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**Konferencija Mreže nacionalnih mehanizama za prevenciju torture zemalja jugoistočne Evrope**

**PRITVOR U KONTEKSTU MIGRACIJA I DJELOTVORNE ALTERNATIVE**

**IZLAGANJA UČESNIKA**



**U zajedničkoj organizaciji Savjeta Evrope i Institucije Zaštitnika ljudskih prava i sloboda Crne Gore - Nacionalnog preventivnog mehanizama**

**Pod okriljem projekta Savjeta Evrope**

**„Djelotvorne alternative pritvoru u kontekstu migracija: Učenje, razmjena i primjena”**

KOFERENCIJA MREŽE NPM ZEMALJA JUGOISTOČNE EVROPE U PODGORICI

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**Pritvor u kontekstu migracija i djelotvorne alternative**

Podgorica, Crna Gora

12 decembar 2018. godine

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1. Zaštinik ljudskih prava i sloboda Crne Gore, g-din Šućko Baković
2. Komesarska NPM-a Albanije, g-đa Ermonela Xhafa
3. Predstavnik Institucije Ombudsmana Austrije, predsjedavajući pravnom grupom, dr Peter Kastner
4. Savjetnica pučke pravobraniteljice za pravna pitanja g-đa Vanja Bakalović i savjetnica pučke pravobraniteljice za zaštitu ljudskih prava Hrvatske, g-đa Snježana Stanić
5. Savjetnik u NPM odjeljenju Institucije Ombudsmana Bivše Jugoslovenske Republike Makedonije, g-din Martin Duvnjak
6. Zamjenica šefa odjeljenja NPM, Mađarska, g-đa Katalin Haraszti
7. Savjetnica Zaštitnika ljudskih prava i sloboda Crne Gore, g-đa Marijana Sinđić
8. Zamjenica Ombudsmana, Rumunija, g-đa Magda Constanta Stefanescu
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10. Zamjenik Ombudsmana Republike Slovenije, g-din Ivan Šelih
11. Stručna savjetnica u Instituciji Ombudsmana za ljudska prava Bosne i Hercegovine, g- đa Dejana Kozomara
12. Viši pravni savjetnik NPM Odjeljenja, Kosovo, g-din Niman Hajdari
13. Član NMP-a, Poljska G-din Marcin Kusy

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1. **Zaštinik ljudskih prava i sloboda Crne Gore, g-din Šućko Baković**

Kao što je poznato migrantska kriza je u prethodnim godinama iznenadila i zatekla Evropsku Uniju i zemlje u regionu nepripremljene. Neke zemlje EU i Balkana nijesu odgovorile na pravi način, pribjegavajući mjerama koje nijesu humane i nijesu u skladu sa evropskim demokratskim vrijednostima.

Odnos prema migrantima je bio različit. Ne mogu a da ne pomenem žalosne prizore kakve smo mogli vidjeti – kao što su policijsko disciplinovanje i batinjanje migranata na graničnim prelazima, upotreba suzavaca i rastjerivanje migranata, zatvaranje granica, podizanje ograda, držanje migranata na otvorenom prostoru i nehumani odnos prema njima.

Najblaže rečeno ovo su neprihvatljivi postupci. Na sreću, za razliku od ovih zemalja, neke zemlje su postupale veoma humano i u skladu sa međunarodnim izbjegličkim pravom pokazujući na taj način svoj demokratski kapacitet.

Poznato je da su migranti posebno ranjiva grupa ljudi. Teško je zamisliti čivjeka u gorem položaju od onog koji je nerijetko izgubio sve osim vlastitog zivota, koji se želi spasiti tražeći utočište u stranoj zemlji. Zato odnos prema ovim osobama u prvom redu mora biti human i civilizovan.

Ljudska dimenzija migranata ne smije biti manje važna od pitanja zaštite bezbjednosti države.

Imigracioni pritvor je nešto što zadire u ličnu slobodu svakog pojedinca, a posebno je težak kada se radi o migrantima- koji su svakako već zbog te činjenice u nezavidnom položaju. Uvjereni smo da pritvor treba da bude mjera poslednjeg izbora i da se u svakom slučaju kada za to postoje osnovi, primjenjuju blaže mjere koje su alternative pritvoru.

Crna Gora je u velikoj mjeri uskladila zakonodavstvo u ovoj oblasti sa međunarodnim standardima. Donijela je Zakon o međunarodnoj i privremenoj zaštiti stranaca (koji se primjenjuje od 01.01. tekuće godine) i noveliran je Zakon o strancima, kojim je naša Institucija dobila dodatnu obavezu.

Poslednje izmjene Zakona o strancima našoj Instituciji su utvrdile posebnu nadležnost – a tiče se readimisije - vraćanja stranaca za koje se utvrdi da nezakonito borave u Crnoj Gori. Obaveza je policije da nas o svakom prinudnom vraćanju stranca blagovremeno obavijesti, da nam dostavi akte na osnovu kojih se vrši vraćanje. U Zakonu je posebno naglašeno da je policija dužna da sarađuje sa Ombudsmanom i da ga blagovremeno obavještava, kako bi mogao da izvrši svoju zakonsku obavezu. Do sada bilo je oko 130 takvih slučajeva.

Prema raspoloživim informacijama, u Crnoj Gori prosječno noć provede 120-130 migranata. Za našu zemlju to nije mali broj. Migracije nisu više izražene u mjeri kako je to bilo prije nekoliko godina ali i dalje su prisutne, posebno one gdje pojedinci, grupe ili porodice traže međunarodnu pravnu zaštitu

Prema standardima Savjeta Evrope, UN-a i EU, stranci i lica bez državljanstva koja traže međunarodnu zaštitu, imaju pravo da budu informisani o svom statusu, pravima i dostupnim vidovima zaštite, na jeziku koji razumiju. Posebnu pažnu treba posvetiti osjetljivim kategorijama kao što su djeca, djeca bez pratnje, stari, žene u drugom stanju, OSI, bolesni, žrtve trgovine ljudima, mučenja ili drugih nečovječnih postupanja i sl.

Zaštitnik ljudskih prava kao NPM preduzima mjere za sprječavanje mučenja i drugih oblika surovih, neljudskih ili ponižavajućih kazni ili postupaka, sprovođenjem redovnih i kontrolnih obilazaka mjesta u kojima se nalaze ili se mogu naći lica lišena slobode ili lica kojima je ograničeno kretanje, odlukom suda ili drugog državnog organa.

Dakle, naš mandat je monitoring i praćenje poštovanja prava lica koja su lišena slobode ili čije je kretanje ograničeno. Naravno, i mi smo uvjerenja da pritvor treba da bude izuzetna mjera, mjera poslednjeg izbora, i da se u svakom slučaju kada za to postoje osnovi primjenjuju blaže mjere, koje su alternativa pritvoru.

U vršenju svog mandata primjenjujemo standarde Evropskog suda za ljudska prava i drugih tijela u vezi sa imigracionim pritvorom i lišavanjem slobode i alternativama pritvoru u kontekstu migracija.

Posebno pratimo da li je lice odmah obaviješteno o razlozima lišavanja slobode ili pritvora na jeziku koji razumije, da li je lice imalo pristup advokatu, pristup ljekaru i da li mu je omogućeno da obavijesti rođaka ili treću osobu o ličnom izboru o mjeri pritvora. Takođe pratimo da li su uspostavljena jasna pravila kućnog reda u svim objektima u kojima borave migranti uključujući pisana uputstva o pravilima ponašanja.

Kako je CPT već naveo u informativnom dokumentu Imigracijski pritvor jasno je da zadržavanje u tranzitnim zonama i policijskim stanicama u dužem trajanju nije prihvatljiv i da bi se trebao svesti na najmanju moguću mjeru.

U tom smislu, Centar za tražioce azila u Crnoj Gori zadovoljava uslove prema kojima se lica mogu zadžati u centrima koji su specifično dizajnirani u takve svrhe, koji nude materijalne uslove koji su takvi da ne podsjećaju na zatvorsko okruženje. Osoblje u Centru je pažljivo odabrano i odgovarajuće obučeno.

Bez sumnje kako se u Analizi „Pravni i praktični aspekti djelotvornih alternativa pritvoru u kontekstu migracija “, navodi, alternativama se preveniraju ozbiljne posljedice koje pritvor može imati na fizičko i psihičko zdravlje migranata i tražilaca azila. Opravdano se naglašava da je pritvaranje ranjivih lica, a naročito djece, posebno problematično u smislu poštovanja prava i blagostanja.

U vezi sa tim navedena Analiza, predstavlja važan materijal koji će koristiti u budućem radu institucijama i organima i drugim subjektima i dati konkretne smjernice za nastavak djelovanja u ovoj oblasti.

U odnosu na praktične aspekte efikasne alternative imigracionom pritvoru, primjećujemo važnost ustaljenih kriterijuma, odnosno obezbjeđivanje usklađenosti sa imigracionim procedurama, poštovanje ljudskih prava i zadovoljenje osnovnih potreba i promovisanje ekonomičnosti.

Svakako da ispunjavanje ovih kriterijuma zahtijeva međusektorski pristup, uključujući i centre za socijalni rad i ne zanemarujući ulogu nevladinog sektora.

Na kraju, vjerujem da će današnji okrugli sto biti korak naprijed i doprinijeti dobrobiti migranata koji su se spletom okolnosti našli u Crnoj Gori i da će podstaći primjenu djelotvornih alternativa pritvoru.

1. **Komesarska NPM-a Albanije, g-đa Ermonela Xhafa**

Albanija nastavlja da bude tranzitna tačka za izbjeglice, tražioce azila i ekonomske migrante koji namjeravaju da koriste njenu teritoriju kako bi putovali u evropske zemlje. Veoma velika većina stranaca ilegalno ulazi sa teritorije Grčke preko zelenog graničnog pojasa u južnim predjelima (Gjirokastra i Saranda) i na kraju sa sve većim tendencijma iz jugoistočnog dijela (Korça). Broj ulazaka se povećao u 2018. godini, pa su se samim tim i problemi povećali. S druge strane, najveći broj izlazaka iz zemlje jeste ka granici sa Crnom Gorom (iz pravca Skadra). Kako bi se odgovorilo na dinamiku dešavanja, Ombudsman radi na povećanju partnerstva sa nekoliko regionalnih i nacionalnih aktera kao što su Direktorat za granice i migracije, Agencije za lokalnu upravu, UNHCR i ostale organizacije u cilju poštovanja ljudskih prava, unapređenja standarda, omogućavanja odgovarajućih uslova prihvatanja, sprovođenja procedure odabira, poštovanja Zakona o azilu od strane potencijalnih tražioca azila koji dolaze iz ratnih zona, itd.

**GLAVNI METODI RADA NACIONALNIH PREVENTIVNIH MEHANIZAMA**

Putem Mehanizma nacionalne odbrane, Ombudsman djeluje u nekoliko segmenata i na nacionalnom i na lokalnom nivou. Glavni metodi obuhvataju:

1. Monitoring

Brojne aktivnosti monitoringa na nacionalnom nivou sprovode se u oblasti mjera i politika migracije. Institucija Ombudsmana je u velikoj mjeri uključena u periodične nadzore Zatvorenog centra za strance koji su ilegalno ušli u zemlju - Karreç, Centra za tražioce azila – Babrru i Direktorata za granice koji se bave ovim pitanjima, kao i graničnih prelaza.

Ove aktivnosti monitoringa na lokalnom nivou obuhvataju:

- praćenje identifikacije lica od strane službenika za migracije na južnoj granici

- praćenje procedura odabira na južnoj granici

- praćenje primjene prava na azil.

Od novembra 2017. godine, Ombudsman je postigao sporazum sa UNHCR-om za monitoring južne granice i zaštitu izbjeglica, u skladu sa međunarodnim standardima i najboljim praksama. U okviru toga, eksterni ekspert Ombudsmana zajedno sa partnerima (UNHCR i regionalna kancelarija Caritas) u Gjirokastri pomažu u prijemu lica, prate individualne slučajeve u procesu identifikacije, odabira i procedura azila za tražioce azila. Ovaj sporazum takođe obuhvata širenje dobro uspostavljenog iskustva UNHCR-a, koje obuhvata jugoistočnu granicu (oblast Korça) i sjevernu granicu (oblast Skadra), sa eksternom ekspertizom koju odabere Ombudsman.

U posljednjem mjesecu smo angažovali 2 eksterna eksperta za Skadar i Korca, od kojih je ekspert zadužen za Skadar već na terenu.

Tokom svih aktivnosti monitoringa, konsultacije i dijalog sa državom i lokalnim vlastima odgovornim za ilegalne migracije i azil obuhvaćeni su u preliminarnim informacijama.

Sve aktivnosti monitoringa praćene su periodičnim izvještajima rješavanja problema, intervencijama po principu „individualni slučaj“ na nacionalnom i lokalnom nivou za implementaciju zakonitosti i preporuka. Konkretno, pored bilateralnih sastanaka na centralnom nivou sa Komesarom za Nacionalni preventivni mehanizam, kao što su Ministarstvo unutrašnjih poslova, Odjeljenje za granice i migracije, Centar za Azil, u cilju upućivanja na nalaze stranih eksperata Ombusdmana (naročito iz Gjirokastre i Skadra), i lokalni koordinatori naše institucije u ovoj oblasti, kao što su Regionalni granični direktorati i Instituti za javno zdravlje pružali su pomoć ilegalnim migrantima koji ulaze na albansku teritoriju.

 

 *Emigranti u Gjirokastri Konferencija Ombudsmana o migrantima*

Ključna tendencija predstavnika Ombudsmana nakon monitoringa jeste da se izvrši odgovarajući pritisak na nadležne organe da ispunajvaju međunarodne obaveze i standarde prava izbjeglica.

2. Garantovanje maksimalnog pristupa žalbenim procedurama, i upućivanje na posebne probleme migranata, tražioca azila i izbjeglica

Institucija Ombudsmana je uvijek otvorena i sa maksimalnom odgovornošću odgovara na žalbe ilegalnih stranaca ili organizacija koje se bave njihovim pravima povremenim upućivanjem na konkretne probleme. Kao dio tima partnera u Gjirokastri, predstavnik Ombudsmana je u mnogim slučajevima uticao na rad institucija, da prisustvuju slučajevima lica sa posebnim potrebama, djece i trudnih žena, kao i da im se pruže neophodne usluge.

Kao dio garancije standarda omogućeno je odsustvo odbijanja porodica sa ženama i djecom sa granice sa Grčkom, i njihovo upućivanje na Agenciju za zaštitu djece za slučajeve lica uzrasta mlađeg od 18 godina.

3. Praćenje procesa dobrovoljne i nedobrovoljne repatrijacije albanskih građana, iz zemalja Šengen zone.

U ovom okviru, Nacionalni preventivni mehanizam je učestvovao u 37 operacija repatrijacije ilegalnih migranata iz zone Šengena (unutar kojih se do sad vratilo 887 albanskih državljana) od 1. januara 2018. do današnjeg dana u okviru procedura praćenja vazdušnog saobraćaja u cilju praćenja procedura uklanjanja albanskih državljana sa teritorija država članica EU i Šengena za koje je izdata odluka o repatrijaciji. Uloga predstavnika Nacionalnog preventivnog mehanizma Albanije jeste praćenje poštovanja Povelje o fundamentalnim pravima i Ustava Republike Albanije, koji omogućavaju poštovanje ljudskog dostojanstva svih lica koja učestvuju u programu reptarijacije. Mi tijesno sarađujemo sa Odsjekom za migracije i granice albanske države, FRONTEX-om i francuskim policijskim službenicima.

4. Rad u mreži i sa partnerima

Institucija Ombudsmana je povećala saradnju sa Odsjekom za migracije i granice u Generalnom direktoratu Državne policije i sa UNHCR-om kako bi se uputilio na probleme izbjeglica učešćem u zajedničkim procedurama standardnog djelovanja, zajedničkim obukama, monitoringu Centra Kareci, na graničnim centrima Regionalnih graničnih direktorata i u objektima unutar kontrole granične policije gdje su smješteni ilegalni imigranti. Produžetak sporazuma sa UNHCR-om, ove godine, uključujući Korça i Skadar, pomoćiće osnaživanje graničnog monitoringa i adekvatno sprovođenje procedure odabira. Sljedeće godine, Ombudsman će realizovati još jedan projekat u cilju boljeg informisanja zajednica u graničnim područjima o pravima izbjeglica i njihovom tretmanu na teritoriji Albanije.

GLAVNI PRIORITETI

Unapređenje identifikacije i standarda odabira

Identifikovanje ilegalnih migranata na teritoriji Republike Albanije reguliše Zakon o strancima i ono je u skladu sa smjernicama za proceduru odabira. Strukture koje sprovode ovu proceduru su Granična policija, Informativna služba i Odsjek za borbu protiv trgovine ljudima.

Trenutno, ove strukture zajedno rade na identifikovanju slučajeva. U ovim praksama identifikovane su neke zakonske praznine kao što je nedostatak sistema upućivanja onih kojima je potrebna međunarodna zaštita, koji traže upućivanje na jedinice lokalne samouprave koje pružaju usluge ovoj kategoriji.

U trenutno primijenjenom Modelu za identifikaciju, jezičke barijere, nedostatak ženskih službenika za migracije, ograničeno vrijeme za izvođenje procedure odabira i iskustvo službenika za migracije imaju direktan uticaj na proces identifikacije. Ovaj sistem je pokazao da potencijalne žrtve trgovine ljudima nisu mogle biti identifikovane na granici i nakon toga kasnijim procedurama za azil u centru za tražioce azila u Babrru, Tirana.

Nacionalni centar za tražioce azila u Babru, trenutno pruža smještaj za oko 92 lica, a isti može primiti ukupno 140 lica. Ključne usluge pruža osoblje centra koji finansijski podržava nekoliko međunarodnih organizacija.

Proces identifikacije je jedan od glavnih segmenata koji treba ojačati, jer se tokom intervjua u ovom centru identifikuju maloljetna lica bez pratnje, zlostavljane žene ili potencijalne žrtve trgovine ljudima.

U skladu sa zakonima i Ustavom Albanije, svi tražioci azila i izbjeglice imaju koristi od usluga kao i albanski državljani, ali nedostatak odjeljenja za pitanja državljanstva i migracije koji obavezuju resorne institucije da sarađuju, ne omogućava ovim ljudima da koriste usluge, kao što su socijalne službe, zakon o socijalnom stanovanju, pristup civilnom statusu, itd.

Često predrasude o zemljama porijekla iz kojih ovi ljudi dolaze utiču na kvalitet odabira i ova lica se ne upućuju na relevantnan mehanizam, već se često šalju u zatvoreni centar u Karec.

Zatvoreni centar za strance u Kareçu je osnovan 2009. godine u skladu sa članom 100 Ustava i Zakonom o strancima, u cilju omogućavanja smještaja ilegalnim migrantima na teritoriji Republike Albanije, kojima je izrečena mjera pritvora u skladu sa važećim zakonima.



*Soba za klanjanje u Karecu*

Ovaj centar može da primi 125 lica, a trenutno ih ima ukupno 71, od čega 67 muškaraca i 4 žene. Zatvoreni centar je subordinisana struktura Direktorata za granice i migracije unutar Generalnog direktorata Državne policije. Interne propise Centra odobrio je generalni direktor Državne policije.

  *Unutrašnjost objekta u Karecu Spoljašnjost objekta u Karecu*

Ombudsman je napomenuo da su se uslovi u centrima za prijem ilegalnih migranata poboljšali, ali su potrebni dalji koraci za postizanje standarda. Tako su u graničnoj policijskoj stanici Kakavija preduzeti koriaci na regulisanju i opremanju prostorija, ali sami kraj zgrade je u riziku od rušenja zida zbog klizišta.

U svim slučajevima koje tretiraju policijski odsjeci u regijama kada su ilegalnim migranti zadržani u pratnji lica uključenih u trgovinu ljudima, postojala je dobra saradnja između službenika za borbu protiv trgovine ljudima i predstavnika Ombudsmana.

Ilegalnim migrantima su omogućeni hrana i skrovište tokom boravka u trajanju od nekoliko časova u prostorijama komesarijata Caritas-a, a tokom istraga boravili su u Centru Grëhot (Gjirokastra). Nema uočenih problema kada je u pitanju koordinacija između okružne i granične policije u ovim slučajevima, ali je potrebno više policijskih snaga za sprečavanje trgovine ljudima, naročito u prekograničnim područjima.

Inspekcije u ovom centru naglasile su potrebu za unapređenjem standarda u nekoliko pravaca kao što su:

* poštovanje fundamentalnih prava na identifikaciju i registraciju, ponovno naseljavanje i repatrijaciju;
* pojedincima koji iskažu želju da se prijave za azil treba da bude omogućen poseban tretman ui proceduri pred-identifikacije, imajući u vidu njihovu nacionalnost,
* ugrožene grupe, uključujući maloljetnike bez pratnje i žrtve trgovine ljudima ne treba dugo da borave u centru, već da se što prije presele u specijalizovana skloništa;
* složenost intervencija za povećanje broja službenika za usluge, unapređenje uslova života, unapređenje neophodne opreme u ovom centru, povećanje bezbjednosti centra, itd.

Ne postoje dokazi u procesu identifikovanja slučaja nasilja od strane albanskih graničnih policijskih struktura, ali je i dalje prisutan problem odbijanja ulazaka (vraćanja u Grčku bez izvođenja procedure odabira).

Procedura za azil

Nakon završetka procedure odabira na osnovu Zakona o azilu, započinje procedura za azil koja je zasnovana na sljedećim vremenskim okvirima:

- Procedura odabira – prijava za azil

- Od prijave za azil 30 dana - saslušanje

- Od saslušanja -15 dana se daje za odluku (i u slučaju pozitivne i u slučaju negativne odluke).

Ukoliko je odluka negativna, rok za žalbu je 15 dana i lice se može obratiti Nacionalnoj komisiji za državljanstvo i azil. Nažalost, ova komisija nije funkcionalna zbog isteka mandata nekih članova i nije uspostavljena.

Stoga, institut žalbe se u praksi ne primjenjuje i slučajeve šalju lica ili organizacije za ljudska prava koje ih brane pred Upravnim sudom, bez upotrebe ovog zakonskog koraka. Sud takođe upućuje ove slučajeve Nacionalnoj komisiji ponovo. Ovdje postoji praznina.

Postoji još drugih zakonskih praznina u zakonu o azilu, koje ne predviđaju međunarodne konvencije (posebne odredbe) kao što je tretiranje palestinskih državljana koji uživaju azil bez prolaska kroz azilske procedure, ali albanski zakon to ne omogućava.

Još jedan izazov jeste pružanje usluga ilegalnim migrantima od strane institucija. U Zakonu o azilu, od svih tražilaca azila ili izbjeglica se očekuje da uživaju usluge kao i albanski državljani. Međutim, u praksi, postoje brojne praznine koje treba da regulišu odjeljenja za državljanstvo i migracije ili podzakonski akti ili među-ministarske smjernice kao što su identifikacioni dokumenti, registracije u kancelarijama za civilni status, pristup zdravstvenim, obrazovnim i socijalnim uslugama, itd.

Izazovi i mogući naredni koraci

* Monitoring Centara za ilegalne migrante na osnovu ovog monitoringa, pripremljene relevatne preporuke i poslate administraciji.
* Kontinuirani sastanci Ombudsmana i Nacionalnih preventivnih mehanizma, sa stranim organizacijama i diplomatskim trupama.
* Dobra saradnja sa UNHCR-om za osmišljavanje brošura o pravima tražioca azila i izbjeglica.

Pitanje zdravstvenih usluga u centrima je istankuto na radionicama koje se godinama organizuju, od strane kancelarije Ombudsmana, putem NPM, sa predstavnicima Mreže jugoistočne Evrope za mehanizme pružanja zdravstvene njege u Albaniji i Direktoratom za migracije i granice, itd.

- Institucija Ombudsmana, u ulozi Nacionalnog mehanizma za sprečavanje torture, uz podršku projekta „Podrška Ombudsmana Danske Ombudsmanu Albanije – bliže lokalnim zajednicama, civilnom društvu i medijima“, dana 29. i 30. oktobra 2015. godine, organizovala je dvodnevnu aktivnost o „Tretmanu tražioca azila, izbjeglica i migranata povratnika u jugoistočnoj Evropi – Diskusija o zajedničkim zabrinutostima i standardima monitoringa".

Predstavnici institucije Ombudsmana širom svijeta okupili su se 7. i 8. septembra u Tirani, Albanija, da diskutuju o trenutnim izazovima koje su izazvali nedavni prilivi izbjeglica i mingranata i da pronađu zajednički odgovor na stanje ljudi kojima je potrebna međunarodna zaštita. Konferencija, čiji je domaćin bio Ombudsman Albanije, organizovana je zajedno sa Asocijacijom Ombudsmana Mediterana (AOM), Asocijacijom frankofonih ombudsmana i medijatora (AOMF), Međunarodnim institutom Ombudsmana (IOI) i Ibero-američkom federacijom Ombudsmana.

Trenutno se revidiraju Smjernice za proceduru odabira, u toku kog procesa su Granična policija, Ombudsman, OEBS, UNHCR i ostali pružili svoje nalaze, u skladu sa kojima se uskoro očekuje konačna verzija smjernica, dajući prioritet ubrzanim procedurama za azil i eliminaciju jezičkih barijera.

Ombudsman je u postupku diskusije i izrade petogodišnje Strategije, uključujući komponentu upravljanja migracijama koja je, u saradnji sa svim agencijama Ujedinjenih Nacija u Albaniji, omogućila svoje resurse kao doprinos za izradu ove strategije (2018- 2022).

Kroz Nacionalni preventivni mehanizam i konkretan rad eksperata u graničnim regijama, Ombudsman Albanije će povećati svoju posvećenost zaštiti prava izbjeglica i tražilaca azila u narednoj godini. Takođe će biti aktivan u partnerstvima ili mrežama saradnje na nacionalnom i regionalnom nivou.

1. **Predstavnik Institucije Ombudsmana Austrije, predsjedavajući pravnom grupom, dr Peter Kastner**

**I. Opšte napomene:**

Pred-deportacijski pritvor nije krivični pritvor. Ukoliko je Federalna kancelarija za strance i azil zabrinuta da lica, koja nisu ovlašćena da borave u Austriji neće napustiti zemlju, već će se radije skrivati, ona izdaje nalog policiji da uhapsi ova lica i da ih sprovede u pred-deportacijski pritvor. Iako austrijski zakon omogućava policiji da kazni strance najviše godinu i po dana, postoji veliko smanjenje broja ovakvih odluka o pritvoru od 2010. godine. Zatim, prosječno vrijeme trajanja pritvora se takođe drastično smanjilo, od 24 dana 2009. godine do nešto manje od 15 dana u 2013. Koji je razlog za to?

**Alternative pritvoru:**

Austrijski zakon propisuje **3 alternative pritvoru**: Boravak na određenoj adresi koju utvrdi nadležni organ, periodično javljanje policijskoj kancelariji i dostavljanje finansijskog depozita kod nadležnog organa. U praksi se uglavnom primjenjuju prve dvije alternative. Ove dvije alternative se takođe mogu kombinovano primjenjivati.

Ostali oblici alternativa ne postoje u Austriji, kao što je elektronski monitoring (npr. obilježavanje), zahtjevi davaoca garancije, otpust kod radnika koji pruža brigu ili shodno planu brige, program upravljanja zajednicom.

