

# POLICY REPORT

Analysis of the  
national policies and  
practices dealing  
with illegal migration  
and asylum seekers



**Analysis of the national policies and practices dealing with illegal migration and asylum seekers**

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**List of abbreviations**

IOM – International Organization for Migration

MARRI RC – Migration, Asylum and Refugees Regional Initiative Regional Centre

MLSP – Ministry of Labor and Social Policy

MoI – Ministry of Interior

PCC SEE – Police Cooperation Convention in Southeast Europe

WB – Western Balkans

## **1. Introduction**

The past decade has seen rapid changes in the migration flows in, from and through the countries of the Western Balkans. Regular migration is very important for the country's socio-economic and demographic development; however, irregular migration also deserves special attention by the competent authorities. It is an issue of both state security and human security and is usually connected with serious and organized crime and the infringement of human rights.

Following visa liberalization for the Western Balkans countries, the region is usually seen as the origin of illegal migration into the European Union. During the last few years all eyes were focused on asylum seekers from the Western Balkans countries. However, it is becoming increasingly difficult to ignore the fact that the region is also a transit area for migrants towards the EU. So far there has been little discussion about this phenomenon among researchers and policy makers, although the national and regional media are becoming more interested in the issue, bringing it closer to citizens.

Macedonia, with its central location within the Balkan region, is vulnerable to illegal migration. Recent political and social developments in the Middle East and North Africa have had significant impact on migration flows and affect other regions, including ours. The number of illegal migrants from those regions is increasing from year on year, especially following the Arab uprisings that started in late 2010 and spread during 2011.<sup>1</sup> From the evidence on the ground it can be concluded that in most of the cases Macedonia is not their final destination, but a transit route to the EU countries. However, they do spend certain period of time within the Macedonian borders, before they continue their journey towards Central and Western Europe.

The fact that Macedonia, with its central location, represents a natural and geographical crossroads between Europe, Asia and Africa is acknowledged in the National Concept for Security and Defense, the basic strategic security document of the country, adopted in 2003. It is admitted that, from a security perspective, Macedonia is one of the main pathways of terrorism, illegal migration, illegal trafficking with drugs, weapons and human beings from Asia and Africa towards Western Europe.<sup>2</sup>

This paper examines the trends of illegal migration in the period 2009-2012, including data – when available - from the first months of 2013. It gives an account of the legal and institutional set up aimed at dealing with illegal migration and highlights the main challenges that national authorities are facing when using already established mechanisms at their disposal. Furthermore, the paper sheds light on the main factors that cause and enable illegal migration (push and pull

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<sup>1</sup> Source: Ministry of Internal Affairs, information gained using the Law on free access to information from public character.

<sup>2</sup> *National Concept for Security and Defense*, Government of the Republic of Macedonia, available at: [http://arhiva.vlada.mk/files/Vladina\\_koncepcija\\_za\\_bezbednost.pdf](http://arhiva.vlada.mk/files/Vladina_koncepcija_za_bezbednost.pdf)

factors) and link it with asylum seekers and criminal offenses, such as smuggling of migrants. However, due to time limitations and resource availability, not all aspects of illegal migration have been examined. Further studies, focusing on the role of the courts, public prosecution and the corruption within the border police, are therefore recommended.

It should be noted that different authors and organizations are using different terms which, in essence, refer to the same phenomena – illegal, irregular or undocumented migration. In this text, the term “illegal migration” and “illegal migrants” will be used. Illegal migration is usually connected with illegal entry into a state, defined as “crossing borders without complying with the necessary requirements for legal entry into the receiving State”.<sup>3</sup> In the author’s opinion, irregular migration is a broader concept encompassing the irregularity of residence by other groups that are not subject of this analysis, such as foreigners that entered legally but had lost their regulated status due to circumstances like expired visa or passport, or “tourists” engaged in the grey economy etc. Moreover, the term “illegal migration” is also used by the National Commission for Combating Trafficking in Human Beings and Illegal Migration in Macedonia. It should be noted that the paper focuses on migrants using the so-called Balkan Route.

The paper also examines the trends in asylum seeking in Macedonia. In this context, an ‘asylum seeker’ is a foreigner that seeks protection from the Republic of Macedonia and has submitted an application for recognizing the right of asylum, when there is no final decision and there is an ongoing procedure for recognition of the right of asylum.<sup>4</sup> Very often there is a strong connection between illegal migration and asylum seeking trends. It should be noted that in the period when a person applies for asylum, he/she cannot be considered an illegal migrant. If the country decides to accept the claims, the person becomes a refugee or person under subsidiary protection, depending on the case, in line with the UNHCR Convention related to the status of refugees from 1951.

The methodological apparatus is composed of qualitative and quantitative methods, including statistical information gathered utilizing the Law on free access to public information, analysis of the legal framework and national strategic documents, qualitative interviews with stakeholders and experts, as well as information from reports issued by relevant international organizations. In addition, field visits to the Reception Center for Asylum Seekers and to the village of Lojane<sup>5</sup> have been conducted.

Based on the findings, practical policy recommendations are provided that could be used as further policy instruments to fight illegal migration.

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<sup>3</sup> Protocol against the smuggling of migrants by land, sea or air; supplementing the United Nations Convention against transnational organized crime (Palermo, 2000)

<sup>4</sup> Law on asylum and temporary protection – consolidated version, *Official Gazette of Republic of Macedonia* no.19/09, Article 3

<sup>5</sup> Lojane is a village near to the Macedonian-Serbian border known as a stopping point for migrants.

## **2. Background**

The visa-free travel regime introduced in 2009 and extended in 2010<sup>6</sup> led to a significantly increased movement of people from and through the Western Balkans to the European Union member states. In addition to the increased number of regular travelers for the purpose of tourism, business and other regular purposes, the number of illegal border crossings and abuses of the right to seek asylum also increased.

