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CM-Public

26 April 2016^[1]

**Information Documents
SG/Inf(2016)18**

**Report of the fact-finding mission
by Ambassador Tomáš Boček
Special Representative of the Secretary
General on migration and refugees to
Greece and "the former Yugoslav Republic of Macedonia"
7-11 March 2016**

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I. THE MISSION

From 7 to 11 March 2016, I carried out a fact-finding mission to Greece and "the former Yugoslav Republic of Macedonia"[2] to help me form a clear idea of how the Council of Europe can assist these two member states in facing the current migratory flows, whilst respecting their commitments under the human-rights instruments of our Organisation.

This was the first such mission since my appointment by the Secretary General.[3] It coincided with important developments in the region: the effective closure of "the Balkan route"[4] and the discussions between the European Union (EU) and Turkey on the migration crisis.[5] The mission took place the week before the European Council of 17 and 18 March and the follow-up meeting with the Prime Minister of Turkey. As a result, the reaction of my interlocutors to many of the questions I raised, reflected their expectations concerning the outcome of these two events. This was natural, as the EU-Turkey Agreement[6] risked having wide-ranging repercussions on several core issues that were the subject matter of my mission. Although the agreement was reached on 18 March, after the end of the mission, it is inevitable that some of its aspects will be discussed in this report.

II. GREECE

1. Introduction

a) Meetings

During my mission to Greece,[7] I had the privilege of discussing with: the Minister of Maritime Affairs and Islands Policy, Mr Thodoris Dritsas, who is, *inter alia*, ultimately responsible for the coast guard and the port of Piraeus; the Alternate Minister of Defence, Mr Dimitris Vitsas, who is in charge of coordinating the Greek state's efforts to deal with the recent migratory flows; the Vice Minister of Foreign Affairs, Mr Dimitris Mardas; the General Secretary of the Ministry of Interior[8] dealing with Population and Social Cohesion Issues,[9] Mr Vasilis Papadopoulos, who - at the time of the visit - would coordinate the work on a bill that aimed at overhauling the Greek legislation on asylum and migrants' integration;[10] the General Secretary of the Ministry of Justice in charge of Transparency and Human Rights, Mr Konstantinos Papaioannou;[11] the Mayor of Athens, Mr Yiorgos Kaminis; the Mayor of Chios, Mr Emmanouil Vournous; the Deputy Ombudsman dealing with children's rights, Mr George Moschos; representatives of the Governing Board of the National Centre for Social Solidarity (EKKA - which is, *inter alia*, ultimately responsible for providing accommodation for unaccompanied children), including its President, Mr Periklis Tziaras; and representatives of the National Commission for Human Rights.

Moreover, I exchanged views with: the acting representative of the UNHCR, Mr Philippe Leclerc, and his colleagues, as well as representatives of UNICEF and the ICRC. Finally, there were meetings with the following NGOs: Apostoli, Arsis, the Ecumenical Refugee Programme, the Hellenic League for Human Rights, Lathra, Médecins du Monde, Médecins Sans Frontières, METAdrasi (METAction), the Norwegian Refugee Council, Nostos, Praxis, Samaritan's Purse, Save the Children, Solidarity Now and Waha.

b) Visits in situ

I also visited: the newly opened hotspot and the reception centre adjacent to it (colloquially known as Vial^[12]) on the Aegean-Sea island of Chios, off the Turkish coast; camps in Chios (Souda), Athens (Eleonas), Eliniko (where the Athens airport used to be), Diavata (off Thessaloniki) and Nea Kavala, Kilkis (close to the border with “the former Yugoslav Republic of Macedonia”); and a centre for unaccompanied children in Petralona, Athens. I also went to the Idomeni site (on the border with “the former Yugoslav Republic of Macedonia”). Thus, I essentially followed most refugees’ and migrants’ route in Greece: from the islands to the port of Piraeus and the larger Attica region,^[13] to Thessaloniki and then to the border with “the former Yugoslav Republic of Macedonia”.

c) Co-operation with the authorities – UNHCR

I would like to thank the Greek authorities for their exemplary co-operation in the preparation of this mission, which was carried out at very short notice. I have greatly appreciated their willingness to discuss all relevant issues and to facilitate my safe access to many sensitive places, some of which had not been seen by many before. I should also like to thank UNHCR Greece for their input, for their help on Chios and for facilitating my meeting with key NGOs in Athens.

d) Need for solidarity

As I had the opportunity to state while in Greece, significant efforts are being made to deal with the recent migratory flow. The Greek authorities should be encouraged in their endeavours to cope with unprecedented challenges. They, together with the volunteers^[14] and the Greek people, must also be congratulated for continuing to offer *philoxenia*^[15] in an altogether adverse economic climate. It is, of course, clear that Greece cannot bear the brunt of the migration crisis on its own. More solidarity is needed.