**Ko profitira od alternativa pritvoru?**

Alternative pritvoru ne propisuju se isključivo posebnim grupama stanovnika država trećeg svijeta. Stoga, u principu **svim pojedincima** koji mogu biti u pritvoru, tražiocima azila po uobičajenim i dablinskim procedurama, kao i netražiocima azila, takođe mogu biti propisane različite alternative pritvoru.

U skladu sa austrijskim zakonom, **maloljetnici** se tretiraju kao posebna grupa. On štiti mlađe od 14 godina od pritvora. Ostale **ranjive grupe** zakon ne tretira direktno kada su u pitanju osnov za pritvor ili vremenska ograničenja; one su, međutim, obuhvaćene zdravstvenim pregledima kojima se određuje spremnost za pritvor, u skladu sa Nalogom o pritvoru. Pojedinci kojima se omoguće alternative pritvoru mogu biti pritvoreni kao posljedica nepridržavanja uslova alternative pritvoru.

**Ko odlučuje o alternativi pritvoru?**

Procedure individualne procjene se sprovode u svim slučajevima i za sve kategorije građana država trećeg svijeta u Austriji, na osnovu relevantnih zakona i precedentnog prava. Zadatak srpovođenja procedura procjene pripada Federalnoj kancelariji za migracije i azil. Pravosudni organ, Federalni upravni sud, uključen je ukoliko se izazove odluka nadležnog organa.

**II. Smještaj Zinnergasse**

Kada su u pitanju alternative pritvoru, trenutno je od posebnog značaja smještajni objekat u Beču, Zinnergasse, **kojim upravlja NVO u saradnji sa policijom.** Ovaj objekat pruža prostor **porodicama**, on takođe nudi policijsku zaštitu od spoljašnje interferencije.

Objekat u Zinnergasse se nalazi na periferiji Beča. Tokom 2013. godine, ukupno 154 lica je tamo bilo smješteno, od kojih je 75 njih smješteno sa svojim porodicama. Svakodnevno funkcionisanje objekta omogućava NVO. Ta NVO je odgovorna za dnevnu brigu, distribuciju hrane, kriznu intervenciju, prevođenje i sprečavanje konflikta.

**Savjetovanje o povratku** se takođe obavlja uZinnergasse. Savjetovanjem o povratku se pruža pomoć i nagovaraju stranci da se dobrovoljno vrate. Oni koji se odluče za dobrovoljni povratak dobijaju informacije i savjete o tome ko će snositi troškove povratka u slučaju da nemaju novca, dobijaju pomoć oko pasoša, rezervacije leta, prevoza do aerodroma, podršku prilikom prijave (check-in) i u tranzitnoj zoni aerodroma, i kada je potrebno plaćanje pomoći za reintegraciju (u skladu sa individualnim slučajem).

U svakom slučaju, **pojedinci** kojima se omogući alternativa pritvoru u Zinnergasse **u obavezi su da se na dnevnom nivou javljaju policiji**, koja je prisutna u objektu. Policija je dakle odgovorna za provjeru poštovanja zahtjeva koje je definisala Federalna kancelarija za imigracije i azil.

U tipičnom slučaju, Federalna kancelarija za migracije i azil, kao organ koji izdaje odluku o alternativi pritvoru, predviđa da li će stranac biti smješten u Zinnergasse i redovno o tome obavještava policiju koja se tamo nalazi. Raspoređivanje stranca u Zinnergasse može se obavljati iz svih djelova Austrije. U većini slučajeva, Federalna kancelarija za migracije i azil organizuje putne karte do Beča za dotične strance. U ostalim slučajevima, npr. kada su u pitanju porodice, put obezbjeđuje Federalna kancelarija za migracije i azil direktno.

U skladu sa podacima Federalnog Ministarstva unutrašnjih poslova, smještaj Zinnergasse se može posmatrati kao dobra praksa za organizaciju alternativa pritvoru. Prisustvo policije u objektu omogućava da pojedinci koji su tamo smješteni imaju zaštitu od spoljašnje interferencije, kao što su krijumčari. Zatim, saradnja između NVO i policije smatra se dobirm modelom.

**Zadaci austrijskog Nacionalnog preventivnog mehanizma:**

Predstavnici austrijskog NPM-a posjećuju Zinnergasse jednom godišnje od 2015. godine. Ovaj objekat je u njihovom mandatu. Lica koja se redovno javljaju policiji treba da budu svjesna činjenice da će, ukoliko ne poštuju pravila, biti pritvoreni. Dakle **Zinnergasse jeste “pritvor”.**

**Nalazi austrijskog Nacionalnog preventivnog mehanizma:**

Iako je u međunarodnim studijama istaknuto da je Zinnergasse dobra praksa, NPM je ustanovio **nekoliko slabosti** koje je potrebno eliminisati.

Tokom izbjegličke krize, 60-70 lica je odjednom došlo, što nije samo predstavljalo logistički problem za pružanje pomoći velikom broju ljudi istovremeno, već se ispostavilo kao bezbjednosni rizik, jer policija nije mogla ispratiti situaciju. Dakle, izazov je bila identifikacija stranaca, obezbjeđivanje da porodice ostanu na okupu i da se djeca ne izgube.

Iako su klijenti intervjuisani uz pomoć profesionalnih prevodilaca, nije bilo dovoljno onih koji su mogli informisati ta lica o njihovim pravima na jeziku koji razumiju. Za one koji ne znaju čitati, nedostajali su informativni dokumenti sa piktogramima.

Žene su pretresale isključivo ženski službenici. Djeca se nijesu odvajala od majki tokom intervjua. Međutim, medicinska briga je bila na niskom nivou. Ukoliko je klijent je zapadao u teško psihičko stanje, policija je morala da ga fiksira na pod dok doktor ne bi došao i ne bi odlučio šta da se radi. Ova situacija se poboljšala. Tokom 2016. godine, angažovan je doktor i instalirana je mala ambulanta u kojoj je vršen zdravstveni pregled prije odvođenja ljudi na aerodrom.

Piće i hrana su uvijek snabdijevani u dovoljnim količinama. Svim klijentima je nuđena svježa hrana i voće. Sobe su prostrane i bivaju očišćene prije nego što se dodijele narednoj porodici. Međutim, jedna od posjeta NPM-a bila je tokom ljetnjeg perioda, i komisija je ustanovila da se prozori mogu samo odškrinuti, ne i otvoriti širom. To je takođe bila jedna od kritika.

Kritika komisije bila je i ta što djeca i tinejdžeri ne mogu koristiti spoljašnji prostor sa igralištem, zbog činjenice da isti nema ogradu i da se u okolini nalazi mnogo smeća. Situacija se od tada popravila, kao što se može vidjeti na sljedećim fotografijama.

Na kraju, komisija je svjesna ćelije sa rešetkama. Na samim rešetkama ćelije i zbog podignutih čeličnih ploča u ovoj ćeliji, postoji povećan rizik od povrede. Policija je odgovorila da se ova ćelija ne koristi. NPM je preporučio 2015. godine da ne postoji potreba za ćelijom, da je ona bespotrebno iskorišćen prostor i da ga treba bolje iskoristiti. Stoga, rešetke treba eliminisati, budući da one narušavaju klimu slobodne zone. Dvije godine kasnije ispostavilo se da postoji potreba za ovom ćelijom, jer trajanje pritvora unutar nje ne bi trajalo duže od 15 minuta u prosjeku. Svaki boravak je dokumentovan, kao i razlog za kažnjavanje klijenta.

Stoga, ukratko, neophodno je da NPM nastavi sa povremenim posjetama. Ove posjete se ne najavljuju, kao i većina naših posjeta ostalim pritvorima.

1. **Savjetnica pučke pravobraniteljice za pravna pitanja g-đa Vanja Bakalović i savjetnica pučke pravobraniteljice za zaštitu ljudskih prava Hrvatske, g-đa Snježana Stanić**

Ured pučke pravobraniteljice intenzivno djeluje u području zaštite ljudskih prava i sloboda tražitelja međunarodne zaštite i migranata u iregularnim situacijama, još od tzv. balkanske rute 2015. Zalažemo se da se o ovoj važnoj temi razgovara ne samo iz perspektive sigurnosti, koja je u javnom diskursu naglašena, nego i iz perspektive ljudskih prava. Naime, često se zanemaruje kako nije riječ o dva suprotstavljena, već neodvojiva pojma, odnosno kako se bez jamstava i zaštite ljudskih prava ne može govoriti o postizanju sigurnosti u zemlji.

S potpisivanjem ugovora između EU i Turske i ponovnog vraćanja u okvire Zajedničkog europskog sustava azila, dolazi do strože kontrole granice u državama tzv. balkanske rute, pa se krajem 2016. pojavljuju navodi medija i pritužbe pučkoj pravobraniteljici o vraćanju migranata u Srbiju bez provođenja postupaka predviđenih zakonom, prema kojima je, ovisno o mjeri kojom se osigurava povratak, trebalo biti izdano rješenje, a postupak provođen individualno i uz osigurano prevođenje. Neke od dokumentiranih pritužbi tijekom 2016. sadržavale su i navode kako su policijski službenici iregularne migrante pri postupcima vraćanja tukli palicama, prisiljavali da skinu cipele i kleče ili stoje u snijegu te ih tjerali da prolaze kroz kordon u kojem su udarani i vrijeđani. Tijekom takvih postupanja, navodi se u pritužbama, nije im bilo dozvoljeno govoriti, a postoje svjedočanstva i da su im oduzimane vrijednosti, novac i mobilni telefoni. Rezultati provedenih ispitnih postupaka i obilazaka temeljem mandata NPM, ukazuju na kršenja ljudskih prava iregularnih migranata prilikom postupanja policije. To se posebice odnosi na vraćanja osoba zatečenih na državnom teritoriju *(push-back)*, nakon iregularnog prelaska granice sa susjednim državama koje nisu članice EU, uključujući i izostanak učinkovite istrage o navodima o policijskom nasilju; zatim na pristup, odnosno mogućnost traženja međunarodne zaštite te vođenje upravnog postupka prilikom donošenja rješenja o povratku.

Takva postupanja, mogu predstavljati povredu čl.3 Europske konvencije za zaštitu ljudskih prava i temeljnih sloboda, prema kojem nitko ne smije biti podvrgnut mučenju ni nečovječnom ili ponižavajućem postupku ili kazni, i zahtijevaju provođenje učinkovite istrage čemu smo detaljno pisali u godišnjem izvješću pučke pravobraniteljice za 2017.

Iako smo ih u više navrata zatražili, detaljne informacije MUP-a i DORH-a o provođenju takvih istraga nikada nismo dobili, a izostala je i nedvosmislena i jasna osuda nasilja prema migrantima od strane najviših državnih dužnosnika. Dodatno, kao jedan od odgovora na pritužbe, uz nepostojanje podataka u evidencijama i potrebu za zaštitom državne granice, redovito se navode podatci o postotku migranata koji su napustili RH prije okončanja postupka međunarodne zaštite, pri čemu se ističe kako on pokazuje da je očito riječ o lažnim optužbama s ciljem zlouporabe ovog instituta. No, navedena argumentacija nije ni primjerena niti uvjerljiva, posebice s obzirom da se taj postotak nije mijenjao u odnosu na godine prije migrantske krize.

Stoga i ne čudi kako su slična izvješća i pritužbe nastavile pristizati i tijekom 2017. i 2018., a jačanjem migracijskog pritiska na granici s BiH, počele su se odnositi i na to područje. Sve pritužbe (koje su, nažalost, kontinuirano aktualne) pristigle pučkoj pravobraniteljici ili one iznijete putem organizacija civilnog društva i međunarodnih organizacija, vrlo su slične te obično započinju navodima o iregularnom prijelazu državne granice RH, zatjecanju na teritoriju od strane policijskih službenika, traženju međunarodne zaštite i ignoriranju takvih izjava, nasilnom uvođenju u kombi pa čak i premlaćivanju, uključujući i palicama, otuđivanju novca i svih vrijednosti, uništavanju mobitela, bilo utora za punjenje odvijačem ili polijevanjem vodom, te vraćanju preko zelene granice, mimo zakonske procedure.

Na upite povodom ovakvih pritužbi, MUP je u svojim odgovorima tek konstatirao da su one nesadržajne i netočne, a ne daje tražene podatke o broju i vrsti postupaka poduzetih da bi se one ispitale. Pri tom, neuvjerljiv je odgovor MUP-a kako se istrage ne mogu provesti zbog nedostatka preciznih podataka o datumu, vremenu i mjestu prituženih događaja, jer i kada smo im takve podatke povodom konkretne pritužbe dostavili, utvrđeno je kako nedostaje dio materijala snimljenog termovizijskim kamerama, upravo u vrijeme počinjenja djela, koji je takve navode mogao potvrditi ili otkloniti.

Osim na postupanje policijskih službenika prema iregularnim migrantima koji uključuju moguću povredu čl. 3 EKLJP, zabilježili smo i niz zabrinjavajućih postupanja vezanih uz provođenje mjera osiguranja povratka, koji ukazuju na onemogućavanje ili znatno otežavanje traženja međunarodne zaštite. U gotovo niti jednom predmetu upravnog postupka, pregledanom u okviru mandata NPM-a, ne postoji zapis o vremenu u kojem su iregularni migranti dovedeni i otpušteni iz postaje, jesu li u njoj zatražili međunarodnu zaštitu, te treba li im liječnička pomoć. Dodatno, u jednom od rijetkih spisa u kojem je ipak upisano vrijeme puštanja osobe iz postaje, izvršen je uvid u video zapis, ali u navedenom vremenu, kao i neposredno prije i poslije, nije bilo vidljivo da je baš u to vrijeme i napustila postaju. Kako su neke osobe prevožene iz udaljenih dijelova RH, zbog nedostatka službenih bilješki u spisu, nije bilo moguće provjeriti je li im bila ograničena sloboda kretanja dulje od 24 sata, koliko najviše mogu biti zadržani u postupku donošenja rješenja o povratku.

Konačno, tijekom 2018. godine, pučka pravobraniteljica je po prvi puta onemogućena u radu, tako što je uskraćen neposredan pristup predmetima i podatcima o postupanju prema iregularnim migrantima u Informacijskom sustavu MUP-a, koji je ujedno i jedini izvor tih podataka. Do uskrate je došlo u obilascima i ispitnim postupcima temeljem Zakona o nacionalnom preventivnom mehanizmu i Zakona o pučkom pravobranitelju, u nekoliko policijskih postaja, odnosno uprava.

Uskrata se odnosila isključivo na predmete u kojima se utvrđivao način postupanja prema iregularnim migrantima, i to prilikom primjene mjera za osiguranje povratka temeljem Zakona o strancima, zatim način postupanja prema tražiteljima međunarodne zaštite u postupku izražavanja namjere za međunarodnom zaštitom, kao i uvjete boravka u prostorijama u kojima su one pritvorene ili zadržane. Primjerice, pučkoj pravobraniteljici je osobno, prilikom NPM obilaska policijske postaje na granici s Bosnom i Hercegovinom, u rujnu ove godine, onemogućen nenajavljen pristup traženim podatcima, pri čemu joj je pomoćnica načelnika policijske postaje, ujedno i jedina službena osoba s kojom je mogla razgovarati, navodila kako je ovlaštena za davanje tek jedne izjave: „Migrantska kriza u je tijeku i postupa se sukladno Zakonu o strancima i Zakonu o zaštiti državne granice “. Naime, čekanje „ovlaštene osobe “(službenika za nezakonite migracije iz policijske uprave), u pravilu traje dulji vremenski period, pa se time gubi osnovni element nenajavljenog obilaska, a to je njegova neočekivanost.

Neposrednost uvida u podatke od neprocjenjive je važnosti za provođenje ispitnih postupaka, kao i NPM obilazaka, posebno imajući na umu da je MUP Uredu pučke pravobraniteljice već dostavljao podatke za koje se neposrednim uvidom u spise predmeta utvrdilo da su nepotpuni i/ili netočni.

Stoga smatramo da ovakvo postupanje predstavlja direktan pritisak izvršne vlasti na rad neovisne nacionalne institucije za ljudska prava.

Nadalje, u više navrata, a naročito kroz izmjene i dopune Zakona o strancima isticali smo važnost primjene blažih mjera od ograničavanja slobode kretanja smještajem u Prihvatni centar za strance, međutim nije usvojen naš prijedlog o tome da MUP osigurava smještaj barem za ranjive skupine kako bi se izbjegla njihova detencija. Dodatno MUP, zbog poticanja dobrovoljnih odlazaka, kojima se isto tako prevenira detencija, nije sklopio sporazume s međunarodnim organizacijama i organizacijama civilnog društva, a niti iregularnim migrantima u postupku dobrovoljnog povratka pomaže pribavljati putne isprave i karte što je također predviđeno Zakonom o strancima.

1. **Savjetnik u NPM odjeljenju Institucije Ombudsmana Bivše Jugoslovenske Republike Makedonije, g-din Martin Duvnjak**

U kontekstu imigracijskog pritvora, jedina ustanova u kojoj se zadržavaju izbjeglice/ migranti iz imigracijskih razloga u Republici Makedoniji je Prihvatni centar za strance u Gazi Babi.

Prema Zakonu za strance i Pravilniku za kućni red prihvatnog centra za strance, u Centru se zadržavaju sledeće kategorije stranaca:

* Stranac kog je iz bilo kojih razloga nemoguće prisilno otstraniti sa teritorije Republike Makedonije, a za kog je Ministarstvo unutrašnjih poslova donijelo rješenje za privremeno zadržavanje u Prihvatnom centru,
* Stranac za kog je donešeno rješenje za protjerivanje, a ne posjeduje važeću i priznatu putnu ispravu,
* Stranac čiji se identitet ne može utvrditi, a kome je sudskim rješenjem izrečena mjera zadržavanja u Prihvatnom centru za strance.

Maksimalni period zadržavanja stranca u Prihvatnom centru za strance prema zakonu je do momenta kada prestaju razlozi koji onemogućavaju njegovo otstranjivanje sa teritorije Republike Makedonije, ali ne duže od šest mjeseci, u isključivim slučajevima postoji mogućnost da se ovaj rok produži za još 12 mjeseci najduže.

Od sprovedenih posjeta u Prihvatnom centru za strance u toku 2018te godine, Narodni pravobranilac je konstatovao da je prosječan period zadržavanja devetnaest dana, a najduže zadržavanje stranca u Centru je 80 dana.

U toku 2018te godine, izbjeglice i migranti su produžili da tranzitiraju preko Republike Makedonije koristeći neregularne rute i rute krijumčarenja.

Kao odgovor ovakvoj iregularnoj migraciji, produžila je praksa zadržavanja stranaca iz imigracionih razloga najčešće u ulozi svjedoka u sudskim postupcima, povjećavajući time mogućnost za prekršaje i povrijede ljudskih prava stranih državljana koji su bili zadržavani u Prihvatnom centru za strance u Gazi Babi.

Narodni pravobranilac je u proteklim godinama u više navrata upućivao ozbiljne kritike i ukazivao je na niz propusta i povrijeda prava koje je detektirao u načinu menadžiranja i funkcionisanja Prihvatnog centra za strance u Gazi Babi, te prilikom postupanja nadležnih službenih lica sa strancima koji su bili zadržani u Centru, kao i za loše materijalne uslove, posebno u periodu od kraja 2015te do kraja 2016te godine.

Kao najozbiljniji propusti konstatovani i u Posebnim izvještajima Narodnog pravobranioca navode se: nelegalna rješenja donešena od strane nenadležnog organa, neizdavanje rješenja za zadržavanje u prihvatnom centru za strance licima koja se zadržavaju, prikrivanje aktuelnog broja smještenih lica u Centru i smještaj lica koja nisu evidentirana u registrima Ministarstva za unutrašnje poslove, uskraćivanje prava na šetnju i pristup postupku za priznavanje prava na azil i zadržavanje stranaca u ulozi svjedoka u krivičnom postupku.

Donošenjem novog zakona za međunarodnu i privremenu zaštitu, iako se dobija utisak da je generalno novi zakon liberalniji u odnosu na prethodni Zakon za azil i privremenu zaštitu, ipak jedna zakonska odredba je veoma sporna i problematična.

Naime, novi zakon predviđa mogućnost za ograničenje slobode kretanja licima koja traže azil. Iako je članom 63 stavom 1 Zakona o međunarodnoj i privremenoj zaštiti utvrđeno da će se ograničavanju slobode kretanja tražiocima azila pristupiti u isključivim slučajevima, odnosno ukoliko se druge manje prinudne alternativne mjere ne mogu efektivno primijeniti (oduzimanje pasoša, redovno prijavljivanje), dobija se utisak da isključivi slučajevi koji su navedeni u stavu 2 člana 63 nisu dovoljno precizni, odnosno, ostavljaju veliku mogućnost za diskreciono postupanje nadležnih organa.

Strah od zloupotrebe ove odredbe se javlja imajući u obzir fakat zadržavanja stranaca u Prihvatnom centru za strance Ministarstva za unutrašnje poslove u prošlosti ali i sada, kao praksa u Makedoniji, bez postojanja zakonski izdržanog rješenja za isto. Stranci su bili zadržavani kao svjedoci u postupku koji se vodi protiv krijumčara ili u cilju utvrđivanja njihovog identiteta.

Taj proces zadržavanja u 2015oj godini je trajao i do osam mjeseci, na šta su reagovale i međunarodne organizacije za ljudska prava. Imanje zakonske mogućnosti za lišavanje od slobode lica koja traže azil, dok traje proces traženja azila, stvara osjećaj straha da isti moze biti upotrebljavan i da traje duže, nego što traje u zemljama Evropske Unije, odakle je ova direktiva i preuzeta.

Ono sto posebno zabrinjava je lokacija koja je predviđena za smještaj ove kategorije tražioca azila, a to je u istom Prihvatnom centru za strance- Gazi Baba sa posebnim ulazom izolovanim od prostorija u Centru koje su namijenjene zadržavanju stranaca.

Kako strancima koji su zadržani u Centru, tako i tražiocima azila kojima je ograničena sloboda kretanja shodno novim zakonskim izmjenama je praktično onemogućeno da iskoriste pravo na šetnju na svjež vazduh. Iz tog razloga Narodni pravobranilac smatra da je ovakav način ograničavanja slobode tražiocima azila totalno nepotreban i neadekvatan, posebno ako se uzme u obzir to da tražioci azila imaju zakonom garantovano pravo na neograničenu slobodu kretanja.

Što se tiče alternativa pritvora, u Republici Makedoniji su iste nedostupne i zakonski neregulisane. Iako postoji veliki broj primjera o formama alternative pritvoru za tražioce azila kao načina koji su puno efikasniji i jeftiniji, ipak u Republici Makedoniji jedina funkcionalna alternative pritvora je Objekat za smještaj ranjive kategorije lica- tražioca azila (Safe house). Ova bezbedna kuća koja je prvenstveno služila kao mjesto za zbrinjavanje potencijalnih žrtava trgovije sa ljudima, prošlih godina se koristila za smještaj ranjivih kategorija lica, posebno samohranih majki i nepridružene djece stranaca.

1. **Zamjenica šefa odjeljenja NPM, Mađarska, g-đa Katalin Haraszti**

U 2015. godini, organi Mađarske su registrovali više od 177 hiljada novih prijava za azil. Te godine, Mađarska je bila osma po veličini zemlja po broju zahtjeva za dobijanje azila u svijetu.[[1]](#footnote-1) Ovi aplikanti su se generalno kretali po Evropskoj uniji za kratko vrijeme i njihovi zahtjevi su administrativno bivani zatvarani ubrzo nakon toga.[[2]](#footnote-2)

Odgovarajući na nezapamćeni priliv migracija, Mađarska je bila prva među zemljama Evropske unije koja je uspostavila “*privremenu bezbjedonosnu ogradu*” na svojoj granici sa Srbijom,[[3]](#footnote-3) a kasnije na granici sa Hrvatskom.[[4]](#footnote-4) Dana 16. oktobra 2015. godine, Mađarska je najavila da je ograda dugačka 348 km duž granice sa Hrvatskom završena, i da će u ponoć zatvoriti granicu. Do tada, u cilju osnaživanja nadzora nove granice, vojne i policijske snage su angažovane na ovoj ogradi. Od 17. oktobra 2015, postoji ograda u vidu bodljikave žice, pored koje se nalaze vojne i policijske snage duž cijele grancije Mađarske sa Hrvatskom i Srbijom.

U 2016. godini, uvedene su dodatne oštre mjere u domaće propise. Nakon 5. jula 2016, svako lice koje ilegalno uđe iz Srbije i Hrvatske, a uhvaćeno je u razdaljini od 8 kilometara od granice biva otpraćeno i izmješteno s druge strane ograde.[[5]](#footnote-5) U septembru, Parlament Mađarske je usvojio kriminalizaciju ilegalnog ulaska u zemlju[[6]](#footnote-6). Od tada, prelazak mađarske granice bez pasoša predstavlja krivično djelo, a ako neko pređe ogradu i ošteti je, Krivični zakonik to definiše kao teško krivično djelo.[[7]](#footnote-7)

Djelotvornost novog sistema nadzora granice dokazuje činjenica da je u 2016. godini **32 732** lica spriječeno da pređe mađarsku granicu putem ograde, a 2017. godine ukupno **10 862** lica, a do kraja oktobra 2018. godine, spriječeno je **1505** lica.[[8]](#footnote-8)

Zakon je stupio na snagu 28. marta 2017. godine, čime je prošireno djelovanje granične policije. Ovaj zakon nalaže policiji da otprati ilegalne migrante koji su uhapšeni bilo gdje u Mađarskoj iza ograde gdje će boraviti sve dok ne dostave zahtjev za dobijanje azila u jednoj od dvije tranzitne zone (Röszke i Tompa) na granici sa Srbijom. Nadležni organi ne registruju ova lica prije nego što ih otprate do granice. Da bi dokazali da napuštaju zemlju u dobrom zdravstvenom stanju, predstavnici nadležnih organa fotografišu ili snime uhapšene migrante dok ih prate iza kapija duž granične ograde, i snimci se čuvaju 30 dana.

Broj ilegalnih migranata koji su otpraćeni nazad sa spoljašnje strane ograde na mađarsko-srspkoj granici:[[9]](#footnote-9)

* 5. jul – 31. decembar 2016: **8464** lica
* 1. januar – 10. decembar 2017:  **8187** lica
* 1. januar – 31. oktobar 2018: **3193** lica

**Tranzitne zone na graničnoj bezbjednosnoj ogradi**

U 2015. godini, četiri “*tranzitne zone*” su uspostavljene duž žičane ograde na granici sa Srbijom i Hrvatskom.[[10]](#footnote-10) Ove tranzitne zone su jedina legalna mjesta za nepropisan ulazak u Mađarsku i dostavljanje prijave za međunarodnu zaštitu.[[11]](#footnote-11) Postoje dvije tranzitne zone na granici sa Hrvatskom, ali one ne rade.



**Tranzitne zone na mađarsko-srpskoj i mađarsko-hrvatskoj granici i u Mađarskoj**[[12]](#footnote-12)

Aplikanti koji traže međunarodnu zaštiti putem tranzitnih zona treba da čekaju da se kapija otvori. U 2018, u prosjeku je jedno lice dnevno primano na svakoj tranzitnoj zoni kod granične bezbjednosne ograde. Do 31. oktobra 2018. godine, u tranzitnim zonama je dostavljeno **560** prijava za međunarodnu zaštitu.