While Macedonia, as part of the Western Balkans, represents a source of illegal migration, it is also a transit route for migrants aiming to reach the EU-member states. The political and social developments in other parts of the world do influence other countries and change migration patterns. Poor living conditions as well as security risks are forcing many people to leave their countries and seek a better life. Following the war in Afghanistan and the wave of revolutions in

### **Why is researching illegal migration important?**

#### Human security threat

- ✓ Risk to the life of the migrant
- ✓ Health risks
- ✓ Becoming the victim of human trafficking
- ✓ Violation of human rights
- ✓ Social security

#### National security threat

- ✓ Violation of sovereignty
- ✓ Risks to public order
- ✓ Criminality
- ✓ Social cohesion

the Arabic world i.e. the Arab uprisings, the number of illegal border crossings and the number of asylum seekers in the Western Balkans increased.

According to the Ministry of Interior<sup>7</sup>, the number of detected illegal crossings of the Macedonian border was 1415 in 2009, 1103 in 2010, 469 in 2011, 682 in 2012 and 257 in the first three months of 2013. Although the statistics shows that illegal migration reached its peak in 2009 when there were 1415 illegal border crossings, this number can be attributed to the Albanian citizens representing more than 80% of the total number of illegal migrants. The nature of their irregular migration was seasonal, as most of them were going to Greece for temporary work. When Albania joined the visa-free travel regime, the number

of illegal border crossings by Albanian citizens significantly dropped from 1155 in 2009 to 328 in 2012. On the other hand, there is a significant increase in the number of migrants coming from regions that have not been noted before in such big waves, primarily from the countries of Western and Northern Africa, South-Central and Western Asia and the Middle East. In addition, there were also citizens of Serbia, Kosovo, Greece, United Kingdom, China etc.

Table 1 shows the numbers of illegal crossings of the state border by citizens of the aforementioned regions of Asia or Africa as most common countries of origin where the migrants come from. It is obvious that the trend is increasing – while in 2010 there were only 53

<sup>6</sup> Macedonia, Serbia and Montenegro were granted visa-free travel regime in 2009 and Albania and Bosnia and Herzegovina in 2010.

<sup>7</sup> Source: Ministry of Internal Affairs, information gained using the Law on free access to information from public character.

illegal crossings by these nationalities, the number doubled in 2011 so there were 105 people crossing the border illegally. In 2012 again the number increased by over 100% reaching a total of 225 people. Worryingly, 193 people attempted to cross the Macedonian border in an illegal way during the first quarter of 2013. Usually, the Afghans constitute the most frequent nationality attempting to cross the border illegally, but there are also people from Somalia, Morocco, Palestine etc. In the beginning of 2013, first illegal migrants from Syria were noted – 42 in the period January – March, but this number is expected to increase due to the present insecurity in Syria. According to UNHCR, a total of 2 million Syrian refugees have been recorded.<sup>8</sup> While most of them are hosted in the neighboring countries waiting for international support, there are also people that want to get to the EU. Therefore, bigger waves of Syrian refugees are expected in the territories of Western Balkans countries in the near future.

Table 1: Illegal crossings of the state border in the period 2009-2013 by citizens from Asian or African countries<sup>9</sup>

Nationality	2009	2010	2011	2012	2013-first quarter
<b>Afghanistan</b>	60	16	57	65	22
<b>Somalia</b>	/	10	11	34	3
<b>Morocco</b>	/	3	11	9	6
<b>Palestine</b>	4	17	3	10	8
<b>Pakistan</b>	/	/	23	88	11
<b>Syria</b>	/	/	/	/	42
<b>Mali</b>	/	/	/	/	26
<b>Senegal</b>	/	/	/	1	10
<b>Côte d'Ivoire</b>	/	/	/	/	29
<b>Iraq</b>	1	1	4	1	1
<b>Algiers</b>	/	/	2	5	12
<b>Eritrea</b>	/	3	/	4	4
<b>Bangladesh</b>	/	/	/	4	4
<b>Gambia</b>	/	/	/	/	5
<b>Burkina Faso</b>	/	/	/	/	3
<b>Sierra Leone</b>	/	/	/	/	2
<b>Iran</b>	/	2	1	/	1
<b>Tunisia</b>	/	1	1	1	2
<b>Sudan</b>	/	/	/	3	/
<b>Total</b>	65	53	105	225	191

<sup>8</sup> UNHCR Press Release: Two Million Syrians are Refugees, 03.09.2013

<sup>9</sup> Source: Ministry of Internal Affairs, information gained using the Law on free access to information from public character

However, the numbers at the regional level are more worrying than the national ones. According to the FRONTEX Western Balkans Annual Risk Analysis for 2013, it is shown that the region of Western Balkans is becoming more and more important as transit area for secondary movements – in 2012 there were 8065 people from Afghanistan (compared with 2498 in 2010), 5033 from Pakistan (202), 3029 citizens of Algeria (217), 2000 from Somalia (375)<sup>10</sup> etc.

The increased migration flow did not come as a surprise. The National strategy for combating trafficking of people and illegal migration for 2009-2012 finds that “the financial crisis and political instability in the region of Asia and Middle East might have significant influence in the trends of human trafficking in the countries of South-East Europe.”<sup>11</sup> The same predictions can be found in the MARRI Migration paper 2012 which notes that although the number of migrants from Asian and African countries was not that high in 2010, there are indications that their number will grow.<sup>12</sup> Almost all of the persons interviewed for the purpose of this policy paper (including representatives of institutions and experts) agree that there are indications that the trend of increasing numbers will continue in the years that follow.

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<sup>10</sup> The numbers in the brackets refer to year 2010

<sup>11</sup> The Strategy is available at [http://www.nacionalnakomisija.gov.mk/sites/default/files/prikachyvanja/nap-mak\\_2009-2012.pdf](http://www.nacionalnakomisija.gov.mk/sites/default/files/prikachyvanja/nap-mak_2009-2012.pdf)

<sup>12</sup> Marri Migration Paper 2012, available at: <http://www.marri-rc.org/upload/Documents/MARRI%20Main%20Documents/MARRI%20MP2012%20red.pdf>