2. Accommodation/housing of refugees and migrants: capacity, living conditions and other needs

a) Numbers in need of accommodation

One of the most-discussed issues during my mission to Greece was refugees’ and migrants’ accommodation/housing needs. Today, after the conclusion of the EU-Turkey Agreement, with more than 50 000 recently arrived refugees and migrants, this seems to be one of the biggest challenges - not only because of the sheer number of the persons involved but also because of the extreme vulnerability of some of them. Two-thirds of those arriving are women and children. Some women with children travel otherwise unaccompanied, some women have several children with them and some are pregnant. Among recent arrivals, there are also seriously disabled persons.

b) Capacity

It became clear during my mission that considerable efforts were being made to build the necessary capacity.^[16] These were coordinated by the Alternate Minister of Defence and the armed forces played a key role therein. It also became clear that the goal of providing all with adequate accommodation would not be easily achievable.^[17] Relocation from Greece to other EU countries is slow^[18] and refugees and migrants are still arriving, albeit in smaller numbers.^[19] Some of the accommodation sites I visited were already overcrowded, while others were being stretched to their limits.^[20] Many of my interlocutors expressed fear about the consequences of a continuing massive influx. These fears appear to have materialised. Following the conclusion of the EU-Turkey Agreement, the reception centres next to the hotspots on some of the islands became overcrowded;^[21] on 31 March, violent clashes broke out between those hosted in Vial on Chios; the refugees and migrants then broke out of the reception centre and started camping in the Chios-city port.

c) Staffing – Co-operation with NGOs

The various sites I visited were run/kept going through a combination of efforts made by various state actors^[22] (including local authorities and the armed forces^[23]), IGOs (notably the UNHCR) and NGOs. This is inevitable, since the Ministry of Interior staff dealing with migration need significant strengthening to be able to face up to the challenge. In these circumstances, it is essential to establish a sound framework for cooperating with NGOs, under mutually acceptable conditions (although, of course, it cannot be asked of NGOs to take over the role of the state).^[24]

d) First-line reception facilities

All refugees and migrants are meant to be registered in first-line reception facilities. These include the hotspots. When I visited the one on Chios, the reception centre adjacent to it was practically empty.^[25] The conditions were adequate, although the space in the dormitories, which had to host up to eight persons in four double bunk beds, was very limited. As I have already indicated, following my mission the reception centre next to the Vial hotspot became overcrowded and very soon the authorities lost control of the situation there. According to some of my interlocutors, this was to be expected for the following reasons: after the conclusion of the EU-Turkey Agreement, asylum seekers arriving in the Greek islands were meant to submit their claims in the hotspots; requiring them to stay there pending the examination of their claims would soon stretch the reception centres’ capacity to their limits.

e) Second-line reception facilities

My impressions of the second-line reception facilities I visited are very mixed.

The Eliniko camp (in the Athens metropolitan area^[26]) was initially conceived as a transit centre, in which people would not stay for more than three days. It was installed, as an emergency response to the crisis, in what used to be the Athens airport (some of the premises of which were then used to build Olympic Games stadiums). I visited the part of the camp that is in/next to the hockey stadium. 1 500 people were accommodated in overcrowded conditions in a building and tents. Most of them were Afghans and many had already stayed there for about two weeks. Only their basic needs were covered: food, hygiene products, blankets and sleeping bags. When I visited the camp, relatively early in the morning, I saw several people sleeping on the floor covered with blankets. The effects of overcrowding, in terms of hygiene, were palpable.^[27] Very few staff were present. Although it was reported to me that some NGOs were active on the Eliniko camp, at the time of the visit there were only three independent volunteers helping its inhabitants distribute food among themselves and four representatives of Save the Children and the United Kingdom authorities (on an international development programme) providing information. Lack of information was what the camp’s inhabitants mostly complained about. It would appear that the Eliniko camp is clearly inadequate for long-term stays, especially given the number of persons present there today. As long as it exists, ways should be found to improve the living conditions of those hosted there.

Enhanced co-operation with NGOs could be part of the response. Also there is a clear need for proper information to be imparted to this camp’s population on their legal situation and prospects for the future. This information should, in principle, be provided by the authorities. However, NGOs can also play a role; their independent advice would be particularly appreciated.

In addition, provision should be made for educational activities for children. According to some of my interlocutors, children who cannot - for long periods of time - draw the benefit of such activities have great difficulties adapting to a normal school routine or to life in a "shelter" when they eventually settle down.