Aplikanti, uključujući djecu stariju od 14 godina bez pratnje, ne mogu ući u Mađarsku dok se ne odluči o njihovim slučajevima. Nadležni organi imenuju čuvare samo za djecu mlađu od 14 godina, koja se smještaju u dječji dom u Fót. Djeca bez pratnje starija od 14 godina smještaju se u tranzitnu zonu Röszke. Aplikanti mogu napustiti tranzitnu zonu kroz jednosmjerni izlaz koji vodi ka Srbiji.[[13]](#footnote-13)

Tranzitne zone se nalaze na teritoriji Mađarske, ali u slučaju odbijanja prijave, nadležni organi ih ne razmatraju.[[14]](#footnote-14) Lica čija se prijava odbije ili se vraćaju u tranzitne zone ili bivaju prebačena u zatvorene centre za zadržavanje i čekaju svoj premještaj.[[15]](#footnote-15)

Novi zakon koji je stupio na snagu 28. marta 2017. godine ukinuo je vremensko ograničenje boravka u tranzitnim zonama. U mađarskom zakonu, tranzitne zone na graničnoj ogradi smatraju se otvorenim objektima za prijem, pa se ne izdaju nalozi za pritvor i nema pravnih ljekova u odnosu na one koji su u obavezi da u njima borave. U slučaju *lias i Ahmed protiv Mađarske,* koji se odnosi na boravak u trajanju 23 dana dva tražioca azila iz Banlgadeša u tranzitnoj zoni i njihov premještaj iz Mađarske u Srbiju, Evropski sud za ljudska prava je okvalifikovao ove tranzitne zone kao pritvor.[[16]](#footnote-16)

Na zahtjev Vlade Mađarske, slučaj je upućen Velikom vijeću Evropskog suda za ljudska prava. Postupak je u toku.

**Odgovor Nacionalnog preventivnog mehanizma Mađarske na izazove**

Od 28. marta 2017. godine, policija ima zakonsku obavezu da otprati lica uhapšena bilo gdje u zemlji do južnih granica. Nadležni organi ne registruju ova lica prije nego što ih otprate do južne granice, i ne uračunavaju ih u evidenciju dolazaka zbog toga što njima nije dozvoljen boravak u zemlji. U odsustvu zvanične registracije, policja ne može da prikaže dokumenta o hapšenju i procedure praćenja.

U skladu sa mađarskim zakonom, Ombudsmanu nije dozvoljeno da bude uključen u političku borbu. Zbog tekućeg postupka pred Velikim vijećem Evropskog suda za ljudska prava, Ombudsman ne želi da zauzima stav o tome da li su tranzitne zone na graničnoj ogradi otvoreni objekti za prijem.

U ovoj situaciji, Ombudsman se fokusirao na preventivnu ulogu NPM-a. On i njegovi zaposleni su posjetili tranzitne zone na granici za Srbijom, i on veoma aktivno komentariše nacrte zakona.

Zaposleni učestvuju u aktivnostima obuke za policijske službenike, i oni zajedno sa Ombudsmanom kritički analiziraju aktivnosti nadležnih organa u svojoj stručnoj publikaciji.

1. **Savjetnica Zaštitnika ljudskih prava i sloboda Crne Gore,**

**g-đa Marijana Sinđić**

NPM Crne Gore, redovno obilazi mjesta gdje se nalaze ili mogu naći lica lišena slobode u kontekstu migracija Statistika boravka migranata i tražioca azila se mijenja na dnevnoj osnovi, a nezakonite migracije u Crnoj Gori su individualnog karaktera ili se radi o manjim grupama i imaju tranzitni karakter, uglavnom je riječ o ekonomskim migrantima sa područja Alžira, Sirije, Maroka, Avganistana, Pakistana, Libije, Iraka, kao i državljanima susjednih zemalja – Albanije, Kosova .Njihova konačna destinacija nije Crna Gora .

 Crna Gora raspolaže sa dvije zgrade namijenjene za smještaj migranata i tražioca azila (izgrađene 2014 godine) i to:

1.Prihvatilište za strance( ustanova zatvorenog tipa, organizaciona jedinica u sastavu Uprave policije. U ovoj ustanovi se lica smještaju po rješenju Uprave policije-sektora granične policije-odsjek za strance, vize i suzbijanje nezakonitih migracija. Kapacitet je 46 ležaja. Stranci u Prihvatilištu mogu boraviti najviše dva puta po 90 dana, shodno Zakonu o strancima. NPM je uvidom u dokumentaciju ustanovio da je uglavnom osnov zadržavanja utvrđivanje identiteta i da prosječna dužina zadržavanja je 15 dana. Materijalni uslovi i drugi uslovi su na zavidnom nivou.

2.Centar za prihvat tražioca azila je ustanova otvorenog tipa (počela sa radom 20. februara 2014. godine). Ova ustanova kapaciteta je -80 kreveta. Ima četiri odjeljenja za smještaj tražioca azila, restoran, vešeraj, igraonice za djecu, dvorišni prostor namijenjen za djecu i sportski teren namijenjen za odrasle. Osim u Centru, po potrebi ova lica zbrinjava i u alternativni smještaj koji obezbjeđuje država. Osim obezbjeđenja smještaja i zadovoljavanja ličnih i zajedničkih higijenskih preduslova, primarne zdravstvene zaštite, ova ustanova pruža pomoć u odjeći, obući, psiho-socijalnoj pomoći, pomoći u ostvarivanju prava i dr.

NPM je konstatovao da uslovi u Centrima su na visokom nivou i zapazio sistemski pristup koji omogućava efikasno postupanje u skladu sa važećim propisima i međunarodnim standardima u oblastima azila i migracija. Smještajni kapaciteti, sobe, namještaj, kupatila i toaleti, kuhinja, restoran i zajedničke prostorije - su novi, veoma uredni, čisti i u potpunosti su u skladu sa potrebama korisnika. Hlađenje i grijanje je zadovoljavajuće. Zdravstvena zaštita je stalno dostupna kao i za ostalo stanovništvo Crne Gore. Uvidom u dokumentaciju ustanovljeno je da prosječna dužina zadržavanja je 4 dana, dok je najduži boravak u alternativnim smještajima do 7 dana.

Takođe važno je napomenuti da djeca stranci bez pratnje se smještaju u ustanovu otvorenog tipa JU Centar "Ljubović" kao jedinu ustanovu socijalne i dječje zaštite u Crnoj Gori, koja se bavi institucionalnom zaštitom djece u sukobu sa zakonom. U Centru se zbrinjavaju, vaspitavaju i osposobljavaju djeca i omladina u sukobu sa zakonom, kao i djeca i omladina sa poremećajima u ponašanju, i to djeca i omladina oba pola, državljani Crne Gore kao i strani državljani. NPM je Uvidom u evidenciju ustanovio da je neznatan broj djece migranata bez pratnje, boravilo u ovoj ustanovi. NPM je primijetio da vlasti pokazuju humanost i privremeno utočište licima koji Crnu Goru, koriste kao tranzitnu zonu ka zemljama EU.

 Nacionalno zakonodavstvo u oblasti migracija i azila u Crnoj Gori je u većem dijelu usklađeno i harmonizovano u skladu sa normativnim okvirom sa direktivama i standardima Evropske unije,

Stranci mogu biti lišeni slobode po raznim osnovama i raznim fazama imigracionog procesa. Tako stranci shodno, Zakonu o strancima bivaju lišeni slobode kada im se odbije zahtev za ulazak u zemlju, kada lice uđe u zemlju ilegalno i vlast te zemlje ga potom identifikuje, kada istekne dozvola za boravak nekog lica u zemlji ili kada vlast smatra da je pritvor potreban. Strancu će se ograničiti ili zabraniti kretanje na određenom području u Crnoj Gori ako to zahtijevaju razlozi nacionalne, odnosno unutrašnje bezbjednosti ili javnog zdravlja, u skladu sa zakonom - član 124.

 Zakonom o strancima je određeno da se stranac može lišiti slobode, privesti i zadržati, 24 časa, a najduže 48 časova. Policija donosi rješenje o lišenju slobode stranca.

O lišenju slobode maloljetnog stranca bez pratnje odmah se obavještava nadležni centar za socijalni rad i diplomatsko konzularno predstavništvo države čiji je državljanin.Protiv rješenja stranac može podnijeti tužbu Upravnom sudu, pred kojim je postupak hitan.

Policija ima obavezu razmatranja alternativnih mjera u odnosu na pritvaranje.

 Policija može ograničiti slobodu kretanja stranca njegovim smještajem u prihvatilište za strance, a naročito ako postoji rizik od izbjegavanja obaveze napuštanja Crne Gore ili ako stranac onemogućava izvršenje prinudnog udaljenja i povratka.

 O smještaju stranca u prihvatilištu policija donosi rješenje, dok smještaj u prihvatilište može trajati samo za vrijeme koje je potrebno za prinudno udaljenje i dok su u toku aktivnosti radi prinudnog udaljenja a najduže šest mjeseci. Protiv ovog rješenja se može podnijeti tužba Upravnom sudu,u roku od 5 dana od dana dostavljanja rješenja.Postupak je hitan.

Smještaj u prihvatilištu može se skratiti ili produžiti za još najduže 12 mjeseci, ako stranac odbija da sarađuje ili kasni sa pribavljanjem neophodnih dokumenata iz druge države.

Rješenje o skraćenju ili produženju vremena smještaja donosi policija. Protiv ovog rješenja se može podnijeti tužba Upravnom sudu,u roku od 5 dana od dana dostavljanja rješenja.Postupak je hitan.

Bitno je navesti da je NPM u u obiđenim mjestima je ustanovio da svaki slučaj lišenja slobode iregularnih migranata kao i građana prati dokumentacija od naloga koji se sačini odmah po lišenju slobode do evidencije o boravku u prihvatilištu i aktivnostima preduzetim u boravku.

Od samog početka njihovog lišenja slobode, uživaju tri osnovna prava, na isti način kao i druge kategorije lica lišenih slobode. Ta prava su: (1) pristup advokatu, (2) pristup ljekaru, i (3) obavještenje rođaka ili treće osobu po vlastitom izboru o mjeri pritvora.Praksa je da ako iregularni migranti nijesu u mogućnost da plate advokata,omogućava im se i po službenoj dužnosti. Prilikom prijema u imigracioni pritvor odmah bivaju pregledani od strane ljekara ili od strane kvalifikovanog medicinskog tehničara. Pored ova tri osnovna mehanizma zaštite, priznaje mu pravo da traži konzularnu pomoć. Međutim, ostvarenje ovog prava se prepušta želji pritvorenika. NPM je primijetio da lica koja žele posjetu ispostave se da ne postoji konzularno predstavništvo u Crnoj Gori, što onemogućava prisustvo.

Pritvoreni neregularni migranti u svakom pojedinačnom slučaju budu izričito obaviješteni, bez odlaganja i na jeziku koji razumiju, o svojim pravima i proceduri koja se primenjuje na njih. U tom smislu, svim pritvorenim imigrantima se daje Informator- dokument koji je na jezicima koje najčešće govore osobe, ukoliko je neophodno obezbjeđuje se i prevodilac(problem je u nedostatku prevodilaca za određene jezike ) . Takođe potpisuju listić i potvrđuju da su obaviješteni o svojim pravima na jeziku koji razumiju i dobijaju Pravilnik o kućnom redu . Pritvorenim neregularnim migrantima se omogućava i da iskoriste efikasne pravne ljekove.

 Zakon o strancima, Zaštitniku propisuje novu obavezu da prati svako sprovođenje prinudnog udaljenja i preduzimanje mjera za zaštitu ljudskih prava i sloboda stranca koji se prinudno udaljava. Osim ovoga EU standard nalaže i obavezu Zaštitniku da prati operacije povratka crnogorskih državljana, za koje se utvrdi da nezakonito borave u zemljama Evropske unije. NPM je u toku 2018.godine, imao tri ovakve operacije.

Takođe, prvi put, u skladu sa direktivama Evropskog parlamenta i Savjeta, definišu se "blaže mjere" koje zapravo predstavljaju alternativu smještaja stranca u Prihvatilište za strance, koje suštinski predstavljaju imigracioni pritvor sa mjerom ograničenja slobode kretanja.

Zakonom o strancima je propisana obaveza policije da primjenjuje blaže mjere za obezbjeđenje povratka stranca, te da se strancu može ograničiti sloboda kretanja samo ukoliko istoga nije moguće udaljiti primjenom mjere prinudnog udaljenja ili se njegov povratak ne može obezbijediti primjenom blažih mjera.

U blaže mjere se ubrajaju:1. depozit putnih isprava, putnih dokumenata i putnih karata;2. depozit određenih finansijskih sredstava;3. zabrana napuštanja smještaja na određenoj adresi i 4. javljanje policiji u određeno vrijeme. Uz blaže mjere može biti osiguran smještaj i finansijsko izdržavanje stranca. Alternativne mjere su podložne sudskoj provjeri.

Alternativa pritvora služi pragmatičnom cilju rasprave o svrsi pritvaranja i zalaganje za njegovo smanjenje. Alterntivni oblici pritvora obuhvataju iste garancije licima kao klaični oblici. Međutim činjenica da se lice ne nalazi u pritvoru ne znači nužno da ono nije lišeno slobode.

 Na kraju je važno navesti da veliki izazov u radu, kako za Upravu policije tako i za NPM je primjena ovih mjera. NPM planira u narednom periodu da nastavi da učestvuje u readmisijama naših državljana i da prati prinudna udaljenja stranaca.

1. **Zamjenica Ombudsmana, Rumunija,**

**g-đa Magda Constanta Stefanescu**

Član 5 Evropske konvencije za zaštitu ljudskih prava i fundamentalnih sloboda štiti lica od arbitrarnog miješanja države članice sa njihovim pravom na slobodu. Svako lišenje slobode smatra se zakonskim onda kada je zasnovano na sveobuhvatnom spisku prihvatljivih osnova koji su navedeni u konvenciji. Mjere pritvora mora propisati zakon i moraju štiti od arbitrarnosti. Organi vlasti treba da sprovedu analizu proporcionalnosti i neophodnosti, što obuhvata analizu alternativnih opcija pritvoru (precedentno pravo Evropskog suda za ljudska prava - O.M. protiv Mađarske (br. 9912/15)).

Pritvor, kao vid lišavanja slobode, stoga mora biti izuzetna mjera i mjera posljednjeg izbora koju propisuje nacionalni zakon i koja se primjenjuje samo gdje je to apsolutno neophodno, proporcionalno legitimnom cilju, procijenjeno za konkretne okolnosti slučaja i u skladu sa fundamentalnim pravima.

U Rumuniji, “migracije su proces kojim treba upravljati, a ne problem koga treba rješavati." Jedan od osnovnih principa *Nacionalne imigracione strategije* jeste poštovanje ljudskih prava i fundamentalnih sloboda, na način što se sve aktivnosti nadležnih organa i institucija u oblasti migracija sprovode u skladu sa odredbama međunarodnih konvencija i ugovora o fundamentalnim pravima i slobodama u kojima je Rumunija strana (Odluka Vlade br. 780/2015 o usvajanju Nacionalne imigracione strategije za period 2015-2018. i Akcionog plana 2015. za sprovođenje Nacionalne imigracione strategije za period 2015-2018).

*Smještajni centri za tražioce azila*

U skladu sa zakonom Rumunije, ne vrši se pritvor stranaca tokom perioda obrade njihovog zahtjeva za zaštitom. U Rumuniji se stranci ne smještaju u pritvor kao rezultat njihovog statusa i činjenice da su pobjegli iz svoje zemlje, strahujući za svoje živote. Stranci se smještaju u regionalne smještajne centre ili mogu živjeti u iznajmljenim prostorima koje mogu napuštati kad god žele.

*Regionalni centeri za procedure i smještaj tražioca azila* su specijalizovane strukture Ministarstva unutrašnjih poslova – Generalnog inspektorata za migracije, osmišljene za smještaj tražioca azila (naročito onih koji nemaju neophodne materijalne resurse za samo-održavanje, korisnika međunarodne zaštite). U oblasti svojih nadležnosti, regionalni centri sarađuju sa međunarodnim tijelima, fondacijama i nevladinim organizacijama aktivnim u konkretnoj oblasti, na pitanjima od zajedničkog interesa, naročito sa državnim organima. Ovi centri takođe obezbjeđuju poštovanje odredbi međunarodnih ugovora, sporazuma i konvencija u kojima je Rumunija strana u vezi sa uslovima prijema, statusom, režimom, utvrđivanjem odgovorne države članice i društvenom integracijom lica koja su dobila oblik zaštite u Rumuniji.

Smještajni centri su prostori za zajednički smještaj tražioca azila. Ovi smještajni prostori se nalaze u gradovima, u neposrednoj blizini javnog prevoza, škola i prodavnica. Ovi centri nisu zatvoreni, a porodice imaju visok nivo slobode kretanja, ali sa nekim ograničenjima (registracija odlazaka i dolazaka, zabrana unošenja određenih predmeta u centar, itd.).

Obično, porodica živi zajedno u jednoj ili dvije prostorije, zavisno od broja članova porodice. Porodica dobija mjesečnu nadoknadu za hranu i neprehrambene proizvode. Djeca mogu da idu u vrtiće i škole u naselju ili u centru, a porodice imaju pristup službama za fizičko i mentalno zdravlje u centrima ili gradovima, ukoliko je to neophodno. Lica koja su smještena u ovim centrima dobijaju savjetovanje o pristupu svojim društveno-ekonomskim pravima koja se odnose na: ● tržište rada, ● obrazovni sistem, ● sistem socijalnog osiguranja, ● dobijanje smještaja i kulturnog usmjeravanja; ● kurseve rumunskog jezika za maloljetnike, ● usluge socijalnog i pravnog savjetovanja (osim onih koje se odnose na procedure za dobijanje azila), ● konkretnu materijalnu pomoć za unapređenje životnog standarda. Oni takođe učestvuju u brojnim kulturnim i rekreativnim aktivnostima, razvoju stručnih vještina, kako bi se prilagodili karakteristikama rumunskog društva.

Istovremeno, tokom te procedure, stranci mogu izabrati da žive u iznajmljenim stanovima koje plaćaju oni ili država Rumunija, a koji su dostupni putem nacionalnih programa.

*Alternative pritvoru*

Iako zakoni Rumunije ne propisuju pritvor stranaca kao rezultat njihovog statusa, *u praksi se može sresti nekoliko aspekata koje druge države razmatraju kao alternative pritvoru*. Oni se koriste za garantovanje poštovanja procedura azila i prava određenih kategorija ranjivih lica.

Kada je u pitanju situacija maloljetnika u kontekstu migracija, smatramo da pritvor nije u njihovom najboljem interesu, stoga su alternative najdjelotvornije sredstvo njihove zaštite.

U Rumuniji, sve odluke koje se odnose na maloljetna lica donose se u poštovanju najboljih interesa djeteta i brojni čuvari su na raspolaganju maloljetnim licima bez pratnje, kao što su: ● prioritizovanje njihove prijave, ● imenovanje pravnog zastupnika ● informisanje pravnog zastupnika i maloljetnog lica na jeziku koji razumije ● smještaj u prijemnim centrima koji imaju neophodna materijalna sredstva (Zakon o azilu u Rumuniji 112/2006).

U slučaju maloljetnog stranog državljanina, njegove interese štiti njegov pravni zastupnik. Maloljetni strani državljanin predaje prijavu za azil preko svog pravnog zastupnika, a u slučaju maloljetnika uzrasta 14 godina i vise, prijava se može lično dostaviti. Nakon registracije maloljetnog stranog državljanina bez pratnje, Generalni inspektorat odmah obavještava nadležni organ za zaštitu djeteta u čijoj se teritorijalnoj nadležnosti nalazi smještajni centar, u kojem treba da se preda prijava za azil kako bi se pokrenuo postupak imenovanja pravnog zastupnika. Pravno zastupanje maloljetnog stranog državljanina bez pratnje, onda kada se uspostavi, nastavlja da funkcioniše sve dok maloljetno lice ne dobije međunarodnu zaštitu u Rumuniji.

Kada je u pitanju pravni zastupnik, njega bira Generalni direktorat za socijalnu pomoć i zaštitu djeteta, i on djeluje u najboljem interesu djeteta i pomaže mu u svim stadijuma imigracionog procesa, kao i u drugim pravnim i administrativnim procedurama. Takođe putem Generalnog direktorata za socijalnu pomoć i zaštitu djeteta, maloljetna lica bez pratnje se smještaju u prijemnim centrima za maloljetnike, u kojima uživaju uslove života i obrazovanja u skladu sa svojim uzrastom, uz poštovanje njihovih fundamentalnih ljudskih prava.

U Rumuniji, tokom procedure za azil, stranac koji se prijavljuje za neki oblik zaštite ima pravo na savjetovanje ili pomoć od strane predstavnika rumunske ili inostrane nevladine organizacije u bilo kom stadijumu procedure za azil, kao i pravo na primanje socijalne pomoći.

*Monitoring smještajnih centara od strane NPM-a*

Monitoring tretmana i uslova smještaja lica smještenih u nekoj vrsti pritvora putem nenajavljenih i redovnih posjeta Nacionalnog preventivnog centra jedno je od sredstava sprečavanja torture i lošeg tretmana, dijela sistema zaštite lica lišenih slobode.

Služba za zaštitu od torture u pritvorima unutar Institucije ombudsmana vrši svoja ovlašćenja kao Nacionalni preventivni mehanizam takođe i u regionalnim centrima za procedure i smještaj tražioca azila, kao i u smještajnim centrima za strance u javnom pritvoru.

Tokom 2018. godine, bilo je ukupno pet posjeta centrima za migrante. Cilj ovih posjeta bila je provjera sprovođenja prethodnih preporuka, uslova smještaja, tretman stranaca, načina poštovanja njihovih prava i sloboda, procedure za azil, zaštite djece i ostalih pitanja relevantnih za rad Nacionalnog preventivnog mehanizma.

1. **Zaštinik građana Republike Srbije, mr Zoran Pašalić**

У сагласности са препорукама тела Савета Европе, УН-а и ЕУ, Република Србија у домаћем законодавству имиграциони притвор третира као ванредну меру последњег избора, имајући у виду да је имиграциони притвор у највећем броју случајева административног а не казненог карактера и да мора одговарати принципима неарбитрарности у одлучивању о притвору, као и поштовању принципа нужности и пропорционалности у случајевима када је притвор једина солуција.

Такође, води се рачуна о специфичном положају посебно рањивих категорија, посебно када је реч о притвору деце (посебно малолетника без пратње), тражилаца азила, особа са озбиљним здравственим проблемима (укључујући и ментално здравље), припадника ЛГБТИ популације, особа без држављанства, жртава трговине људима, трудница, жртава тортуре, понижавајућег поступања и насиља у породици, старијих људи и особа са инвалидитетом, чији се случајеви морају посебно пажљиво и индивидуално разматрати.

Будући да је у процесима миграција Република Србија доминантно земља транзита у којој се мигранти задржавају у просеку између осам и десет месеци, као најразвијенији и уједно најефикаснији алтернативни облик притвору су формирани отворени и полуотворени прихватни центри за смештај одраслих миграната и породица, у којима се мигранти и тражиоци азила по правилу не затварају. До сада је оформљено укупно 18 центара за смештај миграната и тражилаца азила (13 прихватних центара за мигранте и 5 центара за азил). Прихватни центри на једном месту пружају услуге смештаја, исхране и основне здравствене његе, као и могућности окупационих активности (образовних, спортских, забавних за децу). Међутим капацитети, ниво и квалитет ових услуга, често варирају од једне установе до друге.

Изузетно, мигрантима се може одредити привремени боравак у Прихватилишту за странце у складу са Законом о странцима („Сл. гласник РС“, 24/18) ради утврђивања идентитета, у случају коришћења фалсификованих докумената, у поступку враћања и слично. Међутим, странцу који има здравствене или друге посебне потребе, обезбеђује се други одговарајући смештај.

Као алтернативну меру смештају у Прихватилиште, Законом о странцима прописан је обавезни боравак у одређеном месту. Ова мера се одређује када постоји ризик да странац неће бити доступан надлежном органу ради спровођења принудног удаљења, а смештај лица у Прихватилиште не би било сразмерна мера, односно у случају да је странцу донето решење о одлагању принудног удаљења. Обавезни боравак се може одобрити у временском трајању до једне године и може да се продужи на исти период, у зависности од постојања разлога због којих се обавезни боравак одобрава. Странац коме је одређен обавезни боравак, дужан је да борави на одређеној адреси и да се јавља полицији. Кад за то постоје оправдани разлози, надлежни орган може решењем одобрити странцу да привремено напусти место обавезног боравка.

Као посебни алтернативни облици смештаја за децу, посебно малолетника без пратње, имајући у виду “екстремну рањивост” деце у условима притвора и њихове специфичне потребе на основу узраста, недостатка независности и статуса тражилаца азила или миграната, се сходно Закону о странцима смештају у Прихватилиште за странце само у пратњи родитеља, стратеља или законског заступника. Малолетни странци без пратње као алтернативна мера притвору смештају се у установе социјалне заштите или специјализована прихватилишта намењена за смештај малолетних странаца без пратње.

Такође, као алтернативна мера притвору тражилаца азила, лица која су изразила намеру за азил смештају се у центре за азил, који су отвореног типа и за то време могу се слободно кретати на територији земље (законски им је омогућено одсуствовање до 72 часа). Уколико тражилац азила поседује сопствена новчана средства, може о свом трошку боравити ван смештајних капацитета Комесаријата, али уз претходно одобрење Канцеларије за азил.

Сходно Закону о азилу и привременој заштити („Сл. гласник РС“, 24/18), кретање тражиоца азила може се ограничити решењем Канцеларије за азил и спроводи се: 1) забраном напуштања центра за азил, одређене адресе, односно одређеног подручја; 2) редовним јављањем у одређено време подручној полицијској управи, односно полицијској станици према месту боравка; 3) одређивањем боравка у прихватилишту за странце, под појачаним полицијским надзором; 4) одређивањем боравка у установи социјалне заштите за малолетна лица са појачаним надзором; 5) привременим одузимањем путне исправе.

НПМ Србије је од средине 2014. године до данас обавио укупно 168 посета у циљу испитивања поступања органа јавне власти у складу са важећим прописима и међународним стандардима према избеглицама и мигрантима. Посећиване су: полицијске управе и полицијске станице у њиховом саставу; регионални центри граничне полиције; центри за азил; прихватни центри; Прихватилиште за странце у Падинској Скели; Аеродром „Никола Тесла“; прихватне јединице за смештај малолетних странаца без пратње и заводи за извршење кривичних санкција. У извештајима о посетама укупно је упућено 212 препорука за унапређење поступања према избеглицама, мигрантима и тражиоцима азила.

- 2014: 41 посета; 27 препорука

- 2015: 59 посета; 36 препорука

- 2016: 52 посете; 72 препоруке

- 2017: 36 посета; 52 препоруке

- 2018: 21 посета; 25 препорука

У области мониторинга положаја избеглица и миграната остварена је интензивна вишегодишња сарадња са канцеларијом УНХЦР и удружењем Београдски центар за људска права.

Током претходних година НПМ Србије је упутио велики број препорука у циљу унапређења смештајних капацитета центара за смештај миграната и тражилаца азила. Поступајући по препорукама НПМ, у многим центрима адаптирани су смештајни капацитети, али извођени су и радови на проширењу капацитета и омогућавању смештаја у чврстим објектима (шатори који су се налазили у двориштима центара повучени су из употребе).

Током посета, НПМ је утврдио да се за мигранте организују различите радионице и активности (шивење, школа језика, библиотека, обука за рад на рачунарима, културно-уметнички програми, фризерски салон, услуга шминкања, спортске активности и друго). Посебна пажња је посвећена бризи о новорођенчади, па је у већини центара организована подршка мајкама кроз саветовање и друге врсте помоћи.