### 3. Relevant stakeholders

Table 2: Relevant stakeholders in the area of illegal migration

Stakeholder	Description of Relevance
<p><b>Ministry of Interior (MoI)</b></p>	<p>Acts as focal institution. Relevant organizational units:</p> <ul style="list-style-type: none"> <li>• Department for Border Affairs and Migration (composed from Unit for Foreigners and Readmission and Mobile Unit for Cross-Border Crime). According to the Law on foreigners, the MoI is responsible for all matters regarding the control of movements and stay of foreigners;<sup>13</sup></li> <li>• Department for suppression of serious and organized crime has a unit for fight against trafficking in human beings and migrant smuggling;</li> <li>• Border Police – securing the state borders;</li> <li>• Asylum unit within the Sector for Civil Affairs – implements the procedure for recognition of the right to asylum (first instance procedure).</li> </ul> <p>There is also the <u>Reception Center for Foreigners</u> under the MoI that accommodates illegal migrants. It is a closed-type institution with limited movement for the accommodated persons.</p>
<p><b>Ministry of Labor and Social Policy (MLSP)</b></p>	<p>Reception and social care for the asylum seekers and the recognized refugees or persons under subsidiary protection. Operates a <u>Reception Center for Asylum Seekers</u>.</p>
<p><b>National Commission for Trafficking in Human Beings and Illegal Migration (further in the text: National Commission)</b></p>	<p>Established by a Decision of the Government in 2001<sup>14</sup> as an inter-institutional body that brings together representatives from all key institutions: Ministry of Interior, Ministry of Labor and Social Policy, Ministry of Education and Science, Ministry of Health, Ministry of Foreign Affairs, Ministry of Justice, Customs Administration, Public Prosecution and the Primary Court Skopje 1. This National Commission acts as a point of coordination between the different institutions involved in the problem, but also monitors and analyzes the developments and trends in this area. Additionally, the Government named a National Rapporteur in 2007.</p>

<sup>13</sup> Law on foreigners, *Official Gazette of Republic of Macedonia*, no. 35/06, Article 7

<sup>14</sup> Decision of the Government, *Official Gazette of Republic of Macedonia*, no.18/2001

#### 4. Illegal migration – causes and method of operation

##### 4.1. Geographical position – Balkan route

Macedonia is part of the so-called “Balkan route” which operates in the following way: the migrants pass the Turkish-Greek borders, having three options to leave the country: 1) by air (intra-Schengen flight), 2) by sea (intra-Schengen ferry to Italy) and 3) by land (through Bulgaria or through the Western Balkans).<sup>15</sup> The ones that decide to travel through the Western Balkans cross the Macedonian border, usually in the surroundings of Gevgelija and fewer in the surroundings of Bitola, then continue towards Serbia (near to the crossing point of Tabanovce) with an aim to reach the countries of Western Europe. The targeted entry point into the Schengen zone is usually Hungary.

Obviously, the Greek-Turkish border faces the biggest pressure. According to FRONTEX (EU’s external border security agency), only in the first half of 2012 almost 21 000 illegal border crossings were noted. In 2012, Macedonian media based on anonymous diplomatic sources were writing that struggling to address this problem, Greek authorities sometimes stay “blind” and prefer to let the migrants leave the country rather than apprehending them as it costs resources.<sup>16</sup> On many occasions, the Minister of Interior has highlighted that the cooperation with Greece is not at the desired level and the borderline is not safeguarded by both sides with the same attention.<sup>17</sup>

After the migrants pass the Greek-Macedonian border, some of them immediately continue towards Serbia, but many of them spend some time in the villages near the Serbian border. The villages of Lojane and Vaksince are known as main stopping points. While some of them are accommodated in private houses (paying rent), others sleep in the forest. According to the local estimations, there are around 300 illegal migrants at the same time.<sup>18</sup>

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<sup>15</sup> Western Balkans Annual Risk Analysis 2012, Frontex

<sup>16</sup> Dnevnik, Грција ни префрла мигранти преку граница [Greece allows migrants to cross Macedonian border], available at <http://www.dnevnik.mk/default.asp?ItemID=431B771CB956F84DB46004900E164FED>

<sup>17</sup> Nova Makedonija: Грција не соработува за спречување на илегалните мигранти [Greece does not cooperate in preventing illegal migration], available at: <http://www.novamakedonija.com.mk/DetailNewsInstant.asp?vestInstant=21538>

<sup>18</sup> Interview with Selam Mehmeti, Head of the Lojane community



Examining the above mentioned analysis provided by FRONTEX, one may notice the discrepancy of detected illegal migrants between the states – those numbers in Serbia are several times higher than in Macedonia, meaning that many of them crossed Macedonia illegally without being noticed by the Macedonian authorities.

Picture 1 – Illegal border crossings in Western Balkans<sup>19</sup>

#### 4.2. Push and Pull Factors

The factors that are forcing people to leave their homeland are representing the push factors. Usually, they are connected with poor economic opportunities and low standard of living, but there are also security and safety reasons. Very often, both economic and social factors play an important role. On the other side, pull factors stand for those factors that attract people to move to a particular country or area. Logically, people migrate to countries that offer better economic opportunities and better standard of living as well as good social and health care systems, such as the wealthier EU – member states. Moreover, they tend to go to countries where there are already established communities of their origin and more likely where they already have relatives.

<sup>19</sup> Source of picture: Western Balkans Annual Risk Analysis 2013, Frontex, available at: [http://www.frontex.europa.eu/assets/Publications/Risk\\_Analysis/WB\\_ARA\\_2013.pdf](http://www.frontex.europa.eu/assets/Publications/Risk_Analysis/WB_ARA_2013.pdf)

As it was previously mentioned, the Balkan route starts in Turkey. One of the factors that facilitate illegal migration is the liberal visa policy that Turkey has established towards the countries from North Africa and Middle East, including visa-free regime for Iran, Iraq, Syria, Egypt etc. In addition, Turkish Airlines has established direct flight connections with all countries of the Western Balkans and also with many African countries, linking them easily and making it attractive for migrants who use falsified documents (false passports or IDs, but also false working permits or student visas). The strategic position of the Western Balkans, linking “the East” with the “West” acts as a pull factor for the migrants. Macedonia with its central position cannot be excluded.

Anton Travner, head of the Secretariat of the Police Cooperation Convention in South-East Europe is an advocate of the theory of price. “The probability that an individual will decide to migrate illegally, even though this might mean that his life or the lives of his close ones is not endangered and taking into consideration his psycho-social circumstances, is proportional to his notion about his life in the target country and at the same time in due proportion with the costs which he will have to pay for his travel and troubles which he anticipates along the journey or in target country, respectively.”<sup>20</sup> In other words, the person decides to migrate and chooses the route according to the image they have about the target country (better life opportunities), the price that has to be paid and expected risks and difficulties. To put it simpler, it is the “cost-benefit” analysis that has to show that migrating is worthwhile.