In addition to Eliniko, I visited a temporary transit camp built by the armed forces, in Nea Kavala, Kilkis, near the border with "the former Yugoslav Republic of Macedonia". Similarly with Eliniko, this was only meant to provide a temporary solution. I understand that the armed forces are in the process of building several other such camps.[28] As I already observed, accommodation capacity needs to be increased urgently. However, the conditions in Nea Kavala, at the time of the visit, were sub-standard and have to be significantly improved. The Greek authorities need help to ensure that people do not sleep in tents in the mud and that they do not have to burn plastic waste to keep warm. Again, as long as these army-built temporary-transit camps exist, ways should be found to improve the living conditions of those hosted there. Co-operation with NGOs, information on the legal situation and future prospects, and educational activities for children, are also issues that need to be looked into in this connection.

Finally, I visited the Eleonas camp, in Athens proper, and the Diavata one, outside Thessaloniki. It is clear that camps of this type are/can be developed into proper second-line reception facilities. The authorities plan to increase their capacity[29] and the Council of Europe Development Bank (CEB) will be financing the extension of the former. Although it is encouraging to learn about these camps' future prospects, the authorities should not overlook the fact that each camp extension generates new issues that need to be addressed. It is also clear that the second-line reception facilities should be spread around the territory.

f) Third-line reception capacity

The third-line reception capacity would consist in dedicated community-based shelters, like the centre for unaccompanied children I visited in Athens[30] and converted hotels, or hotel rooms and flats. I have been informed of the UNHCR's plans to develop such capacity and of the progress made in this connection.

g) Detention facilities for migrants not qualifying for international protection

It goes without saying that, in addition to the above-mentioned accommodation sites, there are detention facilities for migrants not qualifying for international protection who will have to leave the country. These are different types of establishment not to be taken into consideration when counting the capacity for asylum seekers and refugees.

h) The Idomeni site

While in Greece, I also went[31] to the well-known Idomeni site on the border with "the former Yugoslav Republic of Macedonia". Since the end of my mission, the Greek authorities have repeatedly expressed their wish to close down this makeshift camp as quickly as possible. Despite the efforts made by the UNHCR and several NGOs, notably the Médecins Sans Frontières, to alleviate the suffering of those camping there, the situation on the site is such[32] that it is difficult not to share the authorities' approach.

i) Interpretation and psycho-social services

In all the accommodation sites I visited, my interlocutors referred to the issue of lack of interpreters. Given that migrants are in desperate need of information and very soon will be subject to various legal procedures in Greece, this is an issue that should be looked into urgently.

Similarly, psycho-social services are lacking in most camps.

3. The relevant legislation and some aspects of its application (detention, asylum procedure and removal)

a) Review of the legislative framework

At the time of my mission, the rules governing asylum and migration were, in principle, contained in three Acts of Parliament: No. 3907/2011 setting up the Asylum and First Reception Services and transposing Directive 2008/115/EC; No. 4251/2014 on the Code of Migration and Social Inclusion; and No. 4332/2015 amending (i) the Code of Citizenship and (ii) Act No. 4251/2014. A bill was also under preparation, as the authorities intended to carry out a comprehensive review of the relevant legislative framework. The relevant bill was presented to Parliament on 30 March and was enacted on 1 April. On several occasions, I was informed that the bill had been drafted so as to ensure respect for the European Convention on Human Rights.

b) De facto detention?

One of the issues that the new act should clarify is whether refugees and migrants in the reception centres next to the hotspots are subject to a "mere" restriction on their freedom of movement or to deprivation of liberty. One of the conclusions of my visit to Chios is that they are *de facto* subject to the latter.[33] At the time, it seemed that the only way in which these persons could challenge their placement in the reception centre was by lodging an objection with the head of the local police, which raises questions whether this is a remedy for the purposes of the European Convention on Human Rights. I was also been informed that they could appeal against the head of the police's decision to the administrative court. However, the geographical location of these courts is a problem. For example, there is no administrative court on Chios. The competent court is on Lesbos, another island. Moreover, there seem to be limited possibilities of obtaining legal aid. All these factors, taken together or even - in some cases - on their own, could raise issues under Article 5 § 4 of the Convention (right to *habeas corpus*).

According to information I have received, the new act provides for increased judicial protection for persons in the reception centres next to the hotspots. While this is encouraging, perhaps the Council of Europe could organise an expert review of the new legislation to ensure its full conformity with the European Convention on Human Rights. This is especially important, since the EU-Turkey Agreement will - in all likelihood - result in the automatic use of detention for some length of time for all new arrivals, including vulnerable persons and children.

c) Asylum determination procedure - removal

It is also essential that the authorities create the necessary capacity for the application of the new legislation.