Од посебног значаја је успостављање психолошке подршке за мигранте у већини прихватних центара. НПМ је уочио да због неизвесности наставка путовања, недостатка релевантних информација и продуженог боравка у условима колективног смештаја велики број миграната исказује знаке напетости и нервозе. На ове околности треба додати чињенице да су мигранти дужи период на путу, током којег су многи претрпели или су присуствовали насиљу, а многи су изгубили чланове породице или су се одвојили од њих. Имајући у виду наведено, Комесаријату је препоручено да ангажовањем стручних лица, обезбеђивањем одговарајућих просторија за обављање поверљивих разговора са мигрантима и предузимањем других потребних мера у свим центрима за прихват и збрињавање миграната организује пружање психолошке подршке мигрантима.

У већини центара је успостављено боље праћење инцидената и других ванредних догађаја. Поступајући по препоруци НПМ, центри воде евиденције ванредних догађаја и извештавају Комесаријат о њима. Такође, сходно препоруци НПМ из 2016. године, успостављена је процедура притуживања на рад лица ангажованих центрима, тако што се притужбе електронским путем шаљу на за то намењену адресу електронске поште, а наводи из притужби се испитују у седишту Комесаријата. Обавештења о овоме НПМ је затицао истакнута и преведена на више језика у већини посећених центара.

Са друге стране, упркос томе што координација и сарадња различитих органа у погледу збрињавања миграната на државном нивоу постоје и у углавном су добре, на терену службеници Комесаријата који раде у центрима за мигранте често немају довољну подршку других служби у појединима аспектима поступања према мигрантима, па је НПМ упућивао препоруке, на првом месту локалним центрима за социјални рад, да повећају своје присуство у прихватним центрим и посвећеност раду са рањивим категоријама миграната.

Од почетка мигрантске кризе па до данас, садржај и активности у центрима намењен за децу је знатно унапређен. Током прошле године више од 500 деце миграната је било уписано у 27 основних школа у Србији. Овај процес је пратио и НПМ приликом посета центрима и утврдио да су деца у локалним основним школама присуствовала на 2 – 3 школска часа дневно.

НПМ је у протеклом периоду такође посећивао и установе социјалне заштите у којима се смештају малолетни мигранти без пратње (Завод за васпитање омладине у Нишу, Завод за васпитање деце и омладине Београд - Васа Стајић и Дом за децу ометену у развоју „Колевка“ у Суботици). Од 2014. године обављено је укупно 8 посета овим установама. НПМ је у циљу побољшања услова за смештај малолетних миграната без пратње наведеним установама упућивао препоруке да се побољшају услуге њиховог смештаја, здравствене заштите и исхране.

Уопштено гледајући, Република Србија је до сада имала добар и организован одговор на мигрантску кризу, стварајући такве услове у прихватним центрима у којима је благовремено обезбеђен привремени смјештај великом броју тражиоца азила и миграната у поступку процесуирања њихових захтева, што се показало као ефикасна мера и одговарајућа алтернатива притвору ових лица, посебно у ситуацијама великог прилива миграната и релативно дугог остајања ових лица у неким од прихватних центара, због успорене и ниске „пропусности“ граница према Европској Унији.

1. **Zamjenik Ombudsmana Republike Slovenije, g-din Ivan Šelih**

U skladu sa podacima Ministarstva unutrašnjih poslova, u periodu od 1. januara do 31. oktobra 2018. godine, policijski službenici su procesuirali ukupno 8.017 ilegalnih prelaza državne granice u Sloveniji (1.502 u istom periodu prošle godine). Ovaj broj se povećao za 433,8 posto u odnosu na isti period prošle godine. Ove godine, većina ljudi koje je procesuirala policija bili su državljani Pakistana, Avganistana i Alžira. Broj pakistanskih državljana, kao i državljana drugih zemalja sa najvećim rizikom od migracija, se povećava.

U Sloveniji takođe, Policija (organ pridružen Ministarstvu unutrašnjih poslova) obično je prvi organ koji uspostavlja kontakt sa strancima (uključujući tražioce međunarodne zaštite). U slučaju tražioca međunarodne zaštite, policija obavlja samo inicijalne procedure (kao što je identifikacija), a zatim upućuje aplikanta na dalji tretman u Ministarstvo unutrašnjih poslova (Direktorat za administrativne unutrašnje poslove, migracije i naturalizaciju - DUNZMN) kako je propisano Zakonom o međunarodnoj zaštiti (ZMZ-1). Oni koji traže međunarodnu zaštitu obično se smještaju u Dom za azil u Ljubljani, za koji je nadležno Ministarstvo unutrašnjih poslova (a ne Policija), a koji je institucija otvorenog tipa, ali i na drugim lokacijama (to su alternativni smještaji Domu za azil i ne predstavljaju čin lišavanja slobode). Profesionalne službe Direktorata za administrativne unutrašnje poslove, migracije i naturalizaciju zatim odlučuju o predatoj aplikaciji, prateći procedure koju je propisao Zakon o međunarodnoj zaštiti - ZMZ-1.

Strance koji se ne prijavljuju za međunarodnu zaštitu procesuira policija prateći striktne procedure koje propisuje Zakon o strancima. U tim slučajevima, policija sprovodi procedure i aktivnosti za povratak u zemlju tranzita ili zemlju porijekla, uključujući smještaj u Centru za strance (instituciju zatvorenog tipa), kada je to neophodno.

Strancima čije udaljavanje iz zemlje nije odobreno (kako navode dolaze iz Sirije) ili nije moguće zbog zakonski definisanih razloga (clan 73 Zakona o strancima) dozvoljen je privremeni boravak u Sloveniji. U tom slučaju, policija izdaje boravišnu dozvolu za period od šest mjeseci sa mogućnošću produžetka dok postoji osnov za to. Odlukom o izdavanju boravišne dozvole, plicija može odlučiti da dodijeli boravište strancu na određenoj adresi. Stranci koji imaju takvu dozvolu mogu slobodno da se kreću po Sloveniji.

Centar za strance, koji je (kako je navedeno) institucija zatvorenog tipa, može stoga smjestiti strance koji su u Republici Sloveniji ilegalno: strance koji ne napuste zemlju u propisanom roku ili koji ne mogu odmah biti premješteni iz zemlje; strance čiji identitet nije poznat; strance za koje je izdat naog za protjerivanje; maloljetne strance bez pratnje; strance koji ilegalno borave u Sloveniji i koji čekaju predaju stranim bezbjednosnim organima, koji čekaju premještaj shodno relevantnom međunarodnom sporazumu; strance koji se suočavaju sa prinudnim premještajem i strance koji nisu napustili Sloveniju i ponovo su se prijavili za međunarodnu zaštitu.

U Centru se takođe mogu smjestiti tražioci međunarodne zaštite čije je kretanje ograničeno odlukom u skladu sa Zakonom o međunarodnoj zaštiti, kao i tražioci međunarodne zaštite kojima je izdata odluka u skladu sa relevantnom Regulativom Savjeta (Evropske komisije). Ukoliko, u pojedinačnom slučaju, nadležni organ utvrdi da nije moguće djelotvorno sprovesti mjeru ograničenog kretanja u Domu za azil, aplikantu se može izreći mjera ograničenog kretanja u tom domu, koja je, u takvim slučajevima, jedina alternative pritvoru aplikanata u Centru za strance.

Nadležni organ izdaje odluku o izricanju dvije mjere (t.j. o ograničavanju kretanja u Domu za azil i o pritvoru u Centru za strance). Mjera se prvo izriče usmenim putem. Zatim, aplikant odmah dobija zapisnik o izrečenoj mjeri u kome se navode razlozi za tu mjeru. Zapisnik se čita aplikantu na jeziku koji razumije. Pisanu kopiju odluke izdaje nadležni organ najkasnije 48 sati nakon odluke saopštene usmenim putem, koja se mora dostaviti aplikantu u roku od tri radna dana. Mjere mogu (uz neke izuzetke) ostati na snazi sve dok postoje osnovi za njih, ali ne duže od tri mjeseca. Ukoliko, nakon ovog perioda, razlozi za ograničenje kretanja i dalje postoje, mjera se može produžiti za još jedan mjesec na osnovu odluke. Mjere se završavaju *ex officio* ukoliko osnovi za iste prestanu da postoje. Predsjednik Upravnog suda može odlučiti da sprovođenje mjere iz stava 1 ili 2 ovog člana bude nadgledano, i može imenovati sudiju ili sudije Upravnog suda da izvrše taj nadzor u roku i na mjestima koje odredi predsjednik ili u vezi sa određenim aplikantima, i da o tome izvještavaju. Ukoliko kroz taj nadzor, sudija Upravnog suda utvrdi da više ne postoje razlozi za ograničenje kretanja određenog aplikanta, taj sudija izdaje nalog za uklanjanje te mjere.

Ukoliko se mjera ograničavanja kretanja u Centru za strance izrekne ranjivom licu sa posebnim potrebama, nadležni organ kao prioritet obezbjeđuje zaštitu zdravlja tog lica, uključujući mentalno zdravlje, i obezbjeđuje redovni monitoring i adekvatnu pomoć, imajući u vidu specifičnu situaciju dotičnog lica.

Zaštitnik ljudskih prava u Republici Sloveniji je upozorio nadležne organe o nedostatku alternative ograničenju kretanja. Ministarstvo unutrašnjih poslova je objasnilo da je ono, u procesu izrade Zakona o međunarodnoj zaštiti, ispitalo nekoliko alternativa pritvoru aplikanata za međunarodnu zaštitu, kako je to omogućeno članom 8 Direktive 2013/33/EU (redovno izvještavanje nadležnih organa, deponovanje finansijske garancije). Pomenuta Direktiva ne definiše broj blažih mjera koje treba da omogući država članica, već samo da je država članica dužna da obezbijedi definisanje pravila koja se odnose na alternative pritvoru u nacionalnom zakonu. Na osnovu diskusija sa učesnicima procesa usklađivanja nacrta zakona (naročito sa predstavnicima NVO i Ministarstva pravde), Ministarstvo je procijenilo da je blaža mjera ograničenja kretanja u Domu za azil jedina alternativa pritvoru navedena u Derktivi 2013/33/EU koja bi bila izvodljiva u praksi, jer je ona već sprovedena shodno prethodno primjenljivom zakonu. Ono je najavilo, međutim, da će ponovo ispitati mogućnost uvođenja nekoliko alternative pritvoru prilikom izrade narednog amandmana Zakona o međunarodnoj zaštiti.

Ombudsman namjerava da ponovo istakne ovo pitanje u izvještaju za 2018. godinu. U isto vrijeme, u slučajevima kada se aplikant liši slobode, Ministarstvo unutrašnjih poslova je dužno djelovati odmah i bez odlaganja; istovremeno, prilikom razmatranja objektivnih kriterijuma koji se zasnivaju na razlozima za sumnju u bijeg lica koje traži međunarodnu zaštitu, ono treba ponovo da razmotri dodatne izmjene i dopune Zakona o međunarodnoj zaštiti ili dodatne blaze mjere koje bi omogućile individualizovani tretman lica koja traže međunarodnu zaštitu, i stoga i djelotvornije procedure, a, naročito manje interferencije sa pravom na ličnu slobodu.

PREGLED SMJEŠTAJA OD 14. DecembrA 2018.

|  |  |
| --- | --- |
|  STRANCI KOJI ČEKAJU DA PREDAJU PRIJAVU |   |
|   |   |
| PRIJEMNA KANCELARIJA U DOMU ZA AZIL | 27 |
| PRIJEMNA KANCELARIJA U OGRANKU LOGATEC | 0 |
| UKUPNO | 27 |
|  |   |
| LICA KOJA TRAŽE MEĐUNARODNU ZAŠTITU |   |
|   |   |
| DOM ZA ZAŠTITU | 98 |
| OGRANAK KOTNIKOVA, LJUBLJANA | 53 |
| OGRANAK LOGATEC | 25 |
| BOLNICA | 0 |
| HRANITELJSKA BRIGA | 1 |
| STUDENTSKI DOM POSTOJNA | 13 |
| ZATVOR, KUĆNI PRITVOR | 10 |
| CENTAR ZA STRANCE VELIKI OTOK | 4 |
| RASELJENI | 54 |
| UKUPNO | 258 |
|   |   |
| LICA POD MEĐUNARODNOM ZAŠTITOM |   |

|  |  |
| --- | --- |
| INTEGRACIONA KUĆA LJUBLJANA | 2 |
| INTEGRACIONA KUĆA MARIBOR | 29 |
| INTEGRACIONA KUĆA VELENJE | 13 |
| STANOVI KOJE JE PRIVREMENO DODIJELILA VLADA REPUBLIKE SLOVENIJE | 17 |
| DOM ZA AZIL LJUBLJANA  | 0 |
| OGRANAK LOGATEC | 0 |
| OGRANAK KOTNIKOVA, LJUBLJANA | 0 |
| STUDENTSKI DOMOVI | 12 |
| PRIVATNI SMJEŠTAJ | 470 |
| INOSTRANSTVO | 97 |
| UKUPNO | 640 |

1. **Stručna savjetnica u Instituciji Ombudsmana za ljudska prava Bosne i Hercegovine, g- đa Dejana Kozomara**

Na početku izlaganja a prije nego što se kratko osvrnem na temu današnjeg sastanka moram vas upoznati sa statusom preventivnom mehanizma u Bosni i Hercegovini, kao i svim mjerama i radnjama koje su Ombudsmeni preduzeli u ovoj godini a kako bi se što bolje pripremili za implentaciju ovog mehanizma.

U Bosni i Hercegovini nažalost ni u 2018. godini nisu usvojene izmjene Zakona o Ombudsmenu za ljudska prava Bosne i Hercegovine koje predviđaju uspostavu preventivnog mehanizma u okviru Institucije ombudsmena za ljudska prava, iako su još godinu ranije predložene izmjene Zakona prihvaćene od strane Vijeća ministara Bosne i Hercegovine i usvojene u prvom čitanju od strane Ustavo-pravne komisije oba doma Parlamentarne skupštine Bosne i Hercegovine. Bez obzira na navedeno, Ombudsmeni Bosne i Hercegovine su preduzeli određene konkretne aktivnosti kako bi se na vrijeme i što bolje pripremili za implementaciju mandata ovog mehanizma u Bosni i Hercegovini. Upravo iz tog razloga a u okviru Projekta jačanja kapaciteta institucije Ombudsmena za ljudska prava Bosne i Hercegovine, koji je proveden u saradnji sa Ombudsmenom Republike Bugarske, a podržan od strane Ambasade Republike Bugarske u Bosni i Hercegovini, izvršena je potrebna obuka osoblja institucije Ombudsmena o mandatu i funkcionisanju preventivnog mehanizma od strane bugarskih eksperata, te su na taj način stvoreni potrebni preduslovi da institucija Ombudsmena adekvatno preuzme ulogu ovog mehanizma. Takođe dobijena finansijska podrška iskorišćena je za izradu sva Specijalna izvještaja, Specijalni izvještaj o stanju u oblasti migracija u Bosni i Hercegovini i Specijalni izvještaj o stanju u policijskim uprava u Bosni i Hercegovini koji će biti objavljeni u što kraćem roku.

U nastavku izlaganja kratko ću se osvrnuti na temu današnjeg sastanka i istaći da je Vijeće ministara Bosne i Hercegovine u aprila 2018. godine, razmatralo informaciju o problematici migracija, te pozvalo instituciju Ombudsmena da hitno sačini i dostavi Vijeću ministara Specijalni izvještaj o stanju u oblasti migracija u Bosni i Hercegovini s prijedlogom mjera i preporuka nadležnih tijela Bosne i Hercegovine. Ombudsmeni su i prije dostavljenog zaključka uvidjeli značaj i potrebu praćenja stanja u oblasti migracija, te su s tim u vezi preduzeli određene konkretne aktivnosti kako bi sačinili specijalni izvještaj u oblasti migracija u Bosni i Hercegovini, koji će u narednih par dana biti i zvanično objavljen.

Specijalni izvještaj je sačinjen putem vršenja monitoringa u oblasti migracija u Bosni i Hercegovini, i uključivao je posjete svim lokacijama na kojima se nalaze migranti, razgovora i intervjua sa stranim državljanima i osobljem u ustanovama i prostorima gdje su smješteni, održavanje sastanaka sa svim rukovodiocima institucija te predstavnicima međunarodnih organizacija, domaćih i stranih nevladinih organizacija. Pored toga, praćena su i medijska izvještavanja o stanju migracija u Bosni i Hercegovini.

Stanje u oblasti migracija u Bosni i Hercegovini razdvojeno je na dva dijela: period do 31.12.2017. godine i period od 1.1.2018. godine do momenta sačinjavanja ovog Specijalnog izvještaja.

Prvi period je obilježen sporadičnim, odnosno kontrolisanim ulaskom i kretanjem stranaca, gdje je Bosna i Hercegovina prepoznata, uglavnom kao zemlja tranzita, za strance koji dolaze iz drugih zemalja. Drugi period je obilježen dramatičnim porastom broja stranaca koji su ušli u Bosnu i Hercegovinu i koji uglavnom koriste Bosnu i Hercegovinu za tranzit prema zemljama Evropske Unije.

Tako je od početka 2018. godine do 31.10.2018. godine a prema statističkim registrovano ukupno 22.000 migranata koji su ušli u Bosnu i Hercegovinu, s tim da se procjenjuje da se oko 3.000 do 5.000 migranata trenutno nalazi u Bosni i Hercegovini. Procjenjuje se da oko 25% migranata dolazi iz Sirije, dok su preostalih 75% migranata tzv. ekonomski migranti. Najveći broj migranata registrovan je Unsko-sanskom kantonu zbog blizine i dužine granice državne granice sa Republikom Hrvatskom, na ovom području dužina granice je oko 45 KM i pogodna je za prelaz migranata jer je bez fizičkih prepreka.

Ombudsmeni su konstatovali da se u Bosni i Hercegovini trenutno odvija proces tzv. mješovitih migracija. Preklapaju se motivi migracija, tako da imamo strance koji su u potrazi za boljim uslovima života/ekonomski migranti i strance koji traže utočište/osobe pod međunarodnom pravnom zaštitom. Bosna i Hercegovina je dominantno tranzitna zemlja za državljane Pakistana, Irana, Iraka, Maroka, Tunisa, Alžira, Libije, Sirije, Afganistana... Povećan priliv svih kategorija migranata i kontinuitet tog procesa, zahtijeva obavezu dodatne mobilizacije materijalnih, finansijskih i ljudskih resursa sa kojima Bosna i Hercegovina trenutno ne raspolaže. S druge strane, treba istaknuti da složena ekonomska, politička i socijalna situacija u Bosni i Hercegovini uzrokovana je povećanjem broja i građana Bosne i Hercegovine koji napuštaju Bosnu i Hercegovinu.

U sačinjenom Specijalnom izvještaju Ombudsmeni su konstatovali pozitivne pomake konstatujući da je država Bosna i Hercegovina stvorila adekvatan zakonski okvir za zaštitu prava ovih lica na način da je usvojen novi Zakon o strancima, novi Zakon o azilu, Zakon o pružanju besplatne pravne pomoći, Izmjene i dopune Zakona o zabrani diskriminacije, Strategija u oblasti migracija i azila i Akcioni plan za period 2016-2020 godine. Takođe, uspostavljeno je i Koordinacijsko tijelo za pitanja migracija u Bosni i Hercegovini, kao i određeni stepen saradnje nadležnih institucija koje se bave pitanjem migracija sa nevladinim organizacijama.

Ipak, Ombudsmeni Bosne i Hercegovine su u ovom Izvještaju iskazali i određene zabrinutosti, u vezi sa neefikasnošću u postupanju nadležnih organa, koja je evidentna u svim fazama postupanja prema migrantima, ne izvršavanje zakonske obaveze osiguranja informacija strancima o njihovima pravima na njihovom jeziku ili jeziku koji razumiju, neosiguranje adekvatnog institucionalnog stvarnog usmjeravanja stranaca koji su iskazali namjeru da će tražiti azil, prihvatanje da je rok za pristupanje registraciji u postupku ostvarivanja prava na azil predviđen za izuzetne prilike od 14 dana postao redovan rok, umjesto osam (8) dana, čak i prije nego što je došlo do masovnijeg priliva stranih državljana, neosiguranje blagovremene registracije svih osoba koje su iskazale namjeru da traže azil, slabosti u procesu registracije atomatski povlače i nemogućnost organizovanja intervjua sa tražiteljima azila a u cilju donošenja konačne odluke, sporost postupaka ostavlja prostor da migranti koji se nalaze u različitim fazama postupka za ostvarivanje azila najčešće nisu adekvatno zbrinuti, te se nalaze na ulicama gradova i nepostojanje adekvatne evidencija nadležnih službi o broju tražitelja azila koji su smješteni u hostele i privatne smještaje.

Takođe, Ombudsmeni Bosne i Hercegovine su konstatovali da insitucionalni mehanizmi nadležni za pitanje migracija u Bosni i Hercegovini nisu u potpunosti na adekvatan način i u skladu sa svim odredbama zakona organizovali i poduzeli neophodne aktivnosti, s ciljem donošenja odgovarajućih odluka, a posebno na način i u rokovim kako je to propisano zakonom. Nadležni opravdanje za ovakvo stanje nalaze u činjenici nedostatka ljudskih i materijalno-tehničkih resursa, što su prezentovali i Ombudsmenima prilikom sačinjavanja ovog izvještaja.

Uzimajući u obzir sve navedeno Ombudsmeni su preporučili sljedeće:

* da je potrebno aktivirati sve mjere predviđene Strategijom u oblasti migracija i azila i Akcionim planom za period 2016 - 2020. godine, koje uključuju: povećanje efikasnosti nadzora i kontrole državne granice Bosne i Hercegovine, značajno unapređenje sistema kontrole ulaska i boravka stranaca u Bosni i Hercegovini, podizanje na viši nivo zaštite bezbjednosti građana Bosne i Hercegovine;
* da je uz postojeće smještajne kapacitete obezbijediti dodatne smještajne kapacitete;
* da je potrebno uspostaviti jasne operativne procedure za postupanje svih nadležnih organa;
* povećati broj kadrovskog osoblja, odnosno jačati kapacitete institucionalnih mehanizama nadležnih za postupanje po pitanju migracija, uključujući
* uspostaviti operativno tijelo sa visokim stepenom mobilnosti. Operativnost i djelovanje ovog tijela treba da bude 24 sata;
* kontinuirano održavati regionalne sastanke na visokom nivou sa susjednim državama i državama koje se nalaze na ruti kretanja svih kategorija migranata u cilju definisanja zajedničke strategije djelovanja,
* Pokrenuti postupak zaključivanja ugovora o readmisiji sa državama iz kojih su registrovani stranci, a sa kojima još takvi sporazumi nisu potpisani.
1. **Viši pravni savjetnik NPM Odjeljenja, Kosovo,**

**g-din Niman Hajdari[[17]](#footnote-17)**

**Alternative pritvoru u kontekstu migracija u skladu sa kosovskim Zakonom o strancima**

Na Kosovu je pitanje pritvora u kontekstu migracija regulisano Zakonom o strancima. Na Kosovu postoji jedan imigracioni pritvorni centar za kapacitetom da primi 72 lica.Tokom 2018. godine, ovaj centar je primio 40 stranaca koji su bili prinuđeni na napuštanje i identifikaciju. Od tog broja, bilo je 16 muškaraca, 23 žene i četvoro djece.

Prije našeg sastanka u Podgorici, postojala su samo dva pritvorena stranca. U skladu sa podacima Policije Kosova, tokom 2018. godine, policija nadležna za migracije evidentirala je 400 prijava za azil.

**Alternative pritvoru u skladu sa Zakonom o strancima**

Zakon propisuje alternativne mjere pritvoru. Shodno Zakonu, pritvor predstavlja posljednju opciju. U skladu sa Zakonom o strancima, izdaju se privremene mjere kao alternativne mjere pritvoru za strance koji podliježu prinudnom napuštanju, na osnovu pojedinačnog slučaja, bez uticaja na sprovođenje naloga za prinudno napuštanje.

**Alternativne mjere u skladu sa Zakonom o strancima**

* Obaveza javljanja nadležnim organima.
* Privremeno oduzimanje karte ili putne isprave.
* Oduzimanje novca ili nametanje garancije (kaucija).
* Ograničenje slobode kretanja.

**Obaveza javljanja nadležnim organima**

Kada je u pitanju obaveza javljanja nadležnim organima, Zakon nalaže da stranac može biti u obavezi da se redovno javlja nadležnim organima kada:

* Protiv njega/nje postoji izdat nalog za napuštanje teritorije i potrebna je bezbjednost za izvršenje ovog naloga ili je traženo nadgledanje stranca koji napušta teritoriju.
* Prije napuštanja, Granična policija je znala tačnu adresu stranca.
* Ne postoje naznake da stranac može izbjegavati sprovođenje naloga o napuštanju niti da nije poštovao uslove dobrovoljnog napuštanja.
* U slučaju zaštite najboljeg interesa porodice stranca ili njega samog.

**Privremeno oduzimanje karte ili putne isprave**

* U slučaju da stranac podliježe prinudnom napuštanju ili nalogu o napuštanju, Granična policija može, kako bi obezbijedila povratak, oduzeti kartu i putnu ispravu.
* Granična policija je dužna oduzeti putnu ispravu stranca sve dok odluka administrativnog postupka ne postane konačna ili dok kazna ne bude plaćena, ili do isteka roka koji izrekne sud ili tužilaštvo.

**Oduzimanje novca ili nametanje garancije**

* Granična policija je dužna oduzeti strancu novčana sredstva ukoliko on/a posjeduje neophodnu količnu za pokrivanje troškova njegovog/njenog povratka.
* Umjesto ostalih privremenih mjera, ili paralelno sa njima, u skladu sa procjenom pojedinačnog slučaja, Granična policija može tražiti od stranca da deponuje finansijsku garanciju kojom garantuje svoj povratak.
* Zatim, Zakon propisuje da će se finansijska garancija vratiti strancu odmah nakon što se procijeni da ista više nije potrebna ili kada se sprovodi povratak stranca.

**Ograničenje slobode kretanja**

Granična policija ograničava slobodu kretanja stranaca, naređujući im da borave na datoj teritoriji, ukoliko:

* Povratak ili napuštanje ne mogu biti naređeni ili sprovedeni iz objektivnih razloga.
* Stranac ima boravišnu dozvolu iz humanitarnih razloga.
* Perod pritvora u pritvornom centru je istekao i napuštanje stranca nije moguće, ili
* Stranac ne može biti pritvoren u pritvornom centru iz humanitarnih razloga;
* U slučajevima kada organi nadležni za javno zdravlje, na osnovu procjene i u skladu sa Međunarodnom regulativom u oblasti zdravlja, preporuče izolaciju jednog ili više lica na vremenski period koji je potreban za izolovanje pretpostavljene bolesti,
* Granična policija dužna je navesti u nalogu boravak na datoj teritoriji, definisati pravila boravka, mjesto i dužinu boravka, kao i obavijestiti stranca da je dužan javljati se nadležnim policijskim organima svakog mjeseca.
* Stranac ima pravo uložiti žalbu Osnovnom sudu.

**Primjenljivost alternativnih mjera**

* Sa sastanka sa policijom Kosova zaduženom za migracije zaključeno je da se ove mjere primjenjuju samo u slučajevima dobrovoljnog povratka.

**Podaci dobijeni od Policije Kosova**

U skladu sa informacijama dobijenim od Policije Kosova, tokom 2018. godine, te mjere su bile izrečene u ukupno 6 slučajeva (ograničavanje slobode kretanja).