The presence of facilitators of illegal migration is another pull factor that needs to be addressed. The role of facilitators is usually linked to organized crime groups that organize the travel of the migrants, including smugglers and traffickers and “stopping points” where migrants are provided with accommodation and rest before they continue on their way. Such stopping point is in the village of Lojane near Tabanovce crossing point. The local population is especially worried about the medical condition of the migrants and possible health risks.<sup>21</sup> As these villages are very coherent in terms of ethnicity, religion and culture, this situation creates discomfort among the population.

Another factor that can play a role is the possibility to access the grey market as a source for financing their travel. However, the migrants are very careful about getting involved in illegal activities during the journey because of the risk of being caught by the police.

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<sup>20</sup> Anton Travner, Power Point Presentation *Combating illegal migration – experiences from the past* from 04.12.2012, printed version handed to the author

<sup>21</sup> Interview with Sadula Duraku, mayor of the municipality of Lipkovo

4.3. Modus operandi and committed crimes

Legal Framework

Table 3: Legal framework

<b>Law on Foreigners</b>	The Law on Foreigners has been adopted in 2006 and further amended each year that followed. <sup>22</sup> Although its implementation started with certain delays, this law aligned the Macedonian legislation on migration with the EU acquis, including the EU standards for illegal migration, human trafficking, movement and stay of foreigners etc.	Chapter XI - Penal provisions for crimes and misdemeanors: <ul style="list-style-type: none"> <li>• Helping illegal entry and transit (article 148);</li> <li>• helping illegal stay (articles 149, 150, 151, 152, 153, 154, 154-a)</li> </ul>
<b>Law on Border Control</b>	This law was adopted in 2010, replacing the Law on surveillance of the state border <sup>23</sup> . In compliance with the EU acquis.	Chapter VIII – misdemeanor provisions (articles 68, 69, 70 and 71)

Table 4: Criminal offenses connected with illegal migration

Criminal offense	Legal ground	Penalty
<b>Trafficking in human beings</b>	Criminal Code, article 418-a	Min 4 years; in case of official person – min 8 years
<b>Smuggling of migrants</b>	Criminal Code, article 418-b	Min 4 years In case of official – min 10 years
<b>Organizing a group and inciting the perpetration of the crimes of trafficking in human beings and smuggling of migrants</b>	Criminal Code, article 418-v	Min 8 years Becoming part of the group or helping it – min 1 year The punishment can be dropped for persons involved in the group who are willing to come forward and denounce the group before it performs a criminal offense
<b>Trafficking in minors</b>	Criminal Code, article 418-d	Min 8 years
<b>Illegal crossing of the state border</b>	Criminal Code, article 402	Armed or violent – max 1 year or fine Unlawful transportation 6 months to 5 years As part of organized group – 1-5 years

<sup>22</sup> The Law has been amended in: 2007, 2008, 2009, 2010, 2011, 2012 and 2013.

<sup>23</sup> Official gazette of the Republic of Macedonia, 71/2006, 66/2007 and 52/2009

The migrants usually travel in groups and are linked with criminal groups (smugglers) that facilitate their transport.

“They are having a long and difficult road ahead for which they have been preparing for years. They sell their belongings at home, or borrow money from their relatives as their migration is costly. Therefore, they want to take the lowest risk to be detected and precluded to move so they rely on organized criminal groups which for certain amount “guarantee” that this effort will be paid off.”<sup>24</sup>

According to FRONTEX, since 2011, there is an increasing trend of smuggling of migrants, detected at the Macedonian-Serbian border<sup>25</sup> versus the years before when the migrants were self-organized, relaying on amateur maps, instructions and directions.

According to the National Rapporteur for trafficking in human beings and smuggling of migrants, the illegal transfer is organized and trans-national, involving criminal groups and perpetrators with different backgrounds. While in 2011 the criminal groups consisted of Macedonian citizens internationally connected to criminal groups from Serbia and Greece,<sup>26</sup> the National Rapporteur notes that in 2012 the modus operandi has evolved – there are criminal groups from Afghanistan and Pakistan residing in Greece and Turkey as organizers of the migrants’ journey. They recruit leaders among the migrants and train them on how to travel along the transport route. Macedonian citizens are involved in the phase of transport of the migrants from the southern border towards the Macedonian-Serbian border i.e. the villages that serve as stopping points (Lojane and Vaksince).<sup>27</sup> The means of transport include passenger vehicles and vans, but also public transport such as regular buses and trains. This being said, illegal migration is becoming more and more organized and serious where criminal groups closely cooperate, regardless of their nationalities and ethnicities, while the “smuggling of migrants” has transnational character. Prof. Trpe Stojanovski, Director of MARRI Regional Center, warns that when planning their route, in some cases the migrants consult criminals and become potential victims of human traffickers.<sup>28</sup> Moreover, this method of operation might pose serious risks to the life and health of the migrant.

Smuggling of migrants was first classified as a crime in Macedonia’s Criminal Code in 2004. It is part of the 34<sup>th</sup> Chapter of the Criminal Code of Macedonia – Crimes against humanity and the

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<sup>24</sup> Interview with Goce Dzukleski, PhD, Head of National Coordination Center for Border Management

<sup>25</sup> Western Balkans Annual Risk analysis 2013, Frontex

<sup>26</sup> Annual Report of the National Rapporteur for 2011, available at:

[http://www.nacionalnakomisija.gov.mk/sites/default/files/prikachyvanja/annual\\_report\\_of\\_the\\_national\\_reporteur\\_2011.pdf](http://www.nacionalnakomisija.gov.mk/sites/default/files/prikachyvanja/annual_report_of_the_national_reporteur_2011.pdf)

<sup>27</sup> Annual Report of the National Rapporteur for 2012, available at:

[http://www.nacionalnakomisija.gov.mk/sites/default/files/prikachyvanja/izvestaj\\_na\\_nacionalniot\\_izvestuvac\\_za\\_2012\\_godina.pdf](http://www.nacionalnakomisija.gov.mk/sites/default/files/prikachyvanja/izvestaj_na_nacionalniot_izvestuvac_za_2012_godina.pdf)