As a matter of fact, it is expected that the EU-Turkey Agreement will in practice generate a substantial number of claims for asylum[34] by those arriving in the hotspots. These will have to be examined, in accordance with the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, as well as the European Convention on Human Rights, by administrative authorities and then, possibly, by the administrative courts.[35] The agreement could also generate appeals against decisions for removal from the Greek territory by persons whose asylum claims may have been rejected or who may not have even applied for asylum. It is not to

be excluded that these appeals could raise issues under Articles 3 (prohibiting torture and inhuman or degrading treatment) and 5 (on deprivation of liberty) of the European Convention on Human Rights. Finally, there should be independent monitoring of the removal procedures by, for example, the Greek Ombudsman.

4. The treatment of refugee and migrant children

a) Numbers

An issue that I raised at several meetings I had in Greece was the treatment of refugee and migrant children in general, and more specifically the treatment of unaccompanied ones (UAMs).

Confusion seems to reign concerning the number of UAMs having transited through Greece during the recent migration crisis. As it transpired from an IOM and UNICEF data brief published on 30 November 2015, entitled Migration of Children to Europe, the numbers given by Greece, "the former Yugoslav Republic of Macedonia" and some destination countries do not tally.[36] It is clear that a significant number of UAMS have tried to pass for adults while transiting from Greece, one of the possible reasons for this being apprehension concerning the length of the international procedure for family reunification.

b) Age-assessment

Although the age-assessment procedure does not seem to be problematic *per se*, there are implementation issues. These have resulted in UAMs being identified as adults and being placed, as a result, in detention. Moreover, there do not seem to be any effective means of appealing against the outcome of the assessment. The modernisation of the legislative framework could provide an opportunity for addressing these issues.

c) Who is unaccompanied?

Several interlocutors also raised doubts about the current understanding in the relevant Greek administrative/judicial practice of who should be considered an UAM. It would appear that those travelling with members of the extended family are considered unaccompanied. Cases were also reported of spouses being separated. Of course, as already seen, there are also several allegations of "non-identified" cases of UAMs and one should not underestimate the risks that these could involve for some of the children concerned.

d) "Shelters"

According to Greek law, it is the local prosecutor who decides on the follow-up to be given once a case of an unaccompanied child is identified. Usually, the prosecutor will place the child in a centre, like the "shelter" run by Arsis that I visited in Petralona, Athens. The conditions in the Arsis "shelter" appeared to be very good. The problem seems to be that this and, according to reports I have received, all such "shelters" are close to full capacity.[37] The resources of EKKA (the National Centre for Social Solidarity, which is ultimately responsible for providing accommodation for UAMs) also appear to be overstretched.[38] This is, therefore, a question that should be addressed.

e) Deprivation of liberty

Another question to be urgently addressed is that of children's deprivation of liberty.

During the mission to Greece, I was informed that efforts were being made to reduce to the minimum the period of time children were being kept in the reception centres next to the hotspots. The situation seems to have changed because of the EU-Turkey Agreement. The view generally held by my interlocutors is that the agreement in question will in practice result in children spending longer periods being *de facto* deprived of their liberty next to the hot spots, while waiting for their asylum applications to be processed and possible appeals to be heard. The lack of any alternatives to detention seems to be one of the structural problems of the Greek system.

To address the issue, the Greek authorities can draw on the expertise developed by the Council of Europe. The work of the committee of experts on administrative detention of migrants (CJ-DAM), set up on the initiative of the European Committee on Legal Co-operation (CDCJ), will be of great relevance in this respect. The CJ-DAM should pay attention to the human rights of persons kept not only in facilities that are qualified by national law as closed centres but also in other places of deprivation of liberty. Special consideration should be given to vulnerable persons, including children.

A separate problem is the deprivation of liberty of UAMs on their way to "shelters". As already seen, once a child is identified as an UAM, s/he will be placed in a "shelter". However, there seems to be a period of time until s/he arrives safely in his/her "shelter" when the authorities consider that they have no other option but to place him/her in protective custody, given the lack of appropriate transit facilities. This practice has been criticised by many. Again, it would appear that some NGOs, including METAction,[39] try to fill the gap by offering open transit accommodation.

f) Guardianship

Many of my interlocutors agreed on the need to overhaul radically the current system of guardianship, which also applies to unaccompanied minors. Greek law provides that the competent authorities must ensure that a child is legally represented, independently of whether s/he applies for international protection. The public prosecutor for children or the public prosecutor of the local first-instance court acts as a provisional guardian. S/he should appoint a permanent one. In practice, the prosecutors lack the capacity to handle the large number of UAMs who are referred to them. Nor can they rely on another state institution for help.

It was encouraging to learn during the mission that METAction has launched a project aiming at creating a guardianship network for UAMs. The staff of the NGO in question provide services in UAMs' "shelters" and can exercise powers delegated to them by the competent public prosecutor.

