

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; 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: UA
MKD 2/2016:

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Dear Mr. Uzunovski,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; 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 25/2, 24/5, 25/18, 26/19, and 25/13.

In this connection, we would like to bring to the attention of your Government information we have received **concerning physical violence by law enforcement officials of the former Yugoslav Republic of Macedonia against migrants peacefully protesting on the Greek side of the border, and the collective expulsion of migrants in possible violation of the principle of non-refoulement and lack of due process guarantees.**

According to the information received:

On 27 February 2016, a group of irregular migrants carried out a peaceful protest in the refugee camp in Idomeni, Greece. Protesters marched from the fence along the border with the former Yugoslav Republic of Macedonia in protest for the restrictions imposed in accessing the country through the Idomeni border point. On 28 February 2016, the train tracks in front of the camp were blocked and on the following day, the camp's fence allegedly was damaged. In response to this, the former Yugoslav Republic of Macedonia's police allegedly shot sound

grenades and tear gas into the protestors. Children were also present in the group, and reportedly one infant was seriously injured. On 1 March 2016, the protestors were holding white flowers and kept distance from the camp's fence. There was another blockade of the train tracks on 3 March.

It is reported that on the night of 3 March 2016, some people were allowed to cross the border, amongst them a key figure of the migrant's protests. After crossing the border, police and military started physically assaulting this person and another irregular migrant. First, in full view of migrants on the Greek side of the fence, then they were taken behind containers. While one person endured electric shocks to his body and head, the other one was beaten with sticks on the face and legs and later flogged with sticks while naked. It is alleged that he suffered a cracked bone in his neck from the mistreatment by law enforcement officials. The reported abuses continued for an estimated 20 minutes. Reportedly, the identification papers of the key figure of the protests were confiscated and before he was pushed back over the border to Greece, he received verbal death threats from one of the law enforcement officials. After being returned to Greece, he was taken to a nearby hospital, while the other irregular migrant was treated in the camp and left nearly immobile due to injuries resulting from the beating.

As a result of the restrictions imposed in accessing the country through the Idomeni border, reportedly, on the afternoon of 14 March 2016 thousands of migrants – including children, pregnant women and elderly – marched from Idomeni, Greece, towards the former Yugoslav Republic of Macedonia border. The route chosen lead through the Suva Reka river. Reportedly, a group of 15-20 irregular migrants were stranded on an island. After being rescued, they were taken to the transit centre "Vinojug", while four were treated at the hospital for hypothermia and a broken leg. It has been reported that three people lost their lives while crossing the river.

The migrants participating in the march were intercepted by the military and police forces on the former Yugoslav Republic of Macedonia side of the border and were taken back to Greece.

More than 2000 migrants who reached the city of Moin in the former Yugoslav Republic of Macedonia, were apprehended by police and military, separated in groups of 40 to 60 people and loaded in trucks during the night of 14 and 15 March 2016. The irregular migrants were transported back to the border with Greece in 56 trucks. It is alleged that once reaching the border, migrants were forced to cross the border back to Greece. The law enforcement officials allegedly used physical violence against some of the irregular migrants and gave them electric shocks before pushing them over the border back to Greece.

Another group of irregular migrants has been apprehended in the hills around Moin in the night of 14 March 2016, kept overnight and returned to Greece on the following day.

Around 12 volunteers and journalists accompanying the migrants in the march over the boarder have been stopped by military officials and detained overnight on the 14 March and were released the following day upon paying a fee for illegal border crossing. They were returned to Greece.

Grave concern is expressed with regards to the allegations on excessive use of force by border enforcement officials against unarmed migrants seeking protection and who were exercising their rights to freedom of opinion and expression and freedom of peaceful assembly. In addition, great concern is expressed regarding the alleged instances of torture and ill-treatment of some individuals in the group causing serious concern over their mental and physical integrity. Concern is also expressed at the detention of human rights defenders and journalists and the deterrent effect this might have on other activists and human rights defenders who advocate for the rights of migrants and on the legitimate reporting on the situation of migrants and the right to access information on such matters.

Further concern is expressed regarding the collective expulsion of non-nationals, explicitly prohibited under international law. The prohibition against collective expulsion entitles every non-national to an individualized examination of all the arguments used against his or her removal. It represents an important due process guarantee to prevent arbitrary expulsions of non-nationals. An integral element of the right to protection from collective expulsion and the right of access to an effective remedy is that an expulsion is stayed until its compliance with international human rights law has been finally determined.