<sup>28</sup> Interview with Trpe Stojanovski, PhD, Head of MARRI Regional Center

international law as Article 418-b<sup>29</sup> and it is in line with the Protocol against the smuggling of migrants by land, sea or air that supplements the United Nations Convention against transnational organized crime.<sup>30</sup> According to the law, a perpetrator could be person that illegally transfers migrants over the state border,<sup>31</sup> a person who produces, procures or possesses a fraudulent travel document for such purpose or a person who recruits, transports, buys, sells, harbors or receives migrants. In case when the health of the migrant is jeopardized while committing that crime, there are tougher penalties with imprisonment of a minimum of eight years. This could happen often, given the fact that the migrants that are smuggled in vehicles are hiding in small-size trucks. There is also separate article (article 418-v) for organizing groups and encouraging the committing of the crimes trafficking in human beings and smuggling of migrants. It is important to mention that the means of transportation and the instruments used in case of smuggling of migrants (or organizing a group for that purpose) are being confiscated.

The first case of smuggling of migrants from Afghanistan was detected in 2009 at the “Bogorodica” border crossing point (near the city of Gevgelija). The migrants were found in a truck driven by a Macedonian driver.<sup>32</sup> Before that, most of the smuggled migrants had Chinese or Albanian origin and had Greece as final destination in most of the cases.

Table 5: Smuggling of migrants in Macedonia

	2009	2010	2011	2012 <sup>33</sup>
<b>Numbers of cases - Smuggling of migrants</b>	31	27	27	39
<b>Number of perpetrators</b>	53	58	44	70
<b>Number of migrants smuggled</b>	141	199	173	415
<b>Detected organized criminal groups</b>	5	6	2	1

<sup>29</sup> Article 418-a is dedicated for trafficking in human beings.

<sup>30</sup> Protocol against the smuggling of migrants by land, sea or air; supplementing the United Nations Convention against transnational organized crime (Palermo, 2000) available at:

[http://www.uncjin.org/Documents/Conventions/dcatoc/final\\_documents\\_2/convention\\_smug\\_eng.pdf](http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_smug_eng.pdf)

<sup>31</sup> by use of force or serious threat, attacks the life or body of another person, or abducts, deceives, for material benefit, by abuse of position or abuse of the vulnerability of others.

<sup>32</sup> Report of the National Commission for combating trafficking in human beings and illegal migration for 2009

<sup>33</sup> Source – Annual Report on criminal cases regarding smuggling of migrants and trafficking in human beings for 2012, Ministry of Interior

Table 5 shows the number of criminal deeds “smuggling of migrants”, number of offenders involved in smuggling, number of smuggled migrants and detected organized groups. In line with the increased numbers of detected illegal migrants, the number of smuggled migrants shows to be increasing, especially in 2012. The number of criminal offenders also increased. What is worrying regarding this table is the number of organized criminal groups detected. In 2012 the Ministry of Interior detected only one criminal group, while the National Rapporteur notes that migrant smuggling is becoming more and more organized and connected with trans-national organized criminal groups. The International Organization for Migration also reports increased number and scope of criminal organizations facilitating the movements of irregular migrants.<sup>34</sup> This leads to the conclusion that the MoI should make bigger efforts to suppress those negative trends. Apprehension of the illegal migrants is not enough, but more important for curbing illegal migration is the targeting of the members of the organized criminal groups involved.

Smuggling of migrants is not the only crime connected with the illegal migration. Crossing the state border illegally is a criminal offense in itself.<sup>35</sup> Moreover, illegal stay in the country is a reason for expulsion from the country, according to article 101 of the Law on Foreigners. However, in almost all of the cases the migrants do not possess any identification documents. In case when the identity of the foreigner cannot be proved or established, the foreigner is detained in the Reception Center based on a court decision and stays there until information on his/her identity is provided.

Practice has shown that this procedure is very long and in many of the cases it is almost impossible to conclude. One of the reasons that hamper the identification is that many of the countries of origin of the migrants do not keep records on their citizens, or they have started to do so only recently or in some cases have records only for citizens that have a criminal past.<sup>36</sup> Even more, often migrants provide false information which complicate the procedure even more. According to the Law on Foreigners (article 141), when there is a procedure for expelling a certain person from the country, he/she should be provided with an explanation in a language he/she understands. This is another challenge for the Macedonian authorities. Finding a translator/interpreter in Farsi, Pashto or Urdu language is not an easy task. Oftentimes, the authorities rely on translation provided by an English-speaking migrant accommodated in the Reception Center. As IOM highlights, this approach raises issues regarding the quality of interpretation and confidentiality of the procedure.<sup>37</sup> Moreover, the migrant that is fluent in English is more likely to be connected with the smugglers and the organized criminal group – says Ivona Zakovska-Todorovska from IOM.<sup>38</sup>

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<sup>34</sup> *Feasibility study on irregular migration in Western Balkans*, Executive summary, 2013, International Organization for Migration

<sup>35</sup> Criminal code of Macedonia, Unofficial consolidated text published by the Ministry of Justice , article 402

<sup>36</sup> Interview with Jovancho Asprovski, Ministry of Interior

<sup>37</sup> *Feasibility study for irregular migration in Western Balkans*, International Organization for Migration

<sup>38</sup> Interview conducted on 09.07.2013

The Law on Foreigners predicts that helping illegal entry, transit or stay for the purpose of unlawful gains will be punished with minimum three years imprisonment. One manner of helping illegal entry could be renting accommodation which is not unusual in the areas near the borders. The interviews conducted in the villages of Lojane and Lipkovo showed that usually the ones that are renting housing for migrants are not aware of the fact that they commit a criminal offense.

In case when the foreigner is victim of trafficking with human beings (when there are grounds for suspicion of being a victim), there is a two-month period of decision-making in which the foreigner is provided protection and assistance in the process of recovery. In this period, he/she could decide either to cooperate with the authorities in detecting the crimes and perpetrators or to return in his country whose citizen or legal resident is.<sup>39</sup> During this period, the victim cannot be expelled from the country. When the foreigner decides to cooperate with the detection of the crimes, there is ground for issuing a temporary residence permit.