It was also encouraging to learn that the authorities want to introduce legislation that would provide a long-term response to the problem.

g) Education

Children of asylum seekers and children seeking international protection have access to the Greek education system under the same conditions as Greek children.[40] However, some schools create practical problems, asking for documents that are not required by law. This is an issue to be clarified by the Ministry of Education.

I have already discussed the question of the lack of educational activities in some camps/on some sites.

h) Access to information

Refugee and migrant children in general, and especially UAMs, need information on their legal situation and future prospects. In the hotspots, camps or “shelters” that I visited, I did not see any child-friendly information material available in foreign languages. It seems that in 2015 the Greek Asylum Service issued a leaflet in English, French, Arabic and Farsi, providing information in simple language on the rights under the Dublin Regulation of asylum seeking UAMs. The lack of information is a concern. The representatives of the European Asylum Support Office (EASO) have, for example, explained to me that, although UAMs are concerned by the relocation scheme, it is difficult to explain it to them. In my view, up-to-date child-friendly material should be produced in different languages explaining to each age group their rights and applicable procedures.

i) Criminal activities

There have been several reports of refugee and migrant children engaging in criminal activities, such as drug-trafficking and prostitution, in order to earn money. Reference was also made during my mission to Greece to cases of sexual exploitation of refugee and migrant children. However, it is difficult to assess whether these were isolated instances or whether they were part of a pattern. There is also a danger that the tightening up of entry procedures and the closing down of borders will result in families and UAMs leaving the camps and “shelters” to seek the help of smugglers. This exposes them to a risk of violence and exploitation by traffickers. These issues are of direct relevance to the work of the Group of Experts on Action against Trafficking in Human Beings (GRETA), which is responsible for monitoring implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, and the Committee of the parties to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. These bodies to pay, each within its terms of reference, specific attention to the issues identified above and consider making urgent requests for information to the States Parties concerned. The objective would be to prevent or redress serious human-rights violations in connection with the recent migratory flows.

5. Integration policies with a clear non-discrimination component

a) Difference with previous migratory flows

A question that came up at many of my meetings in Greece, especially those with the mayors, was the attitude of the local population *vis-à-vis* refugees and migrants. It should be made clear that this is not the first time that refugees and migrants have arrived in big numbers in Greece. Many had already been present on Greek territory, regularly or irregularly, when the crisis started; and many of these had definitely made the country their home. However, the current migratory flow is seen as different, since it has coincided with the economic downturn. Moreover, most refugees and migrants involved have arrived in Greece without any intention to stay.

b) Local population's attitude

Most of my interlocutors agreed that the local population's attitudes *vis-à-vis* recently arrived refugees and migrants were probably very much affected by a shared perception that this would be a temporary phenomenon; this group of persons was seen as merely transiting through the country. It was reported to me that - some negative reactions notwithstanding - the local population was in general either supportive (a reaction that is very much appreciated given that the country has been subject to austerity for many years) or indifferent. Various explanations have been advanced for these attitudes: Most of the Greek inhabitants of Chios come from families with a refugee past;^[41] the Athens local authority adopted a firm and fair stance;^[42] and most Athenians and Chioties pragmatically accepted that it was better to build centres for refugees and migrants on the outskirts than having wild camps in the middle of their cities.^[43] However, everyone I met in Greece expressed concern as to what would happen when the local population realised that many refugees and migrants were there to stay.

c) Integration policies

It is clear that integration policies are needed.^[44] For these to work, refugees and migrants should be equally distributed throughout the country.^[45] Greek mayors should follow the good example set by the ones in Athens and Chios. It goes without saying that the fight against intolerance and discrimination should be an essential part of the integration policies that will be put in place.

6. Safety at sea

I was informed that the Greek authorities continue to take measures to ensure the safety of those arriving by sea - the Aegean Sea essentially. Co-operation with NGOs, whose contribution in this respect is remarkable, was reported to be very good. It is also hoped that the arrival of the NATO ships - as agreed by the North Atlantic Council meeting at the level of Defence Ministers - will help lay the basis for enhanced co-operation between the Greek and Turkish authorities.^[46]

III. “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”

1. Introduction

During my mission to “the former Yugoslav Republic of Macedonia”,^[47] I had the privilege of discussing with the Minister of the Interior, Mr Oliver Spasovski, as well as officials of the Ministry of Labour and Social Policy. I also had the opportunity to exchange views with the representative of the UNHCR, Mr Mohammad Arif, and his colleagues. Moreover, I visited two camps for refugees and migrants, one on the border with Greece (Vinojug, Gevgelija) and another on the border with Serbia (Tabanovce).

I would like to thank the authorities of “the former Yugoslav Republic of Macedonia” for their cooperation in the preparation and conduct of the visit. I should also thank the representatives of the UNHCR for their input and assistance.