**Posjete NPM-a imigracionom pritvoru i centru za traženje azila**

* NPM vrši redovne posjete centru za traženje azila i imigracionom pritvornom centru.
* Ciljevi posjeta: tretman i prava pritvorenih migranata.
* Oba centra imaju veoma dobre smještajne uslove. Nije bilo primljenih žalbi na tretman. U Centru za traženje azila, tražiocima azila je dozvoljeno da napuštaju centar od 07:00 do 22:00h.

Kada je u pitanju imigracioni pritvorni centar, NPM je ustanovio sljedeće:

* Smještajni uslovi su dobri.
* U centru nema medicinskog osoblja. Zdravstvene usluge pružaju institucije javnog zdravlja.
* Privatno obezbjeđenje nije obučeno da radi sa tom kategorijom.
* Nedostatak ciljanih aktivnosti.

NPM je u svom izvještaju sa posjete organima vlasti preporučio sljedeće:

* Imigracioni pritvorni centar mora imati makar jednu medicinsku sestru na raspolaganju koja će vršiti zdravstvene preglede novopristiglih pritvorenika, davati terapiju i brinuti o medicinskoj dokumentaciji stranaca unutar Imigracionog pritvornog centra, kao i psihologa, kako to nalaže Regulativa.
* Centar treba da prati sljedeće protokole: Protokole za izolaciju, tjelesnu povredu, samopovredu, pokušano samoubistvo, seksualno zlostavljanje i smrt.
* Obezbjeđenje treba da prođe odgovarajuću obuku za rad sa ovom kategorijom lica.
* Za sva svoja prava i obaveze, stranci su dužni biti obaviješteni putem posebnog dokumenta na jeziku koji razumiju, koji oni potpisuju kao znak razumijevanja svojih prava i obaveza.
* Regulativa treba sadrži posebnu odredbu kojom se propisuje da stranac kome je izrečena disciplinska mjera treba da primi kopiju date odluke na jeziku koji razumije.
* Pritvorenim strancima treba obezbijediti besplatnu pravnu pomoć u skladu sa Regulativom o funkcionisanju imigracionog pritvornog centra.
1. **Član NMP-a, Poljska G-din Marcin Kusy**

U Poljskoj postoji šest pritvornih centara za migrante i dva zatvora za migrante. Zatvor je institucija u kojoj su zadržani migranti koji ne poštuju pravila i propise u zatvorenim pritvornim centrima.

NPM Poljske je obišao svaki od njih. Na svakom mjestu smo se sreli sa pritvorenim žrtvama nasilja, iako poljski zakon zabranjuje njihov pritvor.

Postoje problemi sa identifikovanjem ranjivih lica i prije pritvora (npr. na granici), kao i tokom pritvora.

Problem sa identifikovanjem prije pritvora jeste taj što migranti imaju pristup samo opštem zdravstvenom pregledu, a ne i psihološkom i psihijatrijskom. Ljekari ne provjeravaju da li je lice žrtva nasilja, oni samo konstatuju da li zdravstveni uslovi dozvoljavaju da dotično lice bude pritvoreno. Kao rezultat toga, granična straža u prijavama sudu navodi da nema kontraindikatora pritvoru, iako nije potvrđena mogućnost nasilja.

Različiti problemi se javljalju kada se identifikacija javlja tokom pritvora. Nakon prijema, pritvorena lica imaju priliku da obavijeste ljekara ukoliko su žrtve nasilja, u upitniku za samo-identifikaciju koja se odnosi na zdravstveno stanje. Te se informacije zatim prosljeđuju psihologu i socijalnoj službi. Međutim, kako su pokazale posjete NPM-a, potrebno je otprilike 4-5 mjeseci dok bi lice bilo pušteno iz pritvora. Cjelokupan proces identifikacije je veoma spor.

Zatim, u centrima za strance postoji interni dokument granične straže “Pravila ponašanja granične straže sa strancima koji traže poseban tretman", međutim, po našem mišljenju, to je protivno odredbama poljskog zakona i standarda Istanbulskog protokola, kao i ostalih razvijenih međunarodnih standarda. Ovim dokumentom nije omogućen “neposredni otpust” migranata koji su navodne žrtve nasilja, od strane uprave centra. U njemu se navodi da migranti iz ranjivih grupa treba da primaju odgovarajuću terapiju u pritvoru. Po mišljenju NPM-a, tretman i terapija u zatvorenim centrima dostupni za žrtve torture, samo pojačavaju traumu.

Kao primjer nedjelotvornog funkcionisanja sistema za identifikovanje žrtava torture i nasilja, jeste slučaj samohrane majke sa troje djece (uzrasta 5, 8 i 9 godina) koja je izjavila da su ona i jedno njeno dijete trpili torturu i nasilje. Naša ekspertkinja (psiholog) je obavila individualan razgovor sa ovom ženom, tokom kog je uočila moguće simptome napredujućeg post-traumatskog stresnog poremećaja. Tokom tok razgovora, ekspertkinja je saznala da je žena bila žrtva torture i nasilja, a da je jedno njeno dijete bilo upucano u petu tokom policijskog upada u njihovu kuću u njihovoj zemlji porijekla. Ekspertkinja je takođe ispitala dječaka, koji je bio povučen, oprezan i koji je imao nepravilne ožiljke po nogama. Analizom medicinske dokumentacije, otkrilo se da do dana posjete NMP-a, osoblje u objektu nije primijetilo osnov za nezadržavanje ove žene i njene djece u pritvoru. Dan nakon što je NPM informisao upravnika ovog mjesta o ovom slučaju, ta žena i njena djeca su otpušteni iz Centra.

Još jedan primjer je muškarac iz Sirije – koji je smješten u Zatvor kao rezultat pokušaja samoubistva u Centru. Suicidne krize su povezane sa produženim pritvorom. Stanje pacijenta je zahtijevalo neposrednu intervenciju i smještaj u psihijatrijsku bolnicu, zbog mogućnosti ugrožavanja života. Naši eksperti (psiholog i psihijatar) sproveli su kriznu intervenciju s ciljem stabilizovanja stanja stranca, pa stoga nije bilo preporučljivo održati intervju o traumatskim iskustvima iz perioda koji je prethodio pritvoru. Psihofizičko stanje stranca ukazivalo je na veliku vjerovatnoću traumatskog iskustva, uključujući nasilje. Da ne pominjem da je po mom mišljenju nehumano smjestiti u Zatvor lica koje je bilo u tako ozbiljnom psihičkom stanju zbog pokušaja samoubistva.

Ovo su samo neki od primjera kojim se pokazuje nedjelotvornost sistema identifikacije u Poljskoj. Pošto smo posjetili sve zatvorene institucije za migrante ove godine, sada planiramo da objavimo tematski izvještaj o pitanju sistema identifikacije žrtava nasilja u Poljskoj, sa konkretnim preporukama.

Još jedan sistemski problem jeste taj da zakon Poljske omogućava zatvaranje u ilegalnih maloljetnih migranata bez pratnje u Pritvornim centrima zatvorenog tipa. Međutim, dozvoljenost zatvaranja maloljetnih migranata ispitiju nevladine organizacije, međunarodne institucije i komesar za ljudska prava u brojnim prilikama. Po mišljenju NMP-a, bez obzira na to koliko su dobro maloljetnici zbrinuti tokom boravka u pritvornom centru zatvorenog tipa, takvi boravci, u svakom slučaju, imaju veoma negativan uticaj na njihovo psihološko stanje i njihovo uobičajeno funkcionisanje nakon toga.

**ANEKS I**

**DNEVNI RED**

**Regionalni okrugli sto**

**Sastanak mreže nacionalnih mehanizama za prevenciju torture zemalja jugoistočne Evrope**

**Pritvor u kontekstu migracija i djelotvorne alternative**

**12. decembar 2018. godine**

**Hotel Centre Ville, Podgorica**

U zajedničkoj organizaciji Savjeta Evrope i Institucije Zaštitnika ljudskih prava i sloboda Crne Gore uz podršku Nacionalnih preventivnih mehanizama

pod okriljem projekta Savjeta Evrope

„Djelotvorne alternative pritvoru u kontekstu migracija: Učenje, razmjena i primjena”

**DNEVNI RED**

09.00 – 9.30 Registracija učesnika i kafa dobrodošlice

*Sesija 1: Moderatorka Milica Vesović, menadžerka projekta, Odjeljenje nezavisnih tijela za ljudska prava, Direktorat za ljudska prava i vladavinu prava, Savjet Evrope*

**9:30 – 10:15 – Uvodna obraćanja, uvodne napomene i predstavljanje ciljeva okruglog stola i potrebe za regionalnom razmjenom**

Šućko Baković, Ombudsman, Institucija zaštitnika ljudskih prava i sloboda Crne Gore

Zoran Pašalić, Ombudsman i predsjedavajući Medicinske grupe (Srbija),

Peter Kastner, predstavnik Institucije Ombudsmana Austrije i predsjedavajući Pravne grupe (Austrija),

Lilja Gretarsdotir, Zamjenica načelnika Odjeljenja nezavisnih tijela za ljudska prava, Direktorat za ljudska prava i vladavinu prava, Savjet Evrope

**10:15 – 10:40 – Prezentacija *Analize pravnih i praktičnih aspekata djelotvornih alternativa pritvoru u kontekstu migracija* Nadzornog odbora za ljudska prava**

Lilja Gretarsdotir, Zamjenica načelnika Odjeljenja nezavisnih tijela za ljudska prava, Direktorat za ljudska prava i vladavinu prava, Savjet Evrope

**10:40 – 11:00 –** komentari i pitanja

**11:10 – 13:00**

*Sesija 2: Moderatorka Zdenka Perović, Zamjenica zaštitnika ljudskih prava i sloboda, Institucija Zaštitnika ljudskih prava i sloboda Crne Gore*

**Utvrđivanje ključnih metoda rada NPM-a i glavni prioriteti u kontekstu migracija i azila, pritvor u kontekstu migracija i alternative pritvoru: Izazovi i mogući budući koraci**

Moderator ukratko predstavlja temu, a zatim slijede prezentacije predstavnika NPM-a u trajanju od 7-10 minuta po predstavniku za stolom*,* nakon čega slijedi diskusija:

 Članice Mreže: Albanija, Austrija, Bugarska, Hrvatska, Bivša Jugoslovenska Republika Makedonija, Mađarska, Crna Gora, Rumunija, Srbija i Slovenija

 Stalni posmatrači: Bosna i Hercegovina, Kosovo[[18]](#footnote-18) Gost: Poljska

**13.30 – 15.00** Pauza za ručak

**15:00 – 16:30**

*Sesija 3 Moderatorka Milica Vesovic, menadžerka projekta, Odjeljenje nezavisnih tijela za ljudska prava, Direktorat za ljudska prava i vladavinu prava, Savjet Evrope*

**Zaključne napomene i komentari:**

Peter Kastner, predstavnik Institucije Ombudsmana Austrije i predsjedavajući Pravne grupe (Austrija)

Ivan Šelih, Zamjenik ombudsmana Slovenije

Lilja Gretarsdottir, Zamjenica načelnika Odjeljenja nezavisnih tijela za ljudska prava, Direktorat za ljudska prava i vladavinu prava, Savjet Evrope

*Sesija 4 Moderator Zdenka Perović, Zamjenica zaštitnika ljudskih prava i sloboda, Institucija Zaštitnika ljudskih prava i sloboda Crne Gore*

**16:30 – 18:00 – Interna razmjena između NPM-a u vezi sa novim predsjedavanjem i druga neriješena pitanja**

**ANEKS II**

**Lista učesnika**

1. G-đa Ermonela Xhafa, Komesarska NPM-a Albanije,
2. G-đa Besmira Petriti, Šefica međunarodnih odnosa, EU integracija i koordinatorka projekta, Albanija
3. G-din Peter Kastner, predstavnik Institucije Ombudsmana Austrije
4. Mr. Dimitar Bongalov – Direktor NPM direktorata, Bugarska
5. Mr. Hristo Atanasov – Glavni ekspert u NPM direktoratu, Bugarska
6. G-đa Milica Vesovic, menadžerka projekta, Odjeljenje nezavisnih tijela za ljudska prava, Direktorat za ljudska prava i vladavinu prava, Savjet Evrope
7. G-đa Lilja Gretarsdottir, Zamjenica načelnika Odjeljenja nezavisnih tijela za ljudska prava, Direktorat za ljudska prava i vladavinu prava, Savjet Evrope
8. G-đa Snježana Stanić, savjetnica pučke pravobraniteljice za zaštitu ljudskih prava, Hrvatska
9. G-đa Vanja Bakalović, savjetnica pučke pravobraniteljice za pravna pitanja (za područije - iregularni migranti i tražitelji azila), Hrvatska
10. G-din Martin Duvnjak i
11. G-din Aleksandar Trenkoski, savjetnici u NPM odjeljenju Institucije Ombudsmana Bivše Jugoslovenske Republike Makedonije
12. G-đa Haraszti Katalin, Zamjenica šefa odjeljenja NPM, Mađarska
13. G-din Šućko Baković, Ombudsman, Institucija Zaštitnika ljudskih prava i sloboda Crne Gore
14. G-đa Zdenka Perović, Zamjenica Zaštitnika
15. G-đa Snežana Mijušković, Zamjenica Zaštitnika
16. G-đa Marijana Sinđić, savjetnica
17. G-đa Mirjana Radović, savjetnica
18. G-đa Jovana Đurović, savjetnica
19. G-đa Milana Bojović, savjetnica
20. G-din Saša Čubranović, savjetnik
21. G-đa Magda Constanta Stefanescu, Zamjenica Ombudsmana, Rumunija
22. G-đa Maria Lepadatu, savjetnica
23. G-din Zoran Pašalić, Ombudsman i predsjedavajući Medicinske grupe, Srbija
24. Ms. Jasna Bogosavljević, saradnica u Instituciji Zaštitnika prava građana Republike Srbije
25. G-din Ivan Šelih, Zamjenik Ombudsmana Republike Slovenije i rukovodilac NPM-a
26. G-din Robert Gačnik, Viši savjetnik, NPM, Slovenija
27. G-đa Dejana Čopić, stručna savjetnica u Odjelu za praćenje ostvarivanja prava osoba lišenih slobode i
28. G-din Miroslav Milovuk , stručni saradnik u Odjelu za praćenje ostvarivanja političkih i građanskih prava u Instituciji Ombudsmana za ljudska prava Bosne i Hercegovine
29. G-din Niman Hajdari, viši pravni savjetnik NPM Odjeljenja, Kosovo
30. G-din. Arbër Berisha, pravni savjetnik, Kosovo
31. G-đa Fidane Zekaj, pravna savjetnica, Kosovo
32. G-din Marcin Kusy, član NMP-a, Poljska

FAMILY PHOTO

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**South-East Europe National Preventive Mechanisms Network Meeting**

**IMMIGRATION DETENTION AND EFFECTIVE ALTERNATIVES**

**PRESENTATIONS OF THE PARTICIPANTS**



Organised jointly by the Council of Europe and Ombudsperson’s Institution of Montenegro -

National Preventive Mechanism

Under the auspices of the Council of Europe Project

“Effective Alternatives to Immigration Detention: Learning, Sharing, Applying”

CONFERENCE OF THE SOUTH EAST EUROPE NPM NETWORK

IN PODGORICA

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**Immigration Detention and Effective Alternatives**

Podgorica, Montenegro

12th Decembar 2018

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**1. Protector of Human Rights and Freedoms of Montenegro, Mr. Šućko Baković**

As it has been known, migration crisis in the previous years surprised and found the European Union and the countries in the region unprepared. Some EU and Western Balkans countries failed to respond to it adequately, by choosing the measures which were not humane and not compliant with the European democratic values.

The treatment of migrants was different. I can’t help mentioning the gloomy scenes we could see – such as police discipline and beating of migrants on border crossings, the use of fired tear gas and dispersion of migrants, the closure of borders, lifting of fences, keeping migrants in an open space and inhumane treatment of them.

To say the least, these are unacceptable actions. Luckily, contrary to these countries, some countries acted in a humane way and in accordance with international refugee rights, thus showing their democratic capacity.

Migrants have been recognized as particularly vulnerable category. It is hard to think of a man in a worse position than the one who has lost everything except their own life, who wants to be rescued by seeking for the shelter in a foreign country. Therefore, the attitude towards these persons primarily has to be humane and civilized.

Human dimension of migrants must not be less important than the issue of the protection of security of a country.

Immigration detention is something which touches personal freedom of each individual, and it is particularly tough when it comes to migrants – they are already in an unfavourable position due to the fact that they are migrants. We are convinced that the detention should be a last resort measure, and that in each case, when duly grounded, less severe measures should be applied as alternatives to the detention.

Montenegro has largely aligned its legislation in this area with international standards. It has adopted the Law on International and Temporary Protection of Foreigners (in force since 1 January 2018), while the Law on Foreigners was amended and thus our institution has obtained additional duty.

Latest amendments to the Law on Foreigners prescribed a particular responsibility to our institution, related to readmission – the return of foreigners identified to be illegally residing in Montenegro. The police are obliged to timely inform us on each forced return of foreigners, to submit us related enactments based on which the return is carried out. The Law particularly emphasizes that the police shall cooperate with the Ombudsman and timely inform him, so that he could exercise his legal duty. There have been around 130 such cases so far.

According to available information, there are approximately 120-130 migrants with an overnight stay in Montenegro. It is not a small number for our country. Migrations are not expressed to a large extent, as they were before, but they are still present, especially those in which individuals, groups or families seek international legal protection.

Pursuant to the standards of the Council of Europe, UN and EU, foreigners and persons without citizenship who seek international protection are entitled to be informed about their status, rights and available types of protection, in a language they understand. Particular attention should be dedicated to vulnerable categories such as children, unaccompanied children, the elderly, pregnant women, the disabled, the ill, the victims of trafficking, torture and other inhumane treatment, and the like.

The Protector of Human Rights as the National Prevention Mechanism takes over measures for the prevention of torture and other forms of cruel, inhumane or humiliating punishments or actions, by regular and controlled visits of actual or possible locations of detained persons or persons whose movement is limited by a court decision or other authority.

Therefore, our mandate is also the monitoring of the respect for rights of detained persons or persons with restricted movement. We also believe that detention should be an exceptional measure, a last resort measure, and that in each case, when duly grounded, less severe measures should be applied as alternatives to the detention.

In the exercise of our mandate, we apply the standards of the European Court for Human Rights and other bodies related to immigration detention and deprivation of liberty and alternatives to detention in the context of migrations.

We particularly observe whether a person was immediately informed on the reasons for deprivation of liberty or detention in a language they understand, whether a person had the access to an attorney, the access to a doctor and whether they had an opportunity to inform a cousin or a third person of their choice about the detention measure. We also monitor whether clear house rules are defined in all facilities in which migrants reside, including written rules of conduct.

As CPT already stated in its informative document “Immigration detention”, it is clear that the detention in transit zones and police stations for longer periods is unacceptable and it is should be reduced to the least possible extent.

In this respect, the Centre for Asylum Seekers in Montenegro fulfils all conditions according to which persons may be detained in the centres particularly designed for such purposes, which offer material conditions unlike prison environment. The staff of the Centre are carefully selected and appropriately trained.

Undoubtedly, as stated in the analysis “Legal and practical aspects of effective alternatives to detention in the context of migrations”, alternatives prevent the consequences which the detention may have on psychological and physical health of migrants and asylum seekers. It is justifiably emphasized that the detention of vulnerable persons, particularly children, is especially problematic in the sense of respecting the rights and wellbeing.

In this regard, the Analysis represents an important material which will be useful for the future work of institutions and authorities and other entities, and provides specific guidelines for the continuation of activity in this area.

In terms of practical aspects of efficient alternative to immigration detention, we note the significance of permanent criteria, i.e. the provision of harmonization with immigration procedures, respect for human rights and response to basic needs and promotion of cost-effectiveness.

Certainly, the fulfilment of these criteria requires inter-sector approach, including the centres for social work and not neglecting the role of non-governmental sector.

Finally, I believe that today’s round table will be a step forward and contribute to the benefit of migrants who incidentally reside in Montenegro and that it will encourage the implementation of effective alternatives to the detention.

**2. Commissioner of NPM Albania, Ms. Ermonela Xhafa**

Albania continues to be a transit point for refugees, asylum seekers and economic migrants who intend to use the country's territory to travel to European countries. The overwhelming majority of irregular foreigners enter from Greek territory through the land green border in the southern areas (Gjirokastra and Saranda) and finally with increasing tendencies from the southeastern part (Korça). In 2018 has increased and consequently increased the number of problems. On the other hand, the biggest exit trends are towards the Montenegrin border (from Shkodra). To respond to the dynamics of developments, the People's Advocate is increasing the partnership with several regional and national actors such as Border and Migration Directorates, Local Government Agencies, UNHCR and other organizations to respect these people's rights, improve standards, ensuring adequate reception conditions, implementing the selection procedure, respecting the Asylum Law on potential asylum seekers coming from war zones, etc.

THE MAIN METHODS OF WORK OF THE NPM

The People's Advocate through the National Defense Mechanism is acting in several respects both at national and local level. The main methods include:

1. Monitoring

A series of national level monitoring has been undertaken on immigration policy measures and policies. The People's Advocate Institution has been extensively involved in periodic inspections at the Closed Center for Irregular Foreigners-Karreç, at the Center for Asylum Seekers Babrru , at the Border Directorate facing these issues and at border crossing points.

These monitoring was accompanied at the local level by:

 -monitoring at the southern border of identification of persons by migration officers

-monitoring at the southern border of the selection procedures

-monitoring the application of the right to asylum

Since November 2017, the People's Advocate reached an agreement with UNHCR for monitoring the southern border and refugee protection, in line with international standards and best practices. In this framework, in Gjirokastra an external expert of the People's Advocate together with the partners (UNHCR and Caritas Regional Office) assist in the reception of persons, monitor case by case the process of identification, selection and asylum procedures for asylum seekers. The agreement also includes the extension of this well-established UNHCR experience, covering the southeastern border (the Korça areas) and the northern border (Shkodra areas), with external expertise selected by the People's Advocate.

Last month we had the hiring procedures for 2 external experts for Shkodra and Korca, from who’s the Shkodra ’s expert is already in the field.

During all the monitoring, it was included in the preliminary information, the consultation and dialogue with the state and local authorities responsible for irregular migration and asylum.

All the monitoring activities were accompanied by periodic reports of problem solving, case-by-case interventions at the national and local level for the implementation of legality and recommendations. Specifically, in addition to the bilateral meetings at the central level of the Commissioner for NPM, such as the Interior Ministry, the Border and Migration Department, the Asylum Center, to refer the findings of the Ombudsmen's Foreign Experts (especially in Gjirokastra and Shkoder recently), but also the local coordinators of Our Institution in the border districts are in close partnerships with the responsible actors in this areas such as the Regional Border Directorates, Border and Public Health Institutions that deal with assistance to irregular foreigners entering the Albanian territory.

 

 *Emigrants in Gjirokastra Ombudsman's Conference on Migrants*

The critical tendency of the Ombudsman's representatives after the monitoring has exercised the appropriate pressure on the respective authorities to meet the international obligations and standards of refugee rights.

2. Guaranteeing maximum access to complaints procedures, and addressing specific issues of migrants, asylum seekers and refugees

The People's Advocate Institution has been always open and has assessed with maximum responsibility the complaints from irregular foreigners or organizations working on their rights by occasionally pursuing specific issues. As part of the team of partners in Gjirokastra, the representative of the People's Advocate has harmonized in many cases the work of the institutions to attend the cases of persons with special needs, children and pregnant women and to bring them the necessary services.

As part of the guarantee of standards is provided the non-push back at the crossing border point in Greece of families with women and children and the referral to the Child Protection Agency for cases of persons under 18 years of age.

3. Monitoring of the voluntary and nonvoluntary repatriation processes of Albanian citizens, from Schengen area countries.

In this framework, the NPM has participated in 37 repatriation operations of illegal migrants from the Schengen area (where 887 Albanian citizens have so far returned) from 1 January 2018 to the present day in the aircraft escort procedures with the purpose of monitoring the procedures the removal from the territories of the EU Member States and the Schengen area countries of Albanian nationals for which has been issued a decision on repatriation. The role of representatives of NPM Albania is the monitoring of respect for the Charter of Fundamental Rights and the Constitution of the Republic of Albania, which ensure respect for human dignity of all persons participating in the repatriation program. We work closely with The Albanian Border and Immigration Department of the Albanian State, FRONTEX and the French Police Officers

4. Work in the network and with partners

The People's Advocate Institution has increase its cooperation with the Department of Border and Migration at the General Directorate of State Police and with UNHCR to address the refugee issues by participating in common standard action’s procedures, joint trainings, monitoring of in the Kareci Center, at border points also to the Regional Border Directorates and in facilities under border police control where illegal immigrants are located. Enlargement of the agreement with UNHCR, this year's, including Korça and Shkodra will help the strengthen border monitoring, implementing the selection procedure properly. Next year, the People's Advocate will engage in another project to inform better the communities in border areas about the rights of refugees and their treatment in the Albanian territory.

MAIN PRIORITIES

Improving identification and selection standards

Identification of irregular foreigners in the territory of the Republic of Albania is regulated by the Law on Foreigners and is also in accordance with the guidance on the selection procedure. The structures that conduct this procedure are the Border Police, the Information Service and the Anti-Trafficking Department.

Currently, these three structures work together to identify the cases. In these practices have been identified some legal gaps such as the lack of a referral system for those in need of international protection who seek referral to local government units that provide services to this category.

In the currently applied Model for Identification, it turns out that language barriers, the lack of female migration officers, the limited time limit to carry out the selection procedure and the experience of migration officers have a direct impact on the identification process. This system has proven that potentially potential victims of trafficking could not be identified at the border and subsequently identified in later asylum procedures conducted at the asylum seeker center in Babrru, Tirana.

The Asylum Seeker National Center in Babru, currently accommodated about 92 people, and the capacity of this center is for 140 people. Key services are provided through the staff of this center, which is financially supported through several international organizations.

The identification process is one of the main issues to be strengthened, as during the interviews in this center are identified unaccompanied minors, abused women or victims with potential for trafficking.

According to the Albanian legislation and the constitution, all asylum seekers and refugees benefit from some services as Albanian citizens but the lack of some DCMs obliging line institutions to cooperate does not allow these people to take these services, such as social services, social housing law, and access in Civil Status etc.

Often, the prejudice of the countries of origin from where these people come, affects the quality of the selection and these persons are not referenced in the relevant mechanism but are often sent to the closed center in Karec.

The Closed Center for Foreigners, in Kareç was established in 2009 in accordance with Article 100 of the Constitution and the Law "On Foreigners", with the purpose of housing irregular foreigners in the territory of the Republic of Albania, against whom the detention measure is in accordance with the legislation in force.



*Musliman prayer room in Karecc*

The capacity of this center is 125 people, currently there are 71 people 67 men and 4 women. The Closed Center is a subordinate structure of the Directorate of Border and Migration under the General Directorate of State Police. The Center's Internal Regulation was approved by the General Director of State Police.

 

 *Interior facility in Karec Exterior Facility in Karec*

The Ombudsman noted that the conditions in the reception centers of irregular foreigners have improved, but further steps are needed to achieve the standards. So in the Kakavija border police station steps were taken to regulate and equip the premises, but the end of the building threatens the collapse of the wall carved by the sliding of the terrain.

In all cases treated by the Police Directory Directorates in the Districts when irregular foreigners were detained under the escort of traffickers arrested in flagrante, there was a good co-operation between the anti-trafficking officers and the Ombudsman's representative.