It should also be mentioned that another way of entering the country illegally is using falsified documents. The representative of the MoI interviewed for the purpose of this policy paper says this method is used only on an ad hoc basis because biometric systems can easily detect falsified documents.<sup>40</sup> However, FRONTEX reports increased falsification of student or working visas by citizens of African countries<sup>41</sup> so the Macedonian authorities should be more aware of this fact.

## **5. Asylum seekers**

The right to asylum is a fundamental human right, guaranteed by the Universal Declaration of Human Rights of the United Nations.<sup>42</sup> The rights of refugees are guaranteed with the UN Convention in relation to the status of refugees from 1951. According to the Law on asylum and temporary protection, which is aligned with this Convention, the right to asylum could be provided for two categories – a recognized refugee and a person under subsidiary protection. For one to be recognized refugee it is necessary that this person has a well-founded fear that he/she will be persecuted because of race, confession, nationality, belonging to any social group or political affiliation. As for the subsidiary protection, there needs to be strong evidence that the person will face a real risk of serious injuries such as death penalty, torture and inhuman degrading treatment or serious threats to life. This Law is also aligned with the *acquis communautaire* (Directive 2004/83/EC of the European Council<sup>43</sup>).

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<sup>39</sup> Law on Foreigners, Article 81

<sup>40</sup> Interview with Jovancho Asprovski, Ministry of Interior

<sup>41</sup> Western Balkans Annual Risk Analysis for 2013, Frontex

<sup>42</sup> Article 14.1 says :everyone has the right to seek and to enjoy in other countries asylum from prosecution

<sup>43</sup> Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:304:0012:0023:EN:PDF>

The institution responsible for implementing this law is the Ministry of Interior with its Unit for Migration and asylum, while the Ministry of Labor and Social Policy is responsible for reception of the asylum seekers and social care.

The Law says that the application for asylum should be submitted at the border crossing point or the nearest police station.<sup>44</sup> However, there is a provision saying that a person that entered the country or has unregulated stay (that is punishable according to the Law on Foreigners) will not be punished if he/she applies for asylum. These provisions could be seen as an opportunity for avoiding being detained in the Reception Center, in case the migrant is caught by the police. Moreover, the Law on Foreigners clearly states that a foreigner cannot be denied entrance in Macedonia if he/she has an intention to seek asylum in Macedonia.<sup>45</sup> It could be easy to conclude that there is a risk for these provisions to be misused.

In order to prevent such misuses, the policy makers introduced a so-called accelerated procedure applicable in cases when there are manifestly unfounded applications. Among other reasons for accelerated procedure, this procedure applies in case when there are indications that the application is submitted with the aim to avoid decision for expulsion from the Republic and the applicant already had possibilities to apply for asylum before.<sup>46</sup> The accelerated procedure means shortening the time for making the decision by the MoI and it should be done within 15 days (with 3 day appeal period)<sup>47</sup> from the day of the application. Anyhow, the migrant is accommodated in the Center for asylum seekers which is not a detention center but an open type center that does not strictly regulate the movement of its recipients. Meanwhile, they are provided with medical and social care, are given a place to sleep and meals. In most cases the asylum seekers do not wait for the MoI decision, but leave the Center for Asylum Seekers and never go back, trying to leave the country illegally. When the application for asylum is denied, the person should voluntary leave the country or be expelled according to the Law on Foreigners.

As can be seen in table 6 an increase in illegal migration in the region goes hand in hand with an increased number of asylum seekers. Table 6 shows that the number of people who seek asylum in Macedonia dramatically increases from year to year and reached its peak in 2011 with 811 asylum seekers. That number is due to the situation in Afghanistan resulting in 474 Afghani asylum seekers in Macedonia. As the situation in Afghanistan was calming down, the number of asylum seekers decreased in 2012, but the first half of 2013 again has noted an increased number of asylum applications: 651 as of 15 July 2013, while there were 630 applications during the entire year 2012. This time, the increased number of asylum seekers happens because of Syria's civil war. Namely, 156 citizens of Syria had asked for asylum in Macedonia in the first half of

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<sup>44</sup> Law on asylum and temporary protection – consolidated version, *Official Gazette of Republic of Macedonia* no.19/09, Article 16

<sup>45</sup> *Ibid.* Article 25

<sup>46</sup> *Ibid.* Article 35

<sup>47</sup> The normal procedure is 2 months with 30 day appeal period.

2013 (5 in 2012). Other major groups that asked for asylum in our country in the first half of 2013 are citizens of Pakistan 56 (172 in 2012), Algeria 84 (18 in 2012), Morocco 43 (37 in 2012), Somalia 49 (87) and Palestine 20 (12), but there are also people from: Bangladesh, Mali, Mauritania, Côte d'Ivoire, Eritrea, Nigeria, Senegal, Tunisia, Gambia, Ghana etc. Most of the asylum seekers are men (more than 80% in 2012 and 2013), but there are also women and children, including whole families. However, the Republic of Macedonia usually does not find their claims grounded and this conclusion is supported by the fact that only one person coming from an Asian or African country has been granted asylum for an application submitted in 2009.<sup>48</sup> It is not clear why the rate of approved asylum applications is that low, especially taking into consideration the security conditions in some of the countries of origin of migrants.

The interviewed representatives of Macedonian Young Lawyers Association (MYLA), an NGO that is providing free legal assistance to asylum seekers, raised their concerns regarding the cases when the applicant is a minor. The law stipulates that minors should be provided a guardian that would represent them during the procedure. However, the experience of MYLA has shown that oftentimes the procedure for naming a guardian lasts for too long. In addition, oftentimes there is lack of communication among the applicant, his/her guardian, the Ministry of Labour and Social Policy and the Ministry of Interior. For instance, there have been cases when the minor was not aware that has a guardian appointed to defend his/her rights and interests. All of this could result with decisions that are not in the best interest of the minor.<sup>49</sup>

Table 6: Asylum seekers in Macedonia<sup>50</sup>

Year	Men	Women	Children	Minors	Total
<b>2008</b>	26	5	12	1	<b>44</b>
<b>2009</b>	70	3	6	12	<b>96</b>
<b>2010</b>	126	6	11	28	<b>171</b>
<b>2011</b>	639	57	82	33	<b>811</b>
<b>2012</b>	528	30	40	32	<b>630</b>
<b>2013 (as of 15.07.2013)</b>	570	29	6	46	<b>651</b>