2. Accommodation of refugees and migrants

When visiting the two camps in “the former Yugoslav Republic of Macedonia”, I was faced with very different situations. The Gevgelija one, near the Greek border,^[48] was almost empty,^[49] while the Tabanovce one, near the Serbian border, was seriously overcrowded.^[50] These camps' population consists of persons who were transiting through the country when “the Balkan route” was closed. Very few wish to apply for asylum there.^[51] One can understand the reasons why it is psychologically difficult for these persons to move to Gevgelija, a camp which appears further removed from their preferred end-destination.^[52]

Whereas it is not easy to predict what will happen to the refugee/migrant population of “the former Yugoslav Republic of Macedonia”, there can be no doubt that, while in the country, they should be provided with adequate accommodation.

3. The human-rights implications of policing the border with Greece

The border with Greece is currently policed by officers from “the former Yugoslav Republic of Macedonia” and other Council of Europe countries.[53] Refugees and migrants from the other side of the border quite regularly try to enter the territory of “the former Yugoslav Republic of Macedonia”.[54] There have been repeated reports about push-backs and even allegations of ill-treatment by border guards. While it is not for the Special Representative of the Secretary General to investigate these allegations our Organisation should have a role in ensuring respect for human rights in all situations where there is a risk of their infringement, by *inter alia* - providing training to law-enforcement personnel and supporting national preventive mechanisms.

4. A group of persons camping next to the Tabanovce camp in front of the border with Serbia

While in “the former Yugoslav Republic of Macedonia”, my attention was drawn to the presence of a group of some 400 persons in a makeshift camp next to Tabanovce and in front of the border to Serbia. This group of people (half of whom were children) had been staying there since the day when “the Balkan route” was closed and could not be convinced to abandon their plan to move on. I went to the site on the last day of my mission to “the former Yugoslav Republic of Macedonia”. These persons’ extreme living conditions were clearly unacceptable (flimsy tents in a muddy field, no running water) and further aggravated by the inclement weather.

On 11 March I issued a statement calling on the authorities of “the former Yugoslav Republic of Macedonia” urgently to pursue their efforts to alleviate the suffering of this group of persons.[55] Action was taken to this effect, immediately after my mission: these persons were provided with proper shelters on the site where they had been camping. According to information I have recently received, most of these persons are now accommodated within the Tabanovce camp, about the capacity of which I have already made a recommendation, while the remainder have been moved to the Gevgelija one.

It would appear that a solution has been found - at least for the short-term - to one of the many problems I identified during my mission to Greece and “the former Yugoslav Republic of Macedonia”. At the same time, one should not lose sight of the fact that a lot of progress needs to be made on several other fronts before we can say that we have tried to ensure respect for the human rights of all those coming within the jurisdiction of our member states (as *per* Article 1 of the European Convention on Human Rights).

IV. CONCLUSIONS

This report on my first fact-finding mission is not meant to draw a full picture of the situation in which refugees and migrants find themselves today in Greece and “the former Yugoslav Republic of Macedonia”. Nor does it aim at fully analysing all relevant policy considerations. Its purpose is to identify some issues in respect of which the Council of Europe could provide meaningful assistance to these two member States - with their agreement - in order to ensure that they can face the challenges of migratory flows whilst respecting their obligations under the Organisation’s human-rights mechanisms.

I have a number of recommendations to make to this effect. Thus, the Council of Europe should:

- issue a call for more relocation offers in favour of refugees wishing to leave Greece and for faster relocation procedures; it could also encourage its non-EU member states to make relocation offers;
- assist the Greek authorities in reviewing their legislation on refugees, migrants and UAMs to ensure its full compliance with European human-rights standards;
- mobilise resources (via the CEB and its contacts with other donors, such as the EEA and Norway Grants) to assist the Greek authorities in building additional capacity for adequately accommodating refugees and migrants and ensuring that their needs in terms of information, interpretation, education and psycho-social services are fully met;
- assist the Greek authorities in introducing improved case-management so as to ensure that the Greek administrative-court system can process without delays appeals against decisions rejecting asylum claims or against decisions on the removal from Greek territory;
- assist the Greek authorities, in organising comprehensive human-rights training for all competent staff and, in particular, those examining asylum applications and appeals against decisions to remove from the Greek territory;
- assist the Greek authorities in developing the expertise and professional capacity that is necessary for providing alternatives to detention for families and UAMs, pending the outcome of their asylum applications and the hearing of any related appeals; the CEB could contribute to the building of the necessary physical infrastructure in this connection;
- assist the Greek authorities in strengthening the Greek national child-protection system so that it can prevent and redress human-rights violations during the migratory process;
- assist the Greek authorities in the development of integration policies for refugees, through the transfer of know-how and the sharing of good practices; some of the Organisation’s key monitoring mechanisms, such as the European Commission against Racism and Intolerance (ECRI), have built extensive relevant expertise, which can be very usefully relied on for these purposes; so has the Intercultural Cities programme;
- mobilise resources (via the CEB) to assist the authorities of “the former Yugoslav Republic of Macedonia” in building additional capacity for adequately accommodating refugees and migrants; and
- assist the authorities of “the former Yugoslav Republic of Macedonia”, in particular through training in ensuring that the border with Greece is policed in compliance with the country’s human-rights obligations.