Furthermore, concern is expressed regarding the lack of special measures envisioned to protect vulnerable migrants who might be particularly at risk of human rights violations, including children, persons with disabilities, LGBT persons, older people, victims of torture or victims of gender-based violence or trafficking.

While we do not wish to prejudge the accuracy of these allegations, we would like to remind your Government that the enjoyment of the rights guaranteed in the International Covenant on Civil and Political Rights (ICCPR) to which the former Yugoslav Republic of Macedonia acceded on 18 January 1994, are not limited to citizens of States parties but “must also be available to all individuals, regardless of their 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”.

Additionally, we would also like to refer to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which the former

Yugoslav Republic of Macedonia acceded to on 12 December 1994 which in its article 3 which provides for respect of the principle of non-refoulement. As a result, every State is obliged to give immigrants a fair opportunity to state a claim that an impending extradition, deportation or expulsion puts him or her at risk of torture. In addition, allow us to recall that Human Rights Council resolution 9/5, which "reaffirms that, when exercising their sovereign right to enact and implement migratory and border security measures, States have the duty to comply with their obligations under international law, including international human rights law, in order to ensure full respect for the human rights of migrants" and "urge States to ensure that repatriation mechanisms allow for the identification and special protection of persons in vulnerable situations, including persons with disabilities, and take into account, in conformity with their international commitments, the principle of the best interest of the child and family reunification".

We would also like to draw your Government's attention to the 2014 European Court of Human Rights ruling in *Sharifi and Others v. Italy and Greece* where the Court held that Italy had violated article 3 of the Convention, as the Italian authorities, by returning these applicants to Greece, had exposed them to the risks arising from the shortcomings in that country's asylum procedure; article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens) of the European Convention on Human Rights; and article 13 combined with article 3 of the Convention and article 4 of Protocol No. 4 to the Convention on account of the lack of access to the asylum procedure or to any other remedy in Italy. We feel that the facts with regard to Italy in this case bear similar resemblance to the information we received regarding the former Yugoslav Republic of Macedonia.

We would further like to draw the attention of your Government to the Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provide that Law enforcement officials may only use force when it is strictly necessary and only to the extent required, for the performance of their duties. The use of force and firearms must as far as possible be avoided, using non-violent means before resorting to violent means. Force used must be proportionate to the legitimate objective to be achieved. Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated, including giving a clear warning of the intent to use force and to provide sufficient time to heed that warning, and providing medical assistance as soon as possible when necessary (principle 9).

In relation to the rights to freedom of opinion and expression and freedom of peaceful assembly, we would like to refer to articles 19 and 21 of the ICCPR. We also would further like to refer your Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular article 5 points b) and c).

The full text of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response of the initial steps taken by your Government to safeguard the rights of the above mentioned persons in compliance with international instruments.

As is our 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 allegations.
2. Please explain how mass expulsions as described above comply with the former Yugoslav Republic of Macedonia's international obligations with regards to the non-refoulement principle.
3. Please provide information regarding how the proper identification of all potential protection needs, including individual assessments, age assessment, claims for asylum and other vulnerabilities has been carried out.
4. Please provide information regarding the measures to be taken to ensure the principle of *non-refoulement* as well as the right to life, physical, and mental integrity of migrants, in particular of vulnerable groups such as unaccompanied children.
5. Please provide information regarding how the mass expulsion of migrants is not in contravention to recent European Court of Human Rights rulings to the effect that States should no longer transfer any applicants to Greece.
6. Please provide information with regard to whether the police officers and the military being deployed at the border have appropriate training on human rights protection at borders.
7. Please provide information regarding what remedial measures have been taken vis-à-vis the migrants suffering physical violence by law enforcement officials.
8. Please indicate what measures are to be taken to ensure that migrants can safely exercise their rights to freedom of expression and of peaceful assembly. Please also indicate what measures have been taken to ensure that activists and human rights defenders who work to promote the rights

of migrants are able to carry out their work in a safe and enabling environment without fear of threats or acts of intimidations of any sort.

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 person responsible of the alleged violations.

We are intending to publicly express our concerns in the near future as we are of the view that the information upon which the press release is going to be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Government's to clarify the issue/s in question.

Your Government's 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.

David Kaye

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