<sup>48</sup> Interview with Irena Zdravkova, Macedonian Young Lawyers Association

<sup>49</sup> *Ibid.*

<sup>50</sup> Source: Reception Center for Asylum Seekers

The Reception Center for Asylum Seekers has been constructed with support from the European Bank for Reconstruction and Development and became operational in 2006 while the first asylum seekers were accommodated in 2008. The Center has a capacity to accommodate 150 persons at the same time and that number has never been exceeded (having 147 migrants in the same time at the most). In the case of bigger waves of asylum seekers in the future, the facilities of the Reception Center could be adapted and re-structured to meet those needs.<sup>51</sup>

## **6. Readmission and Return**

Important mechanisms for managing migration are the readmission agreements and their implementation. The MARRI (Migration, Asylum and Refugees Regional Initiative) Migration Paper 2012 states that readmission questions are among the ones that evoke the biggest interest among the Western Balkans countries, which indicates that is one of the priority areas of migration management policies.<sup>52</sup>

The competent authority for issuing decisions on expulsions is the Ministry of Interior. In case when it has been decided that a foreigner does not have the right to stay in Macedonia, the foreigner is provided with a deadline for leaving the territory voluntarily and after the expiration of that deadline, he/she will be deported. However, this deportation has proved to be problematic. In case of deportation, the procedure envisages handing over the foreigner to representatives of the country whose citizen is or the country from which he/she had arrived.<sup>53</sup>

The Macedonian authorities are satisfied with the implementation of readmission agreements, especially with the neighboring countries. In case when nationals of the neighboring countries are readmitted, the handovers usually happen at the border crossing points and under urgent procedure which increases the efficiency and reduces the financial costs.<sup>54</sup>

However, problems arise when citizens of other countries have to be readmitted. Because there are no readmission agreements with the countries of origin of the migrants (African and Asian countries), the persons are subject to readmission to the countries from which they entered Macedonia. As most of them are coming from Greece, it means that they have to be returned there. However, the competent authorities are facing obstacles in this regard. Namely, Macedonia has signed a Readmission Agreement with the European Union which is a legal base for readmission and return. However, a Protocol for its implementation with Greece is missing.<sup>55</sup> In that case, the procedure is very complicated as it goes through the diplomatic networks. There

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<sup>51</sup> Interview with Dejan Ivkovski, Head of Asylum, Migration and Humanitarian Aid within Ministry of Labour and Social Policy

<sup>52</sup> MARRI Migration paper 2012

<sup>53</sup> Law on Foreigners, Article 106

<sup>54</sup> MARRI Migration paper 2012

<sup>55</sup> Protocols are signed individually with each country and they are regulating the procedure for readmission.

have been two initiatives by the Macedonian side to sign a protocol, but Greek authorities remained unresponsive.<sup>56</sup> Often there is no evidence that shows which country the migrants have actually come from. In that case, the Macedonian authorities contact INTERPOL.

Problems also arise when Serbia readmits non-Macedonian migrants to Macedonia. Although the two countries have a readmission agreement and it is implemented well, this does not provide a long-term and sustainable solution. Handing over the migrants from one country to another does not prevent future attempts for illegal border crossings. Moreover, this situation is also not decent from the perspective of the migrants because it raises serious questions for the status of the persons, especially in respect of their social rights.

Besides that, most of the migrants that need to be deported do not possess travel documents so they are temporarily detained in the Reception Center, until the country whose citizen they are issues a travel document. Besides being too long, this procedure may end unsuccessfully. In such a case, the law allows a travel document to be issued by the Republic of Macedonia.

The International Organization for Migration provides assistance for voluntary returns. Namely, if a migrant wishes to voluntarily return to his/her country of origin, IOM is providing services such as covering the travel costs.

## **7. Regional cooperation**

Illegal migration is not a problem of only one country. All countries situated in the Western Balkans are facing the same challenge and obviously, a regional approach is needed in order to resolve the issue. Even more, the EU itself has an interest to prevent illegal migration through the Western Balkans because in the end, the EU member states are the ones having to bear the burden as final destinations of the migrants. Macedonia is included in all regional initiatives for cooperation and has signed the relevant multilateral and bilateral agreements.

Macedonia has signed the Police Cooperation Convention in South-East Europe (PCC SEE)<sup>57</sup> which elaborates all forms of regional cooperation and serves as an umbrella for signing bilateral documents, such as protocol agreements for joint border patrols with Serbia,<sup>58</sup> Albania,<sup>59</sup> Kosovo<sup>60</sup> and Bulgaria<sup>61</sup>; protocols and agreements for joint contact centers (with Serbia<sup>62</sup>, Kosovo<sup>63</sup>, Bulgaria<sup>64</sup> and Albania<sup>65</sup>). The interviewees from the Macedonian MoI are

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<sup>56</sup> Interview with Jovancho Asprovski, Ministry of Interior

<sup>57</sup> Signed 05.05.2006 in Wien, ratified 01.06.2007, Official Gazette of Republic of Macedonia No. 74 from 14.06.2007

<sup>58</sup> Signed 28.02.2011

<sup>59</sup> Signed 22.02.2008

<sup>60</sup> Signed 01.04.2011

<sup>61</sup> Agreement signed 21.02.2011

<sup>62</sup> Signed 28.02.2011

very satisfied with the cooperation they have with the neighboring countries, excluding Greece. However, although there are signed agreements with Serbia for joint contact centers and mixed patrols, they are not operational yet. In addition, the European Commission notes that the monitoring patrols along the border with Kosovo need to address the challenge of illegal trafficking of goods and illegal migration.<sup>66</sup> These mechanisms are very important in light of the fact that Macedonian-Serbian border is the one under the biggest pressure by the migrants.