It goes without saying that I will continue following closely the developments in both countries, in consultation with their representatives and all competent Council of Europe departments. I will also endeavour to identify other on-the-ground situations where a fact-finding mission by the Special Representative will be of real added value for the Organisation and its member states.

Strasbourg, 8 April 2016

Tomáš Boček

Special Representative of the Secretary General on Migration and Refugees

APPENDIX I

Mandate for the Special Representative of the Secretary General of the Council of Europe on Migration and Refugees

The need for a swift and concerted action

A number of Council of Europe member states are experiencing an unprecedented influx of migrants and refugees. As a consequence, their resources and their capabilities to receive and process arriving individuals in accordance with their national legislation, international standards and their international obligations are under growing strain.

The Council of Europe is already mobilized in providing assistance and advice, notably through the Commissioner for Human Rights, Parliamentary Assembly and the Committee of Ministers. In September 2015, the SG issued a guidance to the member States regarding the "Protection of migrants and asylum-seekers: main legal obligations under the Council of Europe Convention".

Other bodies, and especially the Committee for the Prevention of Torture and the European Court of Human Rights are, or are likely to, address these issues within the context of their regular activities.

However, in this highly volatile situation, we are experiencing unpredictable developments, notably sudden concentrations of high numbers of refugees and migrants in certain locations, with instant and serious threats to their well-being and rights under the European Convention on Human Rights, notably Article 3 ("Inhuman and degrading treatments") and Article 5 ("Right to liberty and security").

Any such human rights concern can, and are likely to be eventually addressed through existing Council of Europe mechanisms, but the volatility and gravity of the situation requires additional, exceptional, flexible and rapid means of action to respond to suddenly emerging threats to the rights protected under the European Convention on Human Rights.

In view of the gravity and the urgency of the situation, the SG has decided to appoint a Special Representative of the Secretary General on Migration and Refugees. The Special representative will carry out fact-finding missions, strengthen coordination of the relevant activities within the Council of Europe, and establish communication and co-ordination channels with our international partners.

The objective is to enable the Council of Europe to provide immediate assistance and support to member states concerned, by complementing activities of other relevant Council of Europe bodies and by coordinating our action with other international partners, notably the UNHCR, IOM, UNICEF, EU, FRONTEX and others.

The tasks of the Special Representative

The Special Representative will work with the relevant structures within the Council of Europe, the member States, the European Union and the international organisations, driving the assistance and support of the organisation to the member States and fostering international co-operation in this area.

The mandate of the Special Representative will include:

- Seek and collect information, including through fact finding missions, on human rights situation of refugees and migrants and report to the Secretary General, notably on the basis of the guidance on the "Protection of migrants and asylum-seekers: main legal obligations under the Council of Europe Convention."
- Liaise and exchange information with relevant international organisations and specialised agencies.
- Provide input to the Secretary General on ways to strengthen Council of Europe assistance and advice to member States on human rights treatment of refugees and migrants.
- Strengthen the response of the Council of Europe, notably by reinforcing the work of the Migration co-ordinator and working closely with the Council of Europe's Commissioner for Human Rights, Parliamentary Assembly, Congress and other relevant structures within the organisation.

Appointment, reporting and duration of the mandate

Following the usual consultations, the SG intends to appoint Ambassador Tomáš Boček as his Special Representative on Migration and Refugees.

The Special Representative will report to the SG/PO, but on a daily basis be integrated in the relevant structure in DGI. He will take up his duties as of 1 February next year.

The SG will inform on a regular basis the Committee of Ministers on the developments, accompanied, when necessary, with recommendations on action to be taken.

The Special Representative will not be a permanent structure and its mandate will end when the extraordinary circumstances will be brought under control.

