alleged violations.

Your Government response will be made available in a report to be presented to the Human rights Council for its consideration.

Please accept, Mr. Uzunovski, the assurances of our highest consideration.

Mads Andenas  
Chair-Rapporteur of the Working Group on Arbitrary Detention

Dainius Pūras  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable  
standard of physical and mental health

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François Crépeau  
Special Rapporteur on the human rights of migrants

Juan E. Méndez  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or  
punishment

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns in this letter, the following international human rights standards appear to be relevant:

With regard to the systematic detention of migrants and asylum seekers, we would like to draw your attention to Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR) ratified by the former Yugoslav Republic of Macedonia in 1994, which provides that everyone has the right to liberty and security of person. The enjoyment of the rights guaranteed in the ICCPR is not limited to citizens of States parties but “must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party” (CCPR/C/21/Rev.1/Add. 13 (2004), para. 10). The detention of migrants and asylum seekers should thus be a measure of last resort. The ICCPR further stipulates that all persons deprived of their liberty be ensured the right to challenge the lawfulness of the detention before a court without delay as contained in article 9(4). For a more detailed overview of the international human rights standards governing the detention of migrants, including the obligation of States to always resort to alternatives to detention first, we would like to draw your attention to the Special Rapporteur on the human rights of migrants’ 2012 report to the Human Rights Council (A/HRC/20/24).

With regard to the conditions of detention, we would like to draw the attention of your Government to article 10(1), of the ICCPR, which provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. In its General Comment No. 21 (1992) on humane treatment of persons deprived of their liberty, the Human Rights Committee stated that this right applies to anyone deprived of liberty under the laws and authority of the State in prisons, hospitals – particularly psychiatric hospitals – detention camps or correctional institutions or elsewhere. It further states that treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule and, consequently, the application of this rule cannot be dependent on the material resources available in the State.

In addition, we would also like to draw your attention the Standard Minimum Rules for the Treatment of Prisoners (adopted by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977). We would also like to highlight principle 3 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 (adopted by General Assembly resolution 43/173 of 9 December 1988) which upholds the human rights of persons in detention and prohibits them from being subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Regarding the living conditions at migration detention centres and the access to medical treatment and services, we would like to refer your Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which indicates that States are under the obligation to *respect* the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services. (GC 14, Para.34) In this connection, the General the Basic Principles for the Treatment of Prisoners, adopted by General Assembly resolution 45/111, establish the right of prisoners to have access to the health services available in the country without discrimination on the grounds of their legal situation (Principle 9).

The Committee against Torture (CAT) and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment. In its General Comment No.2 of 2008, the CAT stressed that certain basic guarantees by the Convention must be apply to all persons deprived of their liberty. Such guarantees include, *inter alia*, maintaining an official register of detainees, the right of detainees to be informed of their rights, the right promptly to receive independent legal assistance, independent medical assistance, and to contact relatives, the need to establish impartial mechanisms for inspecting and visiting places of detention and confinement, and the availability to detainees and persons at risk of torture and ill-treatment of judicial and other remedies that will allow them to have their complaints promptly and impartially examined, to defend their rights, and to challenge the legality of their detention or treatment.

By resolution 1997/50, the Working Group on Arbitrary Detention was requested by the Commission to develop criteria for determining whether or not the deprivation of liberty of asylum seekers and immigrants may be arbitrary. In its deliberation No. 5, Principle 6, the Working Group stated that the decision must be taken by a duly empowered authority with a sufficient level of responsibility and must be founded on criteria of legality established by the law. Moreover, in principle 7, the Working Group state that a maximum period should be set by law and the custody may in no case be unlimited or of excessive length. Furthermore, in Principle 8 of the same deliberation, the Working Group specified that notification of the custodial measure must be given in writing, in a language understood by the asylum seeker or immigrant, stating the grounds for the measure; it should set out the conditions under which the asylum seeker or immigrant must be able to apply for a remedy to a judicial authority, which will make a prompt decision on the lawfulness of the measure and, where appropriate, order the release of the person concerned. Finally, in Principle 9, the Working Group specified that custody must take effect in a public establishment specifically intended for this purpose; when, for practical reasons, this is not the case, the asylum-seeker or immigrant must be placed in premises separate from those for persons imprisoned under criminal law.

With regard to the detention of migrant children we would further like to Article 37 of the Convention on the Rights of the Child, ratified by the Government of The former Yugoslav Republic of Macedonia on 2 December 1993 According to article 37 (b) of the Convention on the Rights of the Child, no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be

in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time. Article 37 (c) states that every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances. Article 37 (d) provides that every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action. Furthermore, the Convention provides that in any action taken by States concerning children, the best interests of the child shall be a primary consideration (art. 3). It also sets forth the right for children not to be separated from their parents against their will (art. 9); and the obligation of States to take appropriate measures to ensure that minors who are seeking refugee status or who are recognised refugees, whether accompanied or not, receive appropriate protection and assistance (art. 22).