Macedonia is also a signatory to the Memorandum of Understanding for establishing a system for exchange of statistical information in the area of illegal migration and participation in the regional system for early warning since 2008.<sup>67</sup> However, although the legal basis exists, the exchange of information is not yet on a satisfactory level. This is noted in the feasibility study provided by the International Organization for Migration, which highlights that the insufficient share and exchange of information between countries in the region “hinders the ability of competent bodies to manage the influx of irregular migration flows in a systematic manner.”<sup>68</sup>

Another important initiative is the Migration, Asylum and Refugees Regional Initiative (MARRI).<sup>69</sup> MARRI has a regional center (RC) situated in Skopje and its role is to promote closer regional cooperation and a coherent approach in the respective areas. However, MARRI RC does not have executive capacity, but only provides a platform for exchange of information, policy analysis, identifying gaps and offering suggestions.

The challenges identified in the work of MARRI<sup>70</sup> could be considered as representative of the challenges that the countries have to cooperate with each other – different priorities in the same time, language barriers, extensive administrative and bureaucratic work, lack of capacities to prepare comprehensive answers in a timely manner etc.

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<sup>63</sup> Signed 03.10.2011

<sup>64</sup> Signed 21.02.2011

<sup>65</sup> In procedure (as of September 2013)

<sup>66</sup> European Commission Progress Report on Macedonia for 2012

<sup>67</sup> The MoU is signed within the project “Developing systems for communication and exchange of information in the area of illegal migration in the region of Western Balkans” as part of the AENEAS 2005 Program. Signatories: Macedonia, Serbia, Albania, Bosnia and Herzegovina, Montenegro and Croatia).

<sup>68</sup> Feasibility Study for Illegal Migration in Western Balkans, International Organization for Migration

<sup>69</sup> MARRI was established in 2003 within the context of the Stability Pact for South Eastern Europe by merging the Regional Return Initiative - RRI and the Migration and Asylum Initiative - MAI. Participating countries: Albania, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro and Serbia.

<sup>70</sup> Interview with Trpe Stojanovski, PhD

## **8. Conclusions**

The aim of this policy paper was to illuminate the relevant factors that enable illegal migration through the territory of Macedonia as well as to examine the policies and practices by the national authorities to deal with the issue.

The statistics show that illegal migration in the last few years is noting changes and there is an increasing trend of illegal migrants coming from countries of Western and Northern Africa, South-Central and Western Asia and the Middle East. The most numerous migrants are citizens of Afghanistan, but there are also people from Syria, Pakistan, Somalia, Bangladesh, Tunisia etc. Reasons for that include various social and economical factors, primarily poverty and political and security instability. However, Macedonia is not their targeted final destination, but a transitional country as part of the Balkan route. After the migrants pass the Turkish-Greek border, they split and try to leave Greece by land, air or sea. The traditional Balkan route refers to the ones that decide to leave Greece by land; they enter Macedonia, continue towards Serbia and aim to reach Hungary where they enter the Schengen zone. The research showed that Macedonian authorities should make bigger efforts in detecting illegal migrants as their number is much bigger than the official statistics. The interviewed stakeholders and experts agree that the number of illegal migrants is expected to increase in the years that follow.

Illegal migration is usually connected with organized crime (smuggling and human trafficking) and therefore deserves special attention. Although the authorities recognize that it is a form of organized crime, there is a worrisome rate of detected organized criminal groups involved in illegal migration – only one or two per year.

The legal framework for dealing with illegal migration is aligned with European legislation and complies with the relevant international standards. Problems arise in its implementation such as difficulties to establish the identity of the migrants, problematic implementation of the readmission agreements due to objective factors (cooperation from the country of return, financial resources etc.) and subjective factors (lack of motivation). In addition, there is high risk of abusing the right for asylum seeking. Many migrants could apply for asylum just to avoid being detained at the Reception Center for Foreigners and manage to be accommodated in the Reception Center for Asylum Seekers which is an open-type center that the accommodated persons could easily abandon. In practice, many of the asylum seekers are leaving the Reception Center for Asylum Seekers towards unknown destinations, without waiting for a final decision on recognizing or rejecting their claims. The absence of documentation for identification among the migrants and lack of coordinated activities among the countries bring risks that the same situation could repeat itself in another country that they are passing through on their way to their desired final destination. On the other hand, Macedonian authorities usually find the applicants' claims for asylum ungrounded which raises concerns about the conducted procedures and possible reasons for such low rate of providing asylum.

Illegal migration is a complex phenomenon and requires a regional approach. Macedonia is included in all regional initiatives dealing with this issue, but there are many things that need to be done in addition. The countries of the Western Balkans need support from the international community, especially from the European Union in order to strengthen their capacities to prevent, detect or resolve the illegal migration. Having in mind that the Western Balkans is not the target, but a transit area, the competent authorities might not have the same level of motivation to detect illegal migrants as it is costly and sometimes they just prefer to stay “blind”. It is in the best interest of the EU member states to provide support to the Western Balkan countries and to prevent migrants’ attempts to reach the wealthier EU member states.

**Recommendations:**

- The illegal migration must be addressed at regional level, not only national. The cooperation with the neighboring countries should be enhanced, especially as regards the exchange of information and detection and investigation of organized criminal groups;
- The Ministry of Interior should provide training and support for several persons that should be involved in communication and cooperation with the ministries of other Western Balkan countries. The persons should be fluent in English and have a knowledge about the differences in competences and procedures that exist among different institutions in different countries;
- A protocol for the implementation of the readmission agreement with Greece should be signed;
- The capacities for detection and investigation of organized criminal groups dealing with illegal migration should be improved;
- As the Greek border has been detected as an entry point and the Serbian border as an exit point for migrants, these high risk borderlines need intensified surveillance. In addition, the border police should be provided training and equipment;
- National authorities should think about possible preventive measures against the abuse of asylum system;
- National authorities should approach each asylum application without prejudice and take into account all relevant factors before deciding to refuse or accept the application;
- A database for asylum seekers including their information and fingerprints, providing access for the authorities of all Western Balkan countries should be developed. This database should prevent false asylum seekers to seek asylum in different countries. Fingerprints are important because many migrants tend to provide false information about their identity;
- There is a need for a regional approach regarding translation and interpretation problems;
- Awareness needs to be raised among citizens in the risky areas (especially near the Tabanovce crossing point) that helping illegal stay through providing accommodation or similar is a criminal offense. In addition, there is a need to educate the taxi and bus drivers for the consequences of driving illegal migrants.

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# POLICY REPORT

## Analysis of the national policies and practices dealing with illegal migration and asylum seekers

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