Irregular foreigners have been assisted with food and shelter during the process of staying several hours in the premises of the Caritas commissariats, and during the investigations they stayed in the center in Grëhot (Gjirokastra). No problems have been observed in the coordination between county and border police policies in these cases, but more police force are needed for the prevention and trafficking of these persons, especially in cross-border areas.

Inspections in this center have highlighted the need to improve the standards in several directions such as:

* respecting the fundamental rights to the identification and registration, resettlement and repatriation practices;
* Individuals expressing their desire to apply for asylum should be given special treatment in the pre-identification procedure, taking into account their nationality,
* Endangered groups including unaccompanied minors and victims of trafficking should not stay for long periods in the center, but transfer as soon as possible to specialized shelters;
* the complexity of the interventions to increase the limited service personnel, the improvement of the living conditions, the improvement of the necessary equipment in the center, the increase of the security of the center, etc.

There are no evidences in the process of identifying cases of violence by Albanian border police structures, but there is still a problem the number of push-backs (returns to Greece without performing the selection procedure).

Asylum procedure

Upon completion of the selection procedure based on the Law on Asylum, the asylum procedure starts which is based on such timeframes as:

* Procedure selection - asylum application
* From asylum application 30 days - hearings
* From the hearing session -15 days is given the decision (whether or not it wins asylum).

If the decision is negative, within 15 days it is appealed and the person can address to the National Commission for Citizenship and Asylum. Unfortunately, this commission is not functional due to the end of the mandate of some members and this commission is not set up.

So the appeal, is practically not implemented and the cases are sent by the persons or human rights organizations that defense them to the Administrative Court without consuming this legal step. The Court also refers cases to the National Commission again. This is a gap.

There are also other legal gaps in the asylum law, that do not foresee the international conventions (special provisions) such as treating Palestinian citizens who are presumed to benefit asylum without undergoing asylum procedures, but Albanian law does not provide this opportunity.

Another challenge is the provision of services by irregular foreigners from institutions. In the Asylum Law, all asylum seekers or refugees are expected to benefit from services as Albanian citizens. But in practice, there are many gaps that need to be regulated by DCM or by-laws and inter-ministerial guidelines such as identity documents, registrations in civil status offices, access to health, education, social services, etc.

The challenges and possible ways forward

* Have been monitored the Centers for irregular foreigners on the basis of these monitoring, have been prepared relevant recommendations and sent to the administration.
* Continuous meetings of the People's Advocate and the NPM, with foreign organizations and diplomatic troops.
* Good cooperation with UNCHR for the design of leaflets on rights of asylum seekers and refugees.

The issue of health services at the centers was addressed during the workshops organized over the years, by the People's Advocate Office, through the NPM, with representatives of the South East European Network Mechanisms Healthcare Group in Albania and the Migration Directorate and the Border, etc.

Ombudsperson Institution, in the role of the National Mechanism for the Prevention of Torture (MKPT) and with the support of the project "Supporting the Danish People's Ombudsman for Albanian Ombudsman - Closer to Local Communities, Civil Society and Media" on 29 and 30 October 2015, has conducted a two-day activity on "Treatment of Asylum Seekers, Refugees and Returning Migrants in South East Europe - Discussion on Common Concerns and Monitoring Standards".

Representatives of Ombudsman Institutions from across the world gathered on 7 and 8 September 2016 in Tirana, Albania, to discuss the current challenges posed by the recent refugee and migrant flows and find a common response to the situation of people in need of international protection. The conference, hosted by the People’s Advocate (Ombudsman) of Albania, was jointly organised by the Association of Mediterranean Ombudsmen (AOM), Association of Francophone Ombudsmen and Mediators (AOMF), the International Ombudsman Institute (IOI) and the Ibero-American federation of Ombudsman.

Currently, have been revised the Guidelines for the Selection Procedure, where the Border Police, the People's Advocate, OSCE, UNHCR, etc. have provided its findings, and according to those is expected soon the full guideline, giving the priority to deadlines of the accelerated asylum procedures and elimination of linguistic barriers.

The People's Advocate is in the process of discussing and drafting the five years Strategy, including the component of migration management which, in collaboration with all UN agencies in Albania, has contributed with its resources to complete this strategy (2018- 2022).

Through the NPM section and concrete work of experts in border regions, the People's Advocate of Albania will increase its commitment to protect the rights of refugees and asylum seekers the year ahead. It will also be active in partnerships or networks of cooperation at the national and regional level.

**3. Member of Austrian Ombudsman Board,**

 **PhD. Mr. Peter Kastner**

**I. General Remarks:**

A pre-deportation detention is not a criminal detention. If the Federal Office for Aliens and Asylum worries that people, who not authorized to stay in Austria will not leave the country, but might rather go into hiding, it will give order to the police to arrest these people and take them into a pre-deportation detention. Though the Austrian law enables the police to sentence foreigners for a maximum time of 1 ½ year, there is a steady decrease of those detention decisions since 2010. Further-more the average time of detention has also decreased steadily, from 24 days in 2009 to a little less than 15 days in 2013. What is the reason for that?

**Alternatives to detention:**

The Austrian law stipulates **3 alternatives to detention**: Residing at a particular address determined by the authority, reporting periodically to the police office, and lodging a financial deposit at the authority. In practice, mainly the first two alternatives are applied. These two alternatives can be applied in combination too.

Other forms of alternatives, such as electronic monitoring (e.g. tagging), guarantor requirements, release to a care worker or under a care plan, community management program etc., are not provided in Austria.

**Who profits from the alternatives of detention?**

Alternatives to detention are not exclusively assigned to specific groups of third-country nationals. Thus, in principle **all individuals** who can be detained, asylum-seekers in ordinary and Dublin procedures, as well as non-asylum-seekers, can also be provided the different alternatives to detention.

According to Austrian law **minors** are addressed as a specific group. It prevents those below 14 years from being detained. Other **vulnerable groups** are not directly addressed by the law on grounds for detention or time limits; they are, however, covered by medical checks that shall determine fitness for detention, according to the Detention Order.

Individuals provided alternatives to detention may be detained as a consequence of not following the conditions of the alternative to detention.

**Who decides about the alternative do detention?**

Individual assessment procedures are to be conducted in all cases and for all categories of third-country nationals in Austria, based on relevant legislation and case law. The task of conducting assessment procedures lies with the Federal Office for Immigration and Asylum. A judicial authority, the Federal Administrative Court, is involved if the decision of the authority is challenged.

**II. The accommodation Zinnergasse**

With regards to alternatives to detention, currently the accommodation facility in Vienna, Zinnergasse, **which is run by an NGO in cooperation with the police**, is particularly relevant. This facility gives place to **families**; it offers police protection from outside interference as well.

The facility in Zinnergasse is located at the periphery of Vienna. In 2013, 154 persons in total were accommodated there, of which 75 were accommodated together with their families. The day-to-day function of the facility is done by an NGO. This NGO is responsible for the daily care, food distribution, crisis intervention, interpretation and conflict prevention.

**Return counseling** is done at the Zinnergasse as well. Return counseling shall give assistance and persuade foreigners to return voluntarily. Those who opt for voluntary return get information and advice who will bear the return costs in case the client has no money, get assistance with the travel documents, flight booking, transfer to the airport, support at the check-in and in the transit area of the airport, if necessary payment of a reintegration assistance (in accordance with the individual case).

Any way **individuals** who are provided an alternative to detention in Zinnergasse **have to** **report regularly to the police**, who are present at the facility. The police are thus responsible for checking compliance with the requirements set by the Federal Office for Immigration and Asylum.

In a typical case, the Federal Office for Immigration and Asylum, as the authority issuing the decision on an alternative to detention, foresees that a foreigner shall take accommodation at Zinnergasse and regularly report to the police stationed there. The allocation of a foreigner to Zinnergasse can be done from all parts of Austria. In most cases, the Federal Office for Immigration and Asylum organizes tickets to Vienna for the foreigners concerned. In other cases, e.g. if families are concerned, travel is facilitated directly by the Federal Office for Immigration and Asylum.

According to the Federal Ministry of the Interior, the accommodation Zinnergasse can be regarded as good practice for the organization of alternatives to detention. The presence of police at the facility ensures that individuals accommodated there are provided protection from outside interference, such as from smugglers. Furthermore, the cooperation between NGO and police is perceived as a good model.

**Task of the Austrian NPM:**

The Austrian NPM visited the accommodation Zinnergasse since 2015 once a year. The facility falls in the mandate clearly. People have to report regularly to the police; they have to be aware of the fact, that not following the rules will cause being detained. So **Zinnergasse is a “place of detention”.**

**Findings of the Austrian NPM:**

Even though international studies pointed out that the Zinnergasse is good practice, the NPM found out **several weaknesses** that should be eliminated.

During the refugee crises 60-70 persons came at once, which was not only a logistical problem to give assistance to many people the same time, but turned out to be a safety risk as well, as the police lost track of the situation. So the challenge was to identify the foreigners, make sure, that families can stay together and kids don’t get lost.

Though clients were interviewed with the help of professional interpreters, there were not enough info folders informing people about their rights in a language they can understand. For those you can’t read the NPM missed info folders with pictograms.

Women were searched by female civil servants exclusively. Children were not separated from their mothers while being interviewed. But medical care was poor. If a client became psychotic, the police had to fix him on the floor till the doctor arrived and decided what to do. The situation improved. In 2016 a physician was engaged an s small surgery installed as part of the facility where the medical check-up is done now before bringing people to the airport.

Food and drinking was always provided in a sufficient way. All clients were offered fresh food and fruits as well. The rooms are spacious and will be cleaned, before being distributed to the next family. But one of the NPM visits was done during summer time and our commission found out that windows can be tipped only instead of being opened widely. This was criticized as well.

The commission criticized that children and teenagers cannot use the outdoor area with the children’s playgrounds, due to the fact that there was no fence and a lot of garbage lying around. The situation has improved since, as can be seen on the following photos.

And finally the commission got aware of a cell with grids. At the grids of this cell itself and due to mounted iron plates in this cell there is an increased risk of injury. The police replied that the cell is not used. The NPM recommended in 2015 that if there is no need for a cell it a wasted area that should be used in a better way. So the grids should be eliminated, as they spoil the climate of a free zone as well. Two years later it turned out that there is a need for this cell, though the duration of being detained in it would not last longer than 15 minutes on average. Every stay is documented as well as the reason why the client was sentenced.

So in summary it seems necessary the NPM is continuing its visits from time to time. Visits in Zinnergasse are done unannounced as most of our visits in other places of detention too.

**4. Human Rights Protection Advisor to the Ombudswoman, Ms. Snježana Stanić and Legal Affairs Advisor to the Ombudswoman, Croatia, Ms. Vanja Bakalović**

The Ombudsman office has been intensively active in the area of the protection of human rights and freedoms, seekers of international protection and irregular migrants since the so-called Balkan Route in 2015. We are committed to talk about this important topic not only from the perspective of security, which is emphasized in public discourse, but also from the perspective of human rights. In fact, it is frequently neglected that these two are not two confronted, but two inseparable terms, i.e. that it is not possible to talk about the security in a country without the guarantee and the protection of human rights.

With the signing of the agreement between the EU and Turkey and repeated return in the frameworks of the Joint European Asylum System, border control in the Balkan Route countries became stricter, so at the end of 2016, the allegations of media and complaints to the Ombudsman appeared with regards to the return of migrants in Serbia without conducting the procedures stipulated by law, according to which, depending on the measure for return, a ruling was supposed to be issued, and the procedure should have been implemented individually and with ensured interpretation. Some of the documented complaints during 2016 contained the allegations that police officers had beaten irregular migrants with rods, forced them to take off their shoes and knee down or stand in the snow, and forced them to pass through a cordon through which they had been beaten and insulted. During such treatments, as stated in the complaints, they were not able to speak, and there are testimonies that their valuable belongings, money and mobile phones were seized from them. The results of the conducted investigation procedures and visits, on the basis of the mandate of NPM, indicate the violation of human rights of irregular migrants by police officers. This is particularly related to the push-back of the persons found on the territory of the state, following irregular transit of the state border with neighbouring non-EU member states, including the absence of efficient investigation on the allegations on police violence; then the access to and the possibility of seeking international protection and the administrative procedure during the adoption of the ruling on the return.

Such actions may be a violation of Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, according to which nobody may undergo torture or inhumane or humiliating treatment or punishment, and they require the implementation of an effective investigation which was reported in detail in 2017 Ombudsman Annual Report.

Although we have asked for them several times, we have never received from the Ministry of Interior and State Prosecution Office the information on the implementation of such investigation, and an unambiguous and clear judgement of violence towards migrants by highest state officials is also missing. Additionally, as one of the responses to complaints, along with the lack of data in the records and the need for the protection of state borders, there are regularly reported data on the percentage of migrants who left the Republic of Croatia before the completion of the procedure of international protection, while it is emphasized that it shows that they are obviously false complaints with the aim of the abuse of this institute. However, the mentioned argumentation is neither adequate nor convincing, particularly taking into account the fact that such percentage did not change comparing to the years before migrant crisis.

Therefore, the continuation of similar reports and complaints in 2017 and 2018 is not surprising, and by the strengthening of migration pressure on the border with Bosnia and Herzegovina, they become related to this area as well. All complaints (which are, unfortunately, continuously active) were sent to the Ombudsman or those addressed via civil society organizations and international organizations are very similar and usually begin with the allegations on irregular crossing of the Croatian state border, being found on the state territory by police officers, seeking international protection and neglecting of such statements, forced entrance into police van, even on beating, including with rods, seizure of money and all valuables, destruction of mobile phones, either by destroying the charger or by pouring water over them, and return via green border, contrary to the legal procedure.

In the response to such complaints, the Ministry of Interior only stated that they are inadequate and false, and it did not provide required data on the number and type of undertaken procedures so as to investigate them. In addition to this, the response of the Ministry of Interior on the fact that the investigations cannot be conducted due to the lack of precise data on the dates, time and locations of the respective events, is unconvincing, as even when we had submitted such data related to a specific complaint, it was identified that a part of the material recorded by thermo-visual cameras is missing, at the time of the commitment of the crime, which could have confirmed or removed such allegations.

Besides the treatment of police officers of irregular migrants including a possible violation of Article 3 of the European Charter of Human Rights, we have also identified a range of concerns regarding the implementation of safety return measures, which indicate the prevention or considerable obstruction of seeking international protection. Almost no case of administrative procedure, processed within the NPM mandate, contains the records of time when irregular migrants were brought and released from the station, as well as whether they sought international protection during their stay and whether they needed medical support. Additionally, a video recording was checked in one of the rare case files with recorded time of release from detention, but it was not possible to see whether the respective person had left at the specified time. Since some persons were transported from remote parts of the Republic of Croatia, due to the lack of official records in the case file, it was not possible to identify whether their movement was restricted longer than 24 hours, which is the maximum period of detention at the proceeding of adoption of a ruling on return.

Finally, during 2018, the Ombudsman was for the first time obstructed by being deprived of direct access to cases and data on treating irregular migrants in the Information System of the Ministry of Interior, which is the only source of such data. This happened during the visits and investigations in compliance with the Law on National Preventive Mechanism and the Law on Ombudsman, in several police stations and administrations.

The disabled access was exclusively related to the cases in which the manner of treatment of irregular migrants was supposed to be identified, during the application of measures for safety return based on the Law on Foreigners, and to the manner of treating the seekers of international protection in the procedure of expressing their intention for seeking international protection, as well as the terms of their stay in the premises in which they were detained or kept. For example, during the NPM visit to the police station with Bosnia and Herzegovina in September this year, the unannounced access to required data was prohibited to the Ombudsman, while the deputy head of police station, the only official whom she could speak to, told her that she had been authorized for the provision of only one statement: “There is an ongoing migrant crisis and the Law on Foreigners and the Law on the Protection of the State Border are adhered to. In general, the waiting for the so-called “authorized person” (police officer for irregular migrations) lasts for a longer period, so the basic element of an unannounced visit is thus being lost, and that is its unexpectedness.

Direct insight into the data is of paramount importance for the implementation of investigation procedures, as well as the NPM visits, particularly taking into account that the Ministry of Interior already submitted the data to the Ombudsman, which were identified by the check of the case files as incomplete/incorrect.

Therefore, we think that such conduct represents a direct pressure of executive governance to the work of the independent national institution for human rights.

Furthermore, we have emphasized several times, especially via the amendments to the Law on Foreigners, the significance of measures less severe than the restriction of the freedom of movement by the accommodation in the Admission Centre for Foreigners, however, our proposal that the Ministry of Interior ensure the accommodation at least for vulnerable groups so as to avoid their detention, was not adopted. In addition to this, the Ministry of Interior, due to the encouragement of voluntary returns, which also serve to prevent detention, failed to enter into agreements with international organizations and civil society organizations, and it does not assist irregular migrants in the procedure of voluntary return to obtain passports and travel tickets, as stipulated by the Law on Foreigners.

**5.Adviser to the NPM division, Office of the Ombudsperson of the Former Yugoslav Republic of Macedonia, Mr. Martin Duvnjak**

Regarding the immigration detention, the only institution in the Republic of Macedonia for the detention of refugees/migrants due to immigration reasons is the Admission Centre for Foreigners in Gazi Baba.

Pursuant to the Law on Foreigners and the Rules of conduct of the Admission Centre for Foreigners, the following categories of foreigners are detained:

* A foreigner impossible to be forced to leave the territory of the Republic of Macedonia due to any reasons, and to whom the Ministry of Interior adopted the ruling for temporary detention in the Admission Centre,
* A foreigner for whom an expulsion order is issued and who does not own a valid passport,
* A foreigner whose identity cannot be established, and who is imposed a detention in the Admission Centre for Foreigners by a court ruling.

Maximum period of stay in the Admission Centre for Foreigners pursuant to the law is up to the moment of termination of reasons which prevent their removal from the territory of the Republic of Macedonia, but no longer than six months, in exceptional cases there is a possibility for the extension of this deadline for maximum 12 months.

After conducted visits to the Admission Centre for Foreigners in 2018, the Ombudsman has concluded that the average period of stay is 19 days, while the longest stay of a foreigner in the Centre is 80 days.

In 2018, refugees and migrants continued their transit over the Republic of Macedonia using irregular routes and routes for smuggling.

In response to such irregular migration, the practice of detaining the foreigners due to immigration reasons continued most frequently in the role of witnesses in court proceedings, thus increasing the possibility for misdemeanors and violations of human rights of foreign citizens who had been detained in the Admission Centre for Foreigners in Gazi Babi.

In the previous years, the Ombudsman several times seriously criticized and indicated a range of failures and violations of human rights detected in the manner of managing and functioning of the Admission Centre for Foreigners in Gazi Babi, and during the treatment of competent officers of the detained foreigners, as well as poor material conditions, particularly in the period between the end of 2015 and the end of 2016.

The most severe failures identified also in the Special Ombudsman Reports are the following: illegal rulings adopted by a competent authority, lack of issuing rulings on detention in the Admission Centre for Foreigners to the detained persons, hiding a real number of persons accommodated in the Centre and the accommodation of persons not registered in the registries of the Ministry of Interior, deprivation of right to a walk and the access to the proceeding for the recognition of the right to asylum as well as keeping the foreigners as the witnesses in a criminal proceeding.

By the adoption of a new Law for International and Temporary Protection, although it seems that generally the new Law is more liberal than the previous Law on Asylum and Temporary Protection, however, there is one legal provison which is very questionable and problematic.

The new Law provides for the possibility of restriction of the freedom of movement to asylum seekers. Although, Article 63 paragraph 1 of the Law on International and Temporary Protection stipulates that the restriction of the freedom of movement to asylum seekers shall be carried out only in exceptional cases, i.e. if other, less forcible alternative measures cannot be effectively applied (confiscation of passport, regular reporting), it seems that exceptional cases referred to in paragraph 2 of Article 63 are not sufficiently precise, i.e. they leave a great possibility for discretional conduct of competent authorities.

There is a concern that this provision might be misused, taking into account the fact foreigners were and are detained in the Admission Centre for Foreigners by the Ministry of Interior, as the practice in Macedonia, without legally issued related ruling. The foreigners were detained as the witnesses in a procedure conducted against smugglers or with a view of identifying them.

In 2015, such process lasted even up to eight months, and international organizations for human rights reacted. The existence of legal possibility to be deprived of a liberty while seeking asylum, during the asylum seeking process, creates the feeling of fear that this can be used and can last longer than it lasts in the European Union member states, from which this directive was taken.

What is of particular concern is the location envisaged for the accommodation of this category of asylum seekers, and that is in the same Admission Centre for Foreigners - Gazi Baba with special entrance isolated from the premises intended for detaining foreigners.

Since the foreigners are detained in the Centre, as well as the asylum seekers with restricted freedom of movement, pursant to new legal amendments, their right to walk in an open fresh air is practically disabled. Therefore, the Ombudsman finds this type of restriction of the freedom of asylum seekers is utterly unnecessary and inadequate, especially considering the fact that asylum seekers have a legally guaranteed right to unlimited freedom of movement.

Regarding the alternatives to detention, they are unavailable and legally unregulated in the Republic of Macedonia. Although there is a large number of examples on the forms of alternatives to detention for asylum seekers, as more efficient and cheaper options, the only functional alternative to detention in the Republic of Macedonia is the Facility for the Accommodation of Vulnerable Persons – Asylum seekers (the so-called Safe house). This Safe house, which primarily served as the shelter of potential human trafficking victims, was used last year for the accommodation of vulnerable groups of persons, especially self-mothers and unaccompanied minor foreigners.

**6. Deputy head of OCAT NPM Department, Hungary,**

**Ms. Katalin Haraszti**

**Alternatives to Immigration Detention in Hungary**

In 2015 the Hungarian authorities registered more than 177 000 new asylum applications. In that year Hungary was the eighth-largest recipient of claims for asylum applications in the World.[[19]](#footnote-19) These applicants generally moved in the European Union within a short time and their claims were administratively closed soon afterwards.[[20]](#footnote-20)

Responding to the unprecedented migration flow, Hungary was the first among the EU Member States to set up a “*temporary security fence*” at its border with Serbia,[[21]](#footnote-21) and the later on the border with Croatia.[[22]](#footnote-22) On 16 October 2015, Hungary announced that the fence along the 348 km border with Croatia had been completed and at midnight it would close the border. By that time, in order to strengthen the new border surveillance, military and police forces were deployed to the fence. Since 17 October 2015 there is a razor-wired fence, patrolled by the army and the police on the entire border that Hungary shares with Croatia and Serbia.

In 2016 further severities were introduced into the domestic regulation. After 5 July 2016, every person who entered irregularly from Serbia or Croatia and was caught within 8 kilometres from the border was escorted and relocated to the other side of the fence.[[23]](#footnote-23) In September, the Hungarian Parliament approved the criminalisation of irregular entry into the country[[24]](#footnote-24). Since that time, crossing the Hungarian border without travel documents is a crime, and if someone crosses the fence and damages it, the Criminal Code considers it as a serious crime as oppose to minor offense.[[25]](#footnote-25)

Effectiveness of the new border surveillance system is proved by the fact, that in 2016 **32 732** persons, in 2017 **10 862** persons and by the end of October 2018 **1505** persons were prevented from crossing the border into Hungary via the fence.[[26]](#footnote-26)

The law entered into force on 28 March 2017 extended the scope of the deeper border control policy. This law orders the police to escort the irregular migrants apprehended anywhere in Hungary to wait beyond the fence until they can submit their claims for asylum in one of the two operating transit zones (Röszke and Tompa) at the Serbian border of Hungary. Authorities do not register these persons before escorting them to the borders. In order to prove that they leave the country in good health condition, authorities took photos or videos of the apprehended migrants while escorting them beyond the gates along the border fence and records are stored for 30 days.

Number of irregular migrants escorted back to the outer side of the fence at the Hungarian Serbian border:[[27]](#footnote-27)

* 05 July - 31 December 2016: **8464** persons
* 01 January – 10 December 2017:  **8187** persons
* 01 January – 31 October 2018: **3193** persons

**Transit zones at the border security fence**

In 2015 four “*transit zones*” were established along the wire fenced Serbian and the Croatian borders.[[28]](#footnote-28) The transit zones are the sole legal places of entering irregularly Hungary and submitting application for international protection.[[29]](#footnote-29) Two transit zones at the Croatian borders exist but they do not work.



**Transit zones at the Hungarian-Serbian and the Hungarian-Croatian border and in Hungary**[[30]](#footnote-30)

Applicants who want to seek international protection through the transit zone should wait for opening the gate. In 2018, in general, one person per day was admitted to each transit zone at the border security fence. Until 31 October 2018 **560** applications for the international protection were submitted in the transit zones.

The applicants, including unaccompanied children over 14 years of the age, cannot enter Hungary until their cases have been decided. Authorities assign guardians only to unaccompanied children under the age of 14, who are placed in a children’s home in Fót. Unaccompanied children over 14 years of age are placed in the Röszke transit zone. The applicants may leave the transit zone through the one-way exit leading to Serbia.[[31]](#footnote-31)

The transit zones are on the territory of Hungary but in the case of rejection of the application, the authorities do not consider it as such.[[32]](#footnote-32) The persons whose application is rejected either remand in the transit zones or are transferred to closed detention centres and waiting for his/her removal.[[33]](#footnote-33)

The new law entered into force on 28 March 2017 cancelled the time limit of staying in the transit zones. In the Hungarian law the transit zones at the border fence are considered as open reception facilities consequently no detention orders issued and no legal remedy against being obligated to stay there. In the case of *Ilias and Ahmed v. Hungary,* concerned the staying of two Bangladeshi asylum-seekers in the transit zone for 23 days and their removal from Hungary to Serbia, the European Court of Human Rights (ECtHR) qualified the transit zones as place of de facto detention.[[34]](#footnote-34)

At the request of the Hungarian Government the case is referred to the Grand Chamber of the ECtHR. The proceeding is now ongoing.

**Respond the Hungarian NPM to the challenges**

Since 28 Mach 2017 the police have a legal obligation to escort people apprehended anywhere in the country to the southern borders. Authorities do not register these people before escorting them to the southern borders and do not count them as new arrivals given that they cannot stay within the country. In absence of official registration the police cannot present documents on the apprehension and the escorting procedure.

Under the Hungarian law, the ombudsman is not allowed to be getting involved in political struggles. Due to the ongoing proceeding before the Grand Chamber of the ECtHR the ombudsman does not want to take position on whether the transit zones at the border fence are open reception facilities.

In this situation, the ombudsman is focusing on the preventive manner of the NPM. He and members of the staff visited the transit zones at the Serbian border and he is very active in commenting on draft legislation.

The staffs participate in training activities for police officers, and they and the ombudsman critically analyse the activities of authorities in his professional publication(s).

**7. Advisor of Protector of Human Rights and Freedoms of Montenegro, Ms. Marijana Sinđić**

Montenegrin NPM regularly visits the places in which persons detained in the context of migrations are or may be found. The statistics of stay of migrants and asylum seekers is changed on a daily basis, while illegal migrations in Montenegro are of individual nature or there are small groups in transition. These are usually economic migrants from the territory of Algeria, Syria, Morocco, Afghanistan, Pakistan, Libya, Iraq, as well as the citizens of neighbouring countries – Albania and Kosovo. Their final destination is not Montenegro.

Montenegro possesses two facilities intended for the accommodation of migrants and asylum seekers (built in 2014).

1. Shelter for foreigners (a closed-type institution, an organizational unit within the Police Administration). This institution accommodates persons upon the ruling of the Police Administration – Border Police Division – Department for Migrants, Visas and Combat of Illegal Migrations. The capacity is 46 beds. The foreigners in the Shelter may stay 90 days maximum two times, pursuant to the Law on Foreigners. Having examined the documentation, the NPM has established that main basis for the stay is the identification and that average stay in the Shelter is 15 days. Material and other conditions are appropriate.

2. Centre for Asylum Seekers Admission is an open institution (which started working on 20 February 2014). The capacity of this institution is 80 beds. It has four departments for the accommodation of asylum seekers, restaurant, laundry, playrooms for children, garden area intended for children and sports court intended for adults. Besides the Centre, these persons are also accommodated in alternative accommodation ensured by the state.

Apart from the provision of accommodation and fulfilment of personal and joint hygiene conditions, primary healthcare, this institution also ensures the support in the form of clothing, footwear, psycho-social assistance, assistance in the exercise of rights, etc.

NPM has concluded that the conditions in the Centres are of high-level quality and identified a systemic approach ensuring efficient action in compliance with valid regulations and international standards in the areas of asylum and migrations. Accommodation capacities, rooms, furniture, bathrooms and toilettes, kitchen, restaurant and joint premises are new, very tidy and fully compliant with the needs of their beneficiaries. Cooling and heating are on satisfactory level. Health protection is permanently available as for other population of Montenegro. According to the documentation, average stay is 4 days, while the longest stay in alternative accommodations is up to 7 days.

It is also important to note that unaccompanied minor foreigners are accommodated in an open institution “Ljubović” Centre, as the only institution for social and child protection in Montenegro dealing with institutional protection of children who violated the law. The Centre accommodates, educates and trains the children and youth who violated the law, as well as children and youth with behavioural disorders, of both sexes, citizens of Montenegro and foreign citizens. Following the check of the documentation, the NPM has concluded that a small number of unaccompanied minor migrants resided in this institution. The NPM has noticed that authorities have been showing humanity and temporary shelter to persons who use Montenegro as a transit zone towards the EU countries.

National legislation related to migrations and asylum in Montenegro is largely aligned and harmonized with the EU normative framework and standards.

Foreigners may be detained on various grounds and in different phases of immigration process. Thus, the foreigners, pursuant to the Law on Foreigners, are detained when their application to enter the country is rejected, when a person illegally enters the country and the authority identifies them afterwards, when residence permit of a person expires, or when authorities find detention necessary. Movement of a foreigner shall be restricted or prohibited on certain territory of Montenegro, if it is required by national or internal security or public health, in compliance with the Law, Article 124.

The Law on Foreigners defines that a foreigner may be detained, arrested and held for 24 hours and not more than 48 hours. The police adopt a ruling on the detention of a foreigner.

The detention of an unaccompanied minor foreigner is immediately reported to a competent centre for social work and diplomatic consular office of their country. The foreigner may file a lawsuit against such ruling to the Administrative Court, before which the procedure is urgent. The police shall consider alternative measures to detention. The police may restrict the freedom of movement of a foreigner by their accommodation in the shelter for foreigners, especially if there is a risk of avoiding the obligation to leave Montenegro, or if the foreigner disables the execution of a forced leave and return. The police pass a ruling on the accommodation of a foreigner in the shelter, while the accommodation may be valid only for the period needed for the forced leave and during the activities of the forced leave, maximum for six months. A lawsuit may be filed against this ruling to the Administrative Court, within 5 days from the day of delivery of the ruling. This procedure is urgent.

The accommodation in the shelter may be reduced or extended for maximum 12 months, if a foreigner refuses to cooperate or delays the provision of necessary documents from the other country.

The ruling on the reduction or extension of accommodation period is adopted by the police. A lawsuit may be filed against this ruling to the Administrative Court, within 5 days from the day of delivery of the ruling. This procedure is urgent.

It is important to mention that in the visited places, the NPM has found that each case of detaining irregular migrants, as well as the citizens, is supported by the documentation from the order made immediately after detention initiation up to the records on the stay in the shelter and activities undertaken during the stay.

From the very beginning of their detention, foreigners enjoy three fundamental rights, in the same way as other categories of detained persons. These rights are the following: (1) the access to attorney at law, (2) the access to a physician, and (3) notification of a relative or a third person of their own choice on detention measure. The provision of *ex officio* attorney at law is ensured if illegal migrants are unable to pay for the attorney at law. During the admission in immigration detention, they immediately undergo medical check by a physician or a qualified medical technician. Besides these three protection mechanisms, a foreigner also has the right to seek consular assistance. However, the exercise of such right is left to the will of a detained person. The NPM has also noted that there were no consular offices in Montenegro of the home countries of persons who wanted consular assistance.

Detained illegal migrants in each individual case are explicitly informed, without delay and in a language they understand, on their rights and applicable procedure. In this respect, all detained migrants are provided with an informative brochure – a document produced in frequently spoken languages, when necessary, an interpreter is engaged (there is a problem with the lack of interpreters for certain languages). They also sign a sheet and confirm to have been informed on their rights in a language they understand and they receive the House Rules. The detained illegal migrants are also ensured the use of efficient legal remedies.

The Law on Foreigners prescribes a new obligation to the Ombudsman to monitor each implementation of a forced leave and undertaking of measures for the protection of human rights and freedoms of a foreigner forced to leave. Besides this, the EU standard imposes an obligation for the Ombudsman to monitor the operations of return of Montenegrin citizens, identified to be illegally residing in the European Union countries. During 2018, the NPM had three operations of this kind.

In addition to this, for the first time, in compliance with the directives of the European Parliament and Council, “soft measures” are defined and they actually represent an alternative of the accommodation of foreigners in the shelters for foreigners, which are actually immigration detention with the measure of the restriction of freedom of movement.

The Law on Foreigners stipulates the obligation of the police to apply soft measures to ensure the return of a foreigner, and to restrict the freedom of movement of a foreigner, only if they cannot be made to leave by the application of a forced leave measure or their return cannot be ensured by the application of soft measures.

The soft measures comprise of: 1. deposit of passports and travel tickets; 2. deposit of certain amount of funds; 3. prohibition of leave of the accommodation at certain address; and 4. appearing before the police at certain time. The alternative measures are subject to court verification.

The alternative to detention serves to the pragmatic goal of the discussion related to the purpose of detention and commitment for its reduction. Alternative forms of detention include the same guarantees to persons as the classic forms. However, the fact that a person is not in detention, does not necessarily mean that they are not deprived of liberty.

Finally, it is important to say that a great challenge at work of both Police Administration and the NPM, is the application of these measures. The NPM is planning in the forthcoming period to continue its participation in the re-admissions of our citizens and to monitor forced leaves of foreigners.

**8. Deputy Ombudsman, Romania,**

**Ms. Magda Constanta Stefanescu**

Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms protects persons from the arbitrary interference of a Member State with their right to liberty. Any deprivation of liberty is lawful only when it is based on the exhaustive list of admissible grounds listed by the Convention. Detention measures must be provided by law and must protect against arbitrariness. The authorities should carry out an analysis of proportionality and necessity, which includes an analysis of alternative means of detention (ECHR case law - O.M. V. Hungary (No 9912/15)).

Detention, as deprivation of liberty, must therefore be an exceptional, last resort measure provided for in the national law and applied only where absolutely necessary, proportionate to a legitimate aim, assessed for the particular circumstances of the case and in compliance with the fundamental rights.

For Romania, "Migration is a process that needs to be managed, not a problem that needs to be resolved." One of the basic principles of the *National Immigration Strategy* is that of respecting human rights and fundamental freedoms, so that all activities carried out by authorities and institutions with responsibilities in the field of immigration take place in compliance with the provisions of international conventions and treaties on fundamental rights and freedoms to which Romania is a party (Government Decision No. 780/2015 for the approval of the National Immigration Strategy for the period 2015-2018 and the 2015 Action Plan for the implementation of the National Immigration Strategy for the period 2015-2018).

*►Accommodation centers for asylum seekers*

Under Romanian law, aliens shall not be detained for the period of time during which their request for protection is being processed.

Aliens in Romania are not placed in detention as a result of their status and the fact that they have fled their own country, fearing for their lives. Aliens are accommodated in regional accommodation centers or can live in rented non-enclosed spaces that they may leave whenever they wish.

*The Regional Centers for Procedures and Accommodation of Asylum Seekers* are specialized structures of the Ministry of Internal Affairs - General Inspectorate for Immigration, designed to accommodate asylum seekers (especially those who do not have the necessary material resources for self-maintenance, beneficiaries of international protection). In their fields of competence, the regional centers cooperate with international bodies, foundations and non-governmental organizations active in the specific field and collaborate on issues of common interest, especially with public authorities. The centers also ensure compliance with the provisions of the international treaties, agreements and conventions to which Romania is a party regarding the conditions of reception, status, regime, establishment of the responsible Member State and integration into society of the persons who have obtained a form of protection in Romania.

Accommodation centers are spaces used for the collective accommodation of asylum seekers. These accommodation spaces are located in cities, in the immediate vicinity of public transport, schools and shops. The centers are not enclosed, and families have a high degree of freedom of movement, but with some restrictions (registration of departures and arrivals, prohibition of bringing certain objects into the center, etc.).

Usually, a family lives together, in a room or two, according to the number of family members. The family benefits from a monthly allowance for food and non-food products. Children can attend kindergartens or schools in the area or in the center, and families have access to physical and mental health services in centers or cities, if necessary. In these centers the accommodated persons receive counseling on the access to socio-economic rights regarding: ● the labor market, ● the education system, ● the social insurance system, ● obtaining of housing and cultural orientation; ● Romanian language courses for minors, ● social and legal counseling services (other than those related to the asylum procedure), ● concrete material assistance to improve the standard of living. They also participate in a series of cultural and recreational activities, the development of professional skills, in order to accommodate to the characteristics of the Romanian society.

At the same time, during the procedure, aliens can choose to live in rented apartments paid by them or by the Romanian state, made available through national programs.

*►Alternatives to detention*

Although the Romanian legislation does not provide for the detention of aliens as a result of their mere status as aliens, *in practice several aspects considered as alternatives to detention by other countries can be encountered*. These are used in Romania to guarantee the observance of asylum procedures and the rights of certain categories of vulnerable persons.

As regards the situation of minors in the context of migration, we consider that detention is not in their best interests, therefore alternatives are the most effective means of protecting them.

In Romania, all decisions concerning minors are taken with the observance of the the best interests of the child and a series of safeguards are provided for unaccompanied minors, such as: ● prioritizing their application, ● appointing a legal representative ● informing the legal representative and the minor in a language he or she knows ● accommodation in reception centers that have the necessary material means (Law 112/2006 on asylum in Romania).

In the case of a minor alien, his interests are protected by his legal representative. The minor alien submits the application for asylum through the legal representative, and in the case of minors who have reached the age of 14, the application for asylum can be submitted personally. After registering the unaccompanied minor alien as an asylum seeker, the General Inspectorate for Immigration immediately notifies the competent authority for the protection of the child in whose territorial jurisdiction the accommodation center is located, where the asylum application is to be filed in order to initiate the procedure for appointment a legal representative. The legal representation of the unaccompanied minor, once established, continues to operate for as long as the minor benefits from international protection in Romania.

With regard to the legal representative, he is designated by the General Directorates for Social Assistance and Child Protection, and he will act in the best interest of the child and assist him at all stages of the immigration process and in other legal or administrative procedures. Also through the General Directorates for Social Assistance and Child Protection, unaccompanied minors are accommodated in reception centers for minors, where they enjoy living and education conditions appropriate to their age, with the observance of the fundamental human rights.

In Romania, during the asylum procedure, an alien applying for a form of protection has the right to be counseled and assisted by a representative of a Romanian or foreign non-governmental organization at any stage of the asylum procedure, as well as the right to receive social assistance.

*►Monitoring of accommodation centers by NPM*

Monitoring the treatment and accommodation conditions of people placed in some form of custody through unannounced and regular visits made by the National Preventive Mechanism is one of the means of preventing torture and ill-treatment, part of the system of protecting persons deprived of their liberty.

The Field for the prevention of torture in places of detention within the People's Advocate Institution exercises its powers as a National Preventive Mechanism also in regional centers for procedures and accommodation for asylum seekers and the accommodation centers for aliens taken into public custody.

In 2018, five visits were made to centers for migrants. These visits were aimed at verifying the implementation of previous recommendations, the conditions of accommodation, the treatment of aliens, the way their rights and freedoms are respected, the asylum procedure, the protection of children and other issues relevant to the NPM's work.

**9. Ombudsmen and Chairperson of the Medical Group, Serbia,**

 **Mr. LLM Zoran Pašalić**

In compliance with the regulations of the Council of Europe, the United Nations and the European Union, the Republic of Serbia treats immigration detention in its legislation as extraordinary last resort measure, taking into account the fact that immigration detention is in largest number of cases of administrative, not punitive nature, and it has to be aligned with the principles of non-arbitrariness in deciding upon the detention, as well as the observance of the principle of necessity and proportionality in cases when detention is the only option.

In addition to this, specific position of particularly vulnerable categories is taken into account, especially regarding the detention of children (especially unaccompanied minors), asylum seekers, persons with serious health problems (including mental health), LGBT persons, persons without citizenship, human trafficking victims, pregnant women, victims of torture, humiliation and domestic violence, elderly people and people with disabilities, whose cases have to be carefully and individually considered.

Since the Republic of Serbia is predominantly a transit country in migration processes, in which migrants stay on average between eight and ten months, as the most developed and most efficient alternative to detention, there are open and half-open admission centres for the accommodation of adult migrants and families, in which migrants and asylum seekers are generally not detained. So far, there have been 18 centres for the accommodation of migrants and asylum seekers (13 admission centres for migrants and 5 asylum centres). Admission centres at one place provide accommodation services, food and basic health care, as well as possible occupational activities (educational, sports, entertainment for children). However, the capacities, level and quality of these services frequently vary.

Exceptionally, migrants may be assigned temporary stay in the Shelter for Foreigners in compliance with the Law on Foreigners (“Official Gazette of the Republic of Serbia”, 24/18) for the sake of identification, in case of using false documents, in cases of return and the like. However, a foreigner with health or other special needs shall be ensured another appropriate accommodation.

As alternative to accommodation in the Shelter, the Law on Foreigners prescribes mandatory stay at one certain place. This measure is imposed when there is a risk that a foreigner would not be available to a competent authority for the implementation of a forced removal, and the accommodation in the Shelter would not be a proportionate measure, i.e. in case that a ruling was issued to a foreigner on the delay of a forced removal. Mandatory stay may be approved up to a year and can be extended for the same period, depending on the existence of reasons due to which the mandatory stay is approved. A foreigner to whom a mandatory stay is imposed shall stay at certain address and report to the police. When there are justified reasons for that, a competent authority may allow the foreigner, by the means of a ruling, to temporarily leave the place of mandatory stay.

As special alternatives to accommodation for children, especially unaccompanied minors, taking into account the “extreme vulnerability” of children in detention conditions and their specific needs according to their age, the lack of independence and the status of asylum seekers or migrants, they are accommodated, pursuant to the Law on Foreigners, in the Shelter for Foreigners only if accompanied by their parents, tutors or legal representatives. The alternative to detention for minor unaccompanied foreigners are social protection institutions or specialized shelters intended for minor unaccompanied foreigners.

Also, alternative measure to detention of asylum seekers, persons who expressed their intention to obtain asylum are accommodated in open asylum centres, and their freedom of movement on the territory of the country is not restricted during their stay (the law enables the absence of 72 hours). If an asylum seeker owns their own funds, they can stay at their own cost out of accommodation capacities of the Commissariat, but with previous approval of the Asylum Office.

Pursuant to the Law on Asylum and Temporary Protection (“Official Gazette of the Republic of Serbia”, 24/18), the movement of asylum seekers may be restricted by a ruling of the Asylum Office and it is enforced by: 1) the prohibition of leaving an asylum centre, certain address or certain area; 2) regular appearance at certain time to territorial police administration or police station depending on the stay; 3) ordering the stay in the shelter for foreigners under intensified police supervision; 4) ordering the stay in social protection institution for minors with intensified supervision; 5) temporary seizure of a passport.

Since the middle of 2014 until today, the NPM Serbia has conducted 168 visits aimed at the examination of the actions of public authorities towards refugees and migrants, in compliance with valid regulations and international standards. The following facilities were visited: police administrations and related police stations; regional centres of border police; asylum centres; admission centres; Shelter for Foreigners in Padinska Skela; “Nikola Tesla“ airport; admission units for the accommodation of unaccompanied minor foreigners and institutes for the enforcement of criminal sanctions. Visit reports addressed a total of 212 recommendations for the improvement of the treatment of refugees, migrants and asylum seekers.

- 2014: 41 visits; 27 recommendations

- 2015: 59 visits; 36 recommendations

- 2016: 52 visits; 72 recommendations

- 2017: 36 visits; 52 recommendations

- 2018: 21 visits; 25 recommendations

Regarding the monitoring of the position of refugees and migrants, intensive multiannual cooperation has been established with UNHCR office and Belgrade Centre for Human Rights association.

In previous years, the NPM Serbia addressed a number of recommendations aimed at the improvement of accommodation capacities of accommodation centres for migrants and asylum seekers. Acting upon NPM recommendations, numerous centres renovated their accommodation capacities, and the works were conducted for the extension of capacities and provision of accommodation in solid facilities (the tents in the courtyards were withdrawn from use).

During the visits, the NPM identified that various workshops and activities were organized for migrants (sewing, language courses, library, computer training, culture and arts programmes, hairdressing, make-up workshops, sports activities and the like). Particular attention is dedicated to the care for newborns, and in the majority of centres the support is provided to mothers via counseling and other types of assistance.

The establishment of psychological support in the majority of admission centres is of particular importance. NPM has found that due to the uncertainty of the continuation of their journey, the lack of relevant information and extended stay in the conditions of collective accommodation, numerous migrants show the signs of tension and neurosis. The fact that the migrants spent long period of time travelling and that many of them suffered or witnessed violence during such journey, and many of them lost their family members or separated from them, should be added to these circumstances. Taking into account the above-mentioned, it was recommended to the Commissariat to organize psychological support to migrants by ensuring adequate premises for confidential conversations with migrants and by taking other necessary measures in all centres for admission and care of migrants.

The majority of centres have established better monitoring of incidents and other extraordinary events. Acting upon NPM recommendations, the centres maintain records of extraordinary events and report the Commissariat about them. Also, in line with the NPM recommendation as of 2016, the procedure of complaining about the work of persons in the centres was established, by the possibility of sending the complaints electronically via designated email, while the allegations from the complaints are considered at the headquarters of the Commissariat. The NPM has found related notifications exposed and translated in several languages in the majority of the visited centres.

On the other hand, despite the existence of the coordination and cooperation of different authorities in terms of the care for migrants on the national level, which is mainly good, the officers of the Commissariat who work in the centres for migrants usually do not have sufficient support of other services in certain aspects of treating the migrants, so the NPM addressed the recommendations, primarily to local centres for social work, to increase their presence in admission centres and their commitment in the work with vulnerable categories of migrants.

Since the beginning of migrant crisis until today, children related contents and activities in the centres have been considerably improved. During the previous year, more than 500 migrant children were enrolled in 27 elementary schools in Serbia. This process was monitored by the NPM during its visits to the centres and it established that children attended 2-3 lessons per day in local elementary schools.

In the previous period, the NPM has also visited social protection institutions which accommodate unaccompanied minor migrants (Institute for Youth Education in Niš, Institute for Education of Children and Youth Belgrade – “Vasa Stajić” and Dormitory for Children with Developmental Disorder “Kolevka“ in Subotica). Since 2014, there have been 8 visits to these institutions. With a view of improving the conditions for accommodation of unaccompanied minor migrants, the NPM addressed the recommendations so as to improve the services of their accommodation, health protection and food.

Generally, the Republic of Serbia so far has had a good and organized response to migrant crisis, creating such conditions in admission centres which timely ensure temporary accommodation to a large number of asylum seekers and migrants in the procedure of processing their requests, which has turned out to be an efficient measure and proper alternative to detention of these persons, especially in the situations of a huge inflow of migrants and relatively long stay of these persons in some of admission centres, due to slow and low “permeability” of borders towards the European Union.

**10. Deputy Ombudsman and Head of the NPM of Slovenia,**

**Mr. Ivan Šelih**

According to the Ministry of the Interior (MNZ), in the period from 1 January to 31 October 2018, police officers processed 8,017 illegal crossings of the state border in Slovenia (1,502 in the same period last year). The number increased by 433.8 percent compared to the same period last year. This year, the majority of people processed by the police were citizens of Pakistan, Afghanistan and Algeria. The number of Pakistani citizens, as well as citizens of other countries with the highest risk of migration, is increasing.

In Slovenia, too, the Police (a body affiliated to the Ministry of the Interior) is usually the first body to establish contact with foreigners (including applicants for international protection). In the case of applicants for international protection, the police only perform initial procedures (such as identification) and then refer the applicant for further treatment to the Ministry of Internal Affairs (Directorate for Administrative Internal Affairs, Migration and Naturalisation at the MNZ - DUNZMN) as provided by the International Protection Act (ZMZ-1). Applicants for international protection are usually accommodated at the Asylum Home in Ljubljana, which is under the jurisdiction of the Ministry of the Interior (and not the Police) and is an institution of an open type, but also elsewhere or in other locations (these are alternative accommodations to the stay at the Asylum Home that do not constitute deprivation of liberty). Professional services of the DUNZMN then decide on the filed application following a procedure prescribed by the ZMZ-1.

Foreigners that do not apply for international protection shall be processed by the police following the strict procedure prescribed by the Foreigners Act. In such cases, the police shall conduct procedures and activities for the return to the country of transit or origin, including accommodation at the Aliens Centre (which is a closed-type institution) if necessary.

Foreigners whose removal from the country is not allowed (as they are confirmed to come from Syria) or not possible due to legally determined reasons (Article 73 of the Foreigners Act) shall be allowed to temporarily stay in Slovenia. In this case, the police shall issue a permit to stay for the period of six months with the possibility of extension as long as there are grounds for this. By a decision on issuing a permit to stay, the police may determine a place of residence for a foreigner at a certain address. Foreigners in possession of such a permit may freely move around Slovenia.

The Aliens Centre, which is (as mentioned) a closed-type institution, may therefore accommodate foreigners who are in the Republic of Slovenia illegally: foreigners who do not leave the country within the prescribed period of time or cannot be removed from the country immediately; foreigners whose identity is not known; foreigners against whom an expulsion order has been issued; unaccompanied minor foreigners; foreigners who are in Slovenia illegally and, pending their handover to foreign security authorities, are waiting to be removed under the relevant international agreement; and foreigners facing forcible removal or foreigners who have not left Slovenia and have reapplied for international protection.

The Centre may also accommodate international protection seekers whose movement has been restricted by a decision based on the ZMZ-1, and international protection seekers who were issued a decision pursuant to the relevant Council Regulation (EC). If, in an individual case, the competent authority establishes that it is not possible to effectively implement the measure of having one's movement restricted to an Asylum Home, an applicant may be imposed the measure of having their movement restricted to such Asylum Home, which is, in such cases, the only alternative to the detention of applicants at the Aliens Centre.

The competent authority shall issue a decision on imposing these two measures (i.e. on having one's movement restricted to the Asylum Home and on detention at the Aliens Centre). The measure is first imposed orally. The applicant shall immediately receive a record of the imposed measure stating the reasons for the measure. The record shall be read to the applicant in a language they understand. A written copy of the decision shall be issued by the competent authority no later than 48 hours after the decision was delivered orally and must be served on the applicant within three working days. The measures may (with some exceptions) remain in effect until the grounds for it subsist, but not longer than three months. If, after this period, the reasons for the restriction of movement still exist, the measure may be extended for another month based on a decision. The measures shall terminate *ex officio* if the underlying grounds cease to exist. The president of the Administrative Court may decide that the implementation of the measure referred to in paragraph 1 or 2 of this Article be supervised, and may appoint a judge or judges of the Administrative Court to carry out such a review within the time limits and at locations determined by the president thereof or regarding certain applicants, and to report thereon. If as part of the review a judge of the Administrative Court establishes that the reasons to restrict the movement of a certain applicant no longer exist, such a judge shall order the measure to be lifted.

If a measure restricting movement to the Centre for Foreigners is imposed on a vulnerable person with special needs, the competent authority shall as a priority ensure that such person’s health, including mental health, is protected and shall ensure regular monitoring and adequate assistance, while taking into account that person’s specific situation.

The Human Rights Ombudsman of the Republic of Slovenia has warned the competent authorities about the lack of alternatives to restricted movement. The Ministry of the Interior explained that it has, in the process of drafting the ZMZ-1, examined several alternatives to detention of applicants for international protection, as allowed by Article 8 Of Directive 2013/33/EU (regular reporting to the authorities, the deposit of a financial guarantee). The mentioned Directive does not lay down the number of more lenient measures to be provided by a Member State, but only that Member States shall ensure that the rules concerning alternatives to detention are laid down in national law. On the basis of discussions with the participants in the process of harmonising the draft act (notably with representatives of NGOs and the Ministry of Justice), the Ministry estimated that the more lenient measure of having one's movement restricted to the Asylum Home was the only alternative to detention outlined in Directive 2013/33/EU that would be feasible in practice, since it was already implemented under the previously applicable act. It announced, however, that it would re-examine the possibility of introducing several alternatives to detention when drafting the next amendment to the ZMZ-1.

The Ombudsman intends to point out this issue again in the 2018 report. At the same time, in the cases when an applicant is deprived of liberty, the MNZ should act promptly and without delay; at the same time, in considering the objective criteria on which the reasons for the suspicion of the escape of an applicant for international protection are based, it should reconsider additional amendments to the ZMZ- 1 or additional more lenient measures that would allow for more individualised treatment of applicants for international protection and thus more effective procedures, and in particular less interference with the right to personal freedom.

Overview of accommodations as of 14 December 2018

|  |  |
| --- | --- |
|  FOREIGNERS WAITING TO SUBMIT AN APPLICATION |   |
|   |   |
| RECEPTION OFFICE AT THE ASYLUM HOME | 27 |
| RECEPTION OFFICE AT THE BRANCH FACILITY LOGATEC | 0 |
| TOTAL | 27 |
|   |   |
|   |   |
| APPLICANTS SEEKING INTERNATIONAL PROTECTION |   |
|   |   |
| ASYLUM HOME | 98 |
| BRANCH FACILITY KOTNIKOVA, LJUBLJANA | 53 |
| BRANCH FACILITY LOGATEC | 25 |
| HOSPITAL | 0 |
| FOSTER CARE | 1 |
| STUDENT DORMITORY POSTOJNA | 13 |
| PRISON, HOUSE ARREST | 10 |
| ALIENS CENTRE VELIKI OTOK | 4 |
| DISPLACED | 54 |
| TOTAL  | 258 |
|   |   |
| PERSONS UNDER INTERNATIONAL PROTECTION  |   |

|  |  |
| --- | --- |
| INTEGRATION HOUSE LJUBLJANA | 2 |
| INTEGRATION HOUSE MARIBOR | 29 |
| INTEGRATION HOUSE VELENJE | 13 |
| APARTMENTS TEMPORARILY ALLOCATED BY THE GOVERNMENT OF THE REPUBLIC OF SLOVENIA | 17 |
| LJUBLJANA ASYLUM HOME | 0 |
| BRANCH FACILITY LOGATEC | 0 |
| BRANCH FACILITY KOTNIKOVA, LJUBLJANA | 0 |
| STUDENT DORMITORIES | 12 |
| PRIVATE ACCOMMODATION | 470 |
| ABROAD | 97 |
| TOTAL | 640 |

**11. Expert adviser in Office of the Human Rights Ombudspersons of Bosnia and Herzegovina, Ms. Dejana Kozomara**

At the beginning of my presentation, and before I briefly reflect on the topic of todays meeting, I have to introduce you with the status of preventive mechanism in Bosnia and Herzegovina, as well as all measures and actions taken by ombudsmen in this year, so as to better prepare for the implementation of this mechanism.

In Bosnia and Herzegovina, unfortunately, amendments to the Law on Ombudsman of Bosnia and Herzegovina, envisaging the establishment of the preventive mechanism within the Ombudsman institution, were not even adopted in 2018, although in the previous year, the proposed amendments to the Law were approved by the Council of Ministers of Bosnia and Herzegovina and adopted at the first reading by the Constitutional Committee of both chambers of the Parliament of Bosnia and Herzegovina. Regardless of this fact, the ombudsmen of Bosnia and Herzegovina took over certain specific activities so as to timely and better prepare for the implementation of the mandate of this mechanism in Bosnia and Herzegovina. Consequently and within the Project of strengthening capacities of Ombudsman of Bosnia and Herzegovina, implemented in cooperation with the Ombudsman of Bulgaria and supported by the Embassy of Bulgaria in Bosnia and Herzegovina, a necessary training of the Ombudsman staff was carried out on the mandate and functioning of preventive mechanism by Bulgarian experts, and thus the necessary preconditions were met for the Ombudsman institution to adequately take over the role of this mechanism. Also, the obtained financial support was used for the creation of two special reports: Special Report on Migration Situation in Bosnia and Herzegovina and Special Report on the Situation in Police Administrations in Bosnia and Herzegovina to be published as soon as possible.

Then, I will briefly reflect upon the topic of todays meeting and point out that in April 2018, the Council of the Ministers of Bosnia and Herzegovina considered the information on the issue of migrations and invited the Ombudsman institution to urgently create and submit to the Council of Ministers the Special Report on Migration Situation in Bosnia and Herzegovina, along with the proposal of measures and recommendations of responsible authorities of Bosnia and Herzegovina. Even before the submitted conclusion, the ombudsmen have identified the significance and necessity of monitoring of the situation of migrations, and accordingly, they have taken specific activities so as to create the special report related to migrations in Bosnia and Herzegovina, which will be officially published in the following days.

The Special Report was created via monitoring of migrations in Bosnia and Herzegovina, and it included the visits to all locations at which migrants were found, conversations and interviews with foreigners and staff in the institutions and facilities which accommodated them, meetings with all heads of institutions and representatives of international organizations, national and international non-governmental organizations. In addition to this, media reports on migrations in Bosnia and Herzegovina were also monitored.

The migration situation in Bosnia and Herzegovina is divided into two parts: the period until 31/12/2017 and the period starting from 01/01/2018 up to the moment of the creation of this Special Report.

The first period is characterized by sporadic and controlled entrance and movement of foreigners, where Bosnia and Herzegovina is mainly recognized as a transit country for foreigners coming from other countries. The other period is characterized by dramatic rise in the number of foreigners who entered Bosnia and Herzegovina and who mainly use it as a transit towards the European Union countries.

Consequently, since the beginning of 2018 until 31/10/2018, according to statistical data, there were 22,000 registered migrants who entered Bosnia and Herzegovina, while it is estimated that currently between 3,000 and 5,000 migrants currently reside in Bosnia and Herzegovina. It is estimated that around 25% migrants come from Syria, while the remaining 75% migrants are the so-called economic migrants. The largest number of migrants is registered in Unsko-sanski canton due to the vicinity and length of the state border with the Republic of Croatia. The length of the border is around 45 km and it is appropriate for the transit, as it does not have physical obstacles.

The ombudsmen have found that there is an ongoing process of the so-called mixed migrations in Bosnia and Herzegovina. The motives of migrations overlap, so there are the foreigners seeking for better living conditions/economic migrants and foreigners seeking shelter/persons under international protection. Bosnia and Herzegovina is predominantly a transit country for the citizens of Pakistan, Iraq, Morocco, Tunis, Algeria, Libya, Syria, Afghanistan… The increased inflow of all categories of migrants and the continuity of this process require the obligation of additional mobilization of material, financial and human resources currently not at the disposal of Bosnia and Herzegovina. On the other hand, it should be noted that the complex economic, political and social situation in Bosnia and Herzegovina has been caused by an increased number of its citizens who leave the country.

Ombudsmen identified positive steps in their Special Report by stating that Bosnia and Herzegovina ensured adequate legislation framework for the protection of rights of these persons in such a way that the new Law on Foreigners was adopted, as well as new Law on Asylum, Law on the Provision of Free Legal Aid, Amendments to the Law on the Prohibition of Discrimination, Migration and Asylum Strategy and the Action Plan 2016-2020. Additionally, the Migration Coordination Body was established, as well as certain level of cooperation of competent institutions in charge of migrations with non-governmental organizations.

However, the ombudsmen of Bosnia and Herzegovina in this Report expressed certain concerns related to the lack of efficiency of the actions of competent authorities, evident in all phases of migrant treatment, failure to execute legal obligation of the provision of information to foreigners related to their rights in their language or a language they understand, failure to ensure institutional realistic reference of foreigners who expressed their intention to seek asylum, the acceptance that the 14-day time limit for the registration in the procedure of the exercise of the right to asylum envisaged for exceptional cases has become an ordinary deadline, instead of 8-day time limit, even before the massive inflow of foreigners, failure to ensure timely registration of all persons who expressed their intention to seek asylum, weaknesses in registration process automatically withdraw the impossibility to organize interviews with asylum seekers, and in view of adopting final decision, the slowness of procedures frequently leaves migrants, who are in different phases of asylum procedure, without adequate care, so they are found on the streets of the towns and the non-existence of adequate records of competent services on the number of asylum seekers accommodated in hostels and private accommodations.

Also, the ombudsmen of Bosnia and Herzegovina have identified that institutional mechanisms in charge for migrations in Bosnia and Herzegovina did not fully and adequately and in compliance with all provisions of the law organize and take over necessary activities, aimed at the adoption of adequate decisions, especially in a way and within deadlines as prescribed by law. Competent authorities find the justification for such situation in the lack of human and material-technical resources, which they also presented to the ombudsmen during the creation of this report.

Taking into account the above-mentioned, the ombudsmen have recommended the following:

* all measures envisaged by the Migration and Asylum Strategy and the Action Plan 2016 – 2020 should be activated, including: the increase of the efficiency of monitoring and control of the state border of Bosnia and Herzegovina, significant improvement of the system of control of entries and stays of foreigners in Bosnia and Herzegovina, increasing the level of the protection of security of the citizens of Bosnia and Herzegovina;
* additional accommodation capacities should be ensured along with the existing ones;
* clear operational procedures should be established for the action of all competent authorities;
* the number of professional staff should be increased i.e. the capacities of institutional mechanisms in charge for migrations should be empowered;
* operational body with high-level mobility should be ensured. Efficiency and action of this body should be 24 hours;
* high-level regional meetings should be held with neighbouring countries and the countries on the route of movement of all categories of migrants, with the aim of defining joint action strategy,
* the procedure of concluding agreements of readmission should be initiated with the countries of origin of foreigners, with which such agreements have still not been signed.

**12. Senior Legal Adviser (NPM Department), Kosovo[[35]](#footnote-35),**

**Mr. Niman Hajdari**

In Kosovo the issue of detention in the context of migration is regulated by the Law on Foreigners**.** In Kosovo there is one immigration detention center with the official capacity of 72 persons.During 2018, the center accommodated 40 foreigners subject to forceful removal and identification. From them, 16 were male, 23 females and 4 children.

Just before our meeting in Podgorica, there were only 2 detained foreigners. According to Kosovo Police data, in 2018 migration police recorded 400 requests for asylum.

**Alternatives to detention according to Law on Foreigners**

The law stipulates alternative measures to detention. The law stipulates detention as a last resort. According to the Law on Foreigners temporary measures shall be issued as alternative measures to detention for foreigners who are subject to removal by force, based on a case-by-case review, without affecting the execution of the order for forceful removal.

**Alternative measures according to the Law on Foreigners**

* Obligation to appear before the authorities.
* Temporary confiscation of the ticket or travel document.
* Confiscation of financial means or imposing a guarantee (bail).
* Restrictions of freedom of movement.

**Obligation to appear before the authorities**

As regards obligation to appear before the authorities, the Law provides that a foreigner may be obliged to appear before the authorities on regular period of times when:

* against him/her has been issued a removal order from the territory and security is required for the implementation of this order or it is required supervision of foreigner’s removal from the territory.
* The foreigner before removal had a correct and a known address by the Border Police.
* There are no indications that the foreigner may avoid the implementation of the removal order and haven’t respected the terms for voluntary removal.
* In the case of protection of the best interest of the foreigner`s family of the foreigner itself.

**Temporary confiscation of the ticket or travel document**

* In case a foreigner is subject to a forceful removal or removal order, the Border Police may, in order to ensure the return, confiscate the ticket and travel document.
* The Border Police shall confiscate foreigner's travel document until the decision of an administrative procedure becomes final or the fine is paid, or until the end of the deadline set by a court or the prosecution.

**Confiscation of financial means or imposing a guarantee**

* The Border Police shall confiscate to a foreigner the financial means if he/she owns the amount necessary to cover the costs of his/her return.
* Instead of other temporary measures, or in parallel, according to the case – by - case assessment, Border Police may require from the foreigner to deposit a financial guarantee by which he/she guarantees his/her return.
* Further, the Law provides that financial guarantee shall be returned to the foreigner immediately when it is estimated that there is no longer necessary or when the return of the foreigner is carried out.

**Restrictions on freedom of movement**

The Border Police imposes restrictions on freedom of movement of foreigners, ordering him/her to reside in a given territory, if:

* The return or removal cannot be ordered or implemented, for objective reasons.
* The foreigner has a residence permit for humanitarian reasons.
* The period of detention have been concluded at the detention center and removal of a foreigner is not possible or
* for humanitarian reasons the foreigner cannot be kept detained at the detention center;
* In cases when public health authorities, based to an assessment and in accordance with the International Health Regulation, recommend the isolation of the person or persons for a period of time valid for the isolation of the suspected disease,
* Border Police shall specify in the order the residence in a given territory, define the general rules of residence, place and length of the residence, as well as notify the foreigner to report in at the competent police authorities every month.
* The foreigner has the right to lodge an appeal at a Basic Court.

**Applicability of alternative measures**

* From the meeting with Kosovo immigration police it transpired that such measures are applied only in the case of voluntary returns.

**Kosovo Police data**

According to Kosovo Police, during 2018, suchmeasures were imposed in 6 cases (restriction of freedom of movement)

**NPM visits to immigration detention and asylum seeking center**

* NPM conducts regular visits to asylum seeking center and immigration detention center.
* Objective of visits: treatment and rights of detained immigrants.
* Both centers provide very good accommodation conditions. No complaints were received as regards treatment. In the Asylum seeking center, asylum seekers are allowed to leave the center from 07:00 to 22:00.

As regards immigration detention center, NPM found the following:

* Accommodation conditions are good.
* Lack of medical staff stationed in the center. Medical services are provided by public health institutions.
* Private security not trained to work with such category.
* Lack of purposeful activities.

Through the visit report, the NPM recommended to the authorities as follows:

* Immigration Detention Center must have at least a nurse available who shall carry out the medical checks of the newly accommodated detainees, distribute the therapy and take care of the medical files of the foreigners within the Immigration detention center, as well as, a psychologist as stipulated by the Regulation.
* The center should maintain protocols as follows: Protocols for isolation, bodily injury, self-harm, attempted suicide, sexual abuse and deaths.
* Security personnel should undergo adequate training to work with this category.
* For all their rights and obligations, foreigners shall be notified through a special document in the language they understand and in which they prove by signing it that they have understood their rights and obligations.
* The Regulation shall contain a special provision which provides that a foreigner to whom a disciplinary measure is imposed shall be served with a copy of the decision in a language which he / she understands.
* Detained foreigners shall be provided with the free legal aid in accordance with the Regulation on Functioning of the Immigration Detention Center.

**13. Member of NPM CFHR Office in Poland, Mr. Marcin Kusy**

In Poland there are 6 Detention Centres for Migrants and 2 Arrests for Migrants. The arrest is the institution in which the migrants who do not obey rules and regulations in closed detention centres are kept.

The polish NPM has visited all of them. In every place we have met detained victims of violence even though the polish law prohibits their detention.

The problems with the identification of the vulnerable persons take place both before the detention (like at the border), and during detention.

The problem with the identification before the detention is that the migrants have the access only to the general medical examination, not to the psychiatric or psychological one. The medical doctors do not verify if a person is a victim of violence, they only state, that the health conditions allow a person to be detained. As a result, the Border Guards in their applications to the court state that there are no contra dictators to the detention, even though the possibility of violence has not been verified.

Different problems occur when the identification take place during the detention. Upon the admission, the detainees have a possibility to inform a medical doctor if they are the victims of violence, in the self-identification questions regarding medical conditions. That information is given further to the psychologist and to the social unit. But as the NPM visits shows it takes like 4-5 months till a person is released from the detention. The whole process of identification goes very slow.

More, in the centers for foreigners there is an internal document of the Border Guard "Rules of conduct of the Border Guard with foreigners requiring special treatment", however, in our opinion it is contrary to the provisions of Polish law and the standards of the Istanbul Protocol and other developed international standards. This document does not allow "immediate release" of migrants who are alleged victims of violence, from the guarded center regime. It says that the migrants form vulnerable groups should be given a proper therapy in a detention. In the opinion of the NPM, the treatment and therapy in closed centers which is available for victims of torture, only intensify a trauma

As the example of the ineffective functioning of the system for identifying victims of torture and violence, is the case of a single woman with three children (5, 8 and 9 years old) who recounted that she and one of her children had suffered torture and violence. Our expert (a psychologist) held a one-on-one conversation with the woman, during which she noticed possible symptoms of progressing PTSD. During the conversation, the expert learned that the woman had been a victim of torture and violence, and one of her children had been shot in the feet during a militia raid on their house in their country of origin. The expert also examined the boy, who was withdrawn, cautious and had irregular scars on his legs. Analysis of medical documents revealed that until the day the NMP visit, the facility’s staff had not noticed the grounds for not holding the woman and her children in detention. The day after the NMP informed the commandant of the place about this case, the woman and her children were released from the Centre.

Another example is a man from Syria - placed in the Arrest as a result of a suicide attempt at the Center. The suicide crisis was connected with prolonged detention. The patient's condition required immediate intervention and placement in a psychiatric hospital because of the possibility of life threatening. Our experts (psychologist and psychiatrist) conducted crisis intervention aimed at stabilizing the foreigner, therefore it was not advisable to conduct an interview towards traumatic experiences from the period preceding detention. The psychophysical condition of the foreigner indicated a high probability of traumatic experiences, including violence. Not to mention, that the placement in the Arrest of a person on such severe mental state because of the attempt to commit suicide is, in my opinion, inhuman treatment.

These were just examples to show the identification system in Poland is ineffective. As we have visited all closed institution for migrants this year, now we are planning to publish a thematic report on the issue of torture victim’s identification system in Poland with particular recommendations.

Another systemic problem is that Polish law allows for the confinement in Closed detention centres for migrants of unaccompanied juveniles who are staying in Poland illegally. Yet the permissibility of detaining juvenile migrants has been questioned by non-government organizations, international institutions and the Commissioner for Human Rights himself on numerous occasions. According to the NMP, regardless of how well the juveniles are looked after during their stay in a CDC, such stays, in every instance, have a very negative impact on their psychological condition and their normal functioning thereafter.

**ANNEX I**

**AGENDA**

**South-East Europe National Preventive Mechanisms Network Meeting**

**Immigration Detention and Effective Alternatives**

**12th December 2018**

**Hotel Centre Ville, Podgorica**

Organised jointly by the Council of Europe and Ombudsperson’s Office of Montenegro

with the support of National Preventive Mechanisms

under the auspices of the Council of Europe Project

“Effective Alternatives to Immigration Detention: Learning, Sharing, Applying”

**Draft Agenda**

09.00 – 9.30 Registration of participants and welcome coffee

**9:30 – 11:00** *Session 1: Moderated by Ms Milica Vesović, Project Manager, Independent Human Rights Bodies Division, Directorate of Human Rights and Rule of Law, Council of Europe*

**9:30 – 10:15 - Welcoming addresses, introductory remarks and presentation of the round table objectives and need for regional exchanges**

Mr Šućko Baković, Ombudsman, Institution of the Protector of Human Rights and Freedoms of Montenegro

Mr. Zoran Pašalić, Ombudsmen and Chairperson of the Medical Group (Serbia),

Mr. Peter Kastner, Member of Austrian Ombudsman Board and Chairperson of the Legal Group (Austria),

Ms Lilja Gretarsdottir, Deputy Head of the Division Independent Human Rights Bodies, Directorate for Human Rights and Rule of Law, Council of Europe

**10:15 – 10:40 - Presentation of the Steering Committee for Human Rights (CDDH) *Analysis of the legal and practical aspects of effective alternatives to detention in the context of migration***

Ms Lilja Gretarsdottir, Deputy Head, Independent Human Rights Bodies Division, Directorate for Human Rights and Rule of Law, Council of Europe

**10:40 –11:00 -** Comments and Questions

**11:00 – 13:30** *Session 2: Moderated by Mrs Zdenka Perović, Deputy Ombudsman, Institution of the Protector of Human Rights and Freedoms of Montenegro*

**Identification of key NPM working methods and main priorities in the context of migration and asylum, immigration detention and alternatives to detention: Challenges and possible ways forward**

Brief introduction to the subject by the moderator followed by presentations by representatives of NPMs 7-10 minutes per representative tour de table*,* followed by discussion:

Members: Albania, Austria, Bulgaria, Croatia, the FYRoM, Hungary, Montenegro, Romania, Serbia and Slovenia

Permanent observers: Bosnia and Herzegovina and Kosovo[[36]](#footnote-36)

Guest: Poland

**13.30 – 15.00** Lunch Break

**15.00 – 16.30**  *Session 3 Moderated by Ms Milica Vesovic, Independent Human Rights Bodies Division, Directorate for Human Rights and Rule of Law, Council of Europe*

**Concluding remarks and comments by:**

Mr Peter Kastner, Member of Austrian Ombudsman Board and Chairperson of the Legal Group (Austria)

Mr Ivan Šelih, Deputy Ombudsman of Slovenia

Ms Lilja Gretarsdottir, Deputy Head, Independent Human Rights Bodies Division, Directorate for Human Rights and Rule of Law, Council of Europe

**16:30 – 18:00** *Session 4 Moderated by Mrs Zdenka Perović, Deputy Ombudsman, Institution of the Protector of Human Rights and Freedoms of Montenegro*

 **NPM internal exchanges regarding the new chairmanship and other open questions**

**ANNEX II
LIST OF PARTICIPANTS**

1. Ms. Ermonela Xhafa, Commissioner of NPM Albania
2. Ms. Besmira Petriti, Head of International Relations, EU integrations and Project Coordinator, Albania
3. Mr. Peter Kastner, member of Austrian Ombudsman Board
4. Mr. Dimitar Bongalov - Director in NPM Directorate, Bulgaria
5. Mr. Hristo Atanasov - Chief expert in NPM Directorate, Bulgaria
6. Ms. Milica Vesović, Project Manager, Independent Human Rights Bodies Division, Directorate of Human Rights and Rule of Law, Council of Europe
7. Ms. Lilja Gretarsdottir, Deputy Head of the Division Independent Human Rights Bodies, Directorate for Human Rights and Rule of Law, Council of Europe
8. Ms. Snježana Stanić, Human Rights Protection Advisor to the Ombudswoman, Croatia
9. Ms. Vanja Bakalović, Legal Affairs Advisor to the Ombudswoman, Croatia
10. Mr. Martin Duvnjak, advisor in NPM, FYRoM
11. Mr. Aleksandar Trenkoski, advisor in NPM, FYRoM
12. Mr. Šućko Baković, Ombudsman, Institution of the Protector of Human Rights and Freedoms of Montenegro
13. Ms. Zdenka Perović, Deputy Ombudsman
14. Ms. Snezana Mijušković, Deputy Ombudsman
15. Ms. Marijana Sinđić, Adviser
16. Ms. Mirjana Radović, Adviser
17. Ms. Jovana Đurović, Adviser
18. Ms. Milana Bojović, Adviser
19. Mr. Saša Čubranović, Adviser
20. Ms. Magda Constanta Stefanescu, Deputy Ombudsman, Romania
21. Ms. Maria Lepadatu, counsellor, Romania
22. Mr. Zoran Pašalić, Ombudsmen and Chairperson of the Medical Group, Serbia
23. Ms. Jasna Bogosavljević, advisor, Serbia
24. Mr. Ivan Šelih, Deputy Ombudsman and Head of the NPM of Slovenia
25. Mr. Robert Gačnik, Spec. Senior Adviser, Slovenia
26. Ms. Dejana Čopić, advisor in Institution of Ombudsmen Bosnia and Hercegovina
27. Mr. Miroslav Milovuk, advisor in Institution of Ombudsmen Bosnia and Hercegovina
28. Ms. Haraszti Katalin, Deputy head of OCAT NPM Department, Hungary
29. Mr. Niman Hajdari, Senior Legal Adviser (NPM Department), Kosovo[[37]](#footnote-37)
30. Mr. Arbër Berisha, Legal Adviser, Kosovo
31. Ms. Fidane Zekaj, Legal Adviser, Kosovo
32. Mr. Marcin Kusy, member of NPM CFHR Office in Poland
1. *UNHCR Globalni trendovi 2015 str. 39.* [↑](#footnote-ref-1)
2. *UNHCR Globalni trendovi 2015 str. 40.* [↑](#footnote-ref-2)
3. *1401/2015. (VI. 17.) Korm. határozat*. <http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK15083.pdf> [↑](#footnote-ref-3)
4. *1665/2015. (IX. 21.) Korm. határozat*. <http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK15134.pdf> [↑](#footnote-ref-4)
5. Član 71/A (1) b) Zakona *LXXX o azilu iz 2007. godine* (u daljem tekstu: Zakon o azilu).

 Dostupan na: <http://www.refworld.org/docid/4979cc072.html> [u funkciji od 26. oktobra 2016] [↑](#footnote-ref-5)
6. *Član 352/A Zakona C iz 2012 Krivičnog zakonika* (u daljem tekstu: Krivični zakonik), koji je stupio na snagu 15. septembra 2015. [↑](#footnote-ref-6)
7. *Član 352/B Krivičnog zakonika,* koji je stupio na snagu 15. septembra 2015. [↑](#footnote-ref-7)
8. [www.police.hu/hu/a-rendorsegrol/statisztikak/hatarrendeszet](http://www.police.hu/hu/a-rendorsegrol/statisztikak/hatarrendeszet) [↑](#footnote-ref-8)
9. [www.police.hu/hu/a-rendorsegrol/statisztikak/hatarrendeszet](http://www.police.hu/hu/a-rendorsegrol/statisztikak/hatarrendeszet) [↑](#footnote-ref-9)
10. 9 *Član* *15/A (1) Zakona LXXXIX iz 2007. o državnoj granici* (u daljem tekstu: Zakon o državnoj granici). [↑](#footnote-ref-10)
11. *Član* *15/A (1) Zakona o državnoj granici*. [↑](#footnote-ref-11)
12. Karta dostupna na DW: <http://www.dw.com/en/migrants-trying-to-cross-legally-stranded-at-hungarian-border/a-19252403> [↑](#footnote-ref-12)
13. Član 7 Zakona o azilu [↑](#footnote-ref-13)
14. Član 15/A (2) Zakona o državnoj granici. [↑](#footnote-ref-14)
15. FRA Sakupljanje periodičnih podataka o migracionoj situaciji u Evropskoj uniji. novembarsko izdanje; 1. septembar – 31. oktobar 2018, str. 13. [↑](#footnote-ref-15)
16. [Ilias i Ahmed protiv Mađarske](http://hudoc.echr.coe.int/eng#{) (Predstavka br. 47287/15) [↑](#footnote-ref-16)
17. Svako pominjanje Kosova u ovom tekstu, bez obzira da li se radi o teritoriji, institucijama ili stanovništvu se shvata u potpunosti u skladu sa Rezolucijom 1244 Savjeta bezbjednosti Ujedinjenih nacija i bez prejudiciranja statusa Kosova. [↑](#footnote-ref-17)
18. Svako pominjanje Kosova u ovom tekstu, bez obzira da li se radi o teritoriji, institucijama ili stanovništvu se shvata u potpunosti u skladu sa Rezolucijom 1244 Savjeta bezbjednosti Ujedinjenih nacija i bez prejudiciranja statusa Kosova. [↑](#footnote-ref-18)
19. *UNHCR Global Trends 2015 p. 39.* [↑](#footnote-ref-19)
20. *UNHCR Global Trends 2015 p. 40.* [↑](#footnote-ref-20)
21. *1401/2015. (VI. 17.) Korm. határozat*. Available at: <http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK15083.pdf> [↑](#footnote-ref-21)
22. *1665/2015. (IX. 21.) Korm. határozat*. Available at: <http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK15134.pdf> [↑](#footnote-ref-22)
23. Article 71/A (1) b) of *Act LXXX of 2007 on Asylum* (hereafter: Asylum Act). Available at: <http://www.refworld.org/docid/4979cc072.html> [accessed 26 October 2016] [↑](#footnote-ref-23)
24. *Article 352/A of Act C of 2012 on the Criminal Code* (hereinafter: Criminal Code), entered into force on 15 September 2015. [↑](#footnote-ref-24)
25. *Article 352/B of Criminal Code,* entered into force on 15 September 2015. [↑](#footnote-ref-25)
26. [www.police.hu/hu/a-rendorsegrol/statisztikak/hatarrendeszet](http://www.police.hu/hu/a-rendorsegrol/statisztikak/hatarrendeszet) [↑](#footnote-ref-26)
27. [www.police.hu/hu/a-rendorsegrol/statisztikak/hatarrendeszet](http://www.police.hu/hu/a-rendorsegrol/statisztikak/hatarrendeszet) [↑](#footnote-ref-27)
28. 9 *Article* *15/A (1) of Act LXXXIX of 2007 on State Border* (hereinafter: State Border Act). [↑](#footnote-ref-28)
29. *Article* *15/A (1) of* State Border Act. [↑](#footnote-ref-29)
30. Source of the map is DW Available: <http://www.dw.com/en/migrants-trying-to-cross-legally-stranded-at-hungarian-border/a-19252403> [↑](#footnote-ref-30)
31. Article 7 of Asylum Act [↑](#footnote-ref-31)
32. Article 15/A (2) of State Border Act. [↑](#footnote-ref-32)
33. FRA Periodic data collection on the migration situation in the EU. November Highlights 1 September – 31 October 2018, p. 13. [↑](#footnote-ref-33)
34. [Ilias and Ahmed v. Hungary](http://hudoc.echr.coe.int/eng#{) (Appl. no. 47287/15) [↑](#footnote-ref-34)
35. All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nation's Security Council Resolution 1244 and without prejudice to the status of Kosovo. [↑](#footnote-ref-35)
36. All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nation's Security Council Resolution 1244 and without prejudice to the status of Kosovo. [↑](#footnote-ref-36)
37. All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nation's Security Council Resolution 1244 and without prejudice to the status of Kosovo. [↑](#footnote-ref-37)