APPENDIX II

Programme in Greece

Monday, 7 March

- 14:40 Arrival in Athens
- 16:00 Meeting with the Mayor of Athens, G. Kaminis
- 17:00 Meeting with the Deputy Ombudsman, G. Moschos
- 18:30 Visit to Eleonas site

Tuesday, 8 March

- 08:15 Arrival in Chios
- 08:30 Meeting with the UNHCR
- 09:00 Visit of Saint-Ermioni beach
- 11:30 Visit of VIAL hotspot
- Meeting with the authorities in charge of the hotspot
- Meeting with NGOs active in the hotspot

- 15:30 Visit of Souda camp
 16:30 Meeting with the Mayor of Chios, E. Vournous
 18:55 Arrival in Athens
 20:30 Working dinner with NGOs
 Wednesday, 9 March
 07:30 Working breakfast with the UNHCR
 09:00 Visit of the Eliniko camp
 10:30 Meeting with the Minister of Maritime Affairs and Islands Policy, T. Dritsas
 11:30 Visit of Petralona centre for unaccompanied minors
 13:00 Meeting with the Alternate Minister of Defence, N. Vitsas
 14:30 Meeting with the General Secretary for Population and Social Cohesion,
 V. Papadopoulos
 15:30 Meeting with the Deputy Minister of Foreign Affairs, D. Mardas
 16:30 Meeting at the National Centre for Social Solidarity
 17:30 Meeting with NGOs
 Thursday, 10 March
 09:35 Arrival in Thessaloniki
 10:30 Meeting with the General Secretary for Transparency and Human Rights,
 K. Papaioannou
 11:30 Visit of Diavata camp
 13:00 Visit of Nea Kavala camp
 14:00 Visit of Idomeni site - meeting with the UNHCR

APPENDIX III

Risk of a new humanitarian disaster on another Balkan border - Tabanovce

Statement by Tomáš Boček,

Special Representative of the Secretary General on Migration and Refugees

Strasbourg 11.03.2016 – Today, as part of my first fact-finding mission (*), after meeting the Minister of the Interior of "the former Yugoslav Republic of Macedonia", Oliver Spasovski, I visited the Tabanovce camp at the border with Serbia.

Next to the camp, still on the territory of the "the former Yugoslav Republic of Macedonia", almost 400 persons (more than half children) have been camping for several days now, just in front of the Serbian border. Their extreme living conditions are unacceptable and further aggravated by the adverse weather conditions (for example make-shift tents in a muddy field, no running water).

It is clear that, if the situation does not change dramatically, there will soon be a humanitarian disaster. To prevent this from happening, the authorities of "the former Yugoslav Republic of Macedonia" should urgently pursue their efforts to alleviate the suffering of this group of persons, who up to now cannot be convinced to abandon their plan to move on. It goes without saying that the authorities of Serbia and "the former Yugoslav Republic of Macedonia" should find an acceptable longer-term solution to these persons' plight.

Yesterday I went to Idomeni, Greece on the border with "the former Yugoslav Republic of Macedonia" and I am deeply concerned about the catastrophic situation of more than 13 000 people gathered there, of whom more than 8000 are women and children.

I urge member States to fulfill their legal, political and moral engagements to ensure respect for the human rights guaranteed under the European Convention. The Council of Europe stands ready to provide appropriate assistance to all of them in dealing with the human rights implications of the migration flows they have to manage.

 (*) Tomáš Boček, Special Representative of the Secretary General on Migration and Refugees, conducted a fact-finding mission to Greece and "the former Yugoslav Republic of Macedonia" from 7 to 11 March 2016.

APPENDIX IV

Programme in "the former Yugoslav Republic of Macedonia"

- Thursday, 10 March
 15:00 Arrival in "the former Yugoslav Republic of Macedonia"
 15:15 Visit of Gevgelija camp
 18:30 Arrival in Skopje
 Friday, 11 March
 08:00 Working breakfast with the UNHCR
 09:00 Meeting at the Ministry of Labour and Social Policy

10:00	Meeting with the Minister of Internal Affairs, O. Spasovski
11:15	Visit of Tabanovce camp
13:15	Departure from "the former Yugoslav Republic of Macedonia"

[1] This document has been classified 'restricted' at the date of issue; it will be declassified in accordance with Resolution Res(2001)6 on access to Council of Europe documents.

[2] In this mission I was supported by: my legal advisor, Mr Stephanos Stavros; Ms Livia Stoica-Becht, from the Children's Rights Policy-Coordination Division of the Council of Europe; Ms Päivi Suhonen, one of the Council of Europe communications officers; and another Council of Europe staff member, Mr Sebastian Rietz. I was also assisted by two interpreters: Mr Alexander Zaphiriou, while in Greece; and Ms Jasna Soptrajanova, while in "the former Yugoslav Republic of Macedonia".

[3] The mandate of the Special Representative appears in Appendix I.

[4] The term refers to the itinerary followed by many refugees and migrants trying to reach Western and Northern Europe from Turkey, via the Balkans.

[5] The term refers to an unprecedented migration flow, started in 2015, involving a rising number of persons travelling across the Mediterranean Sea and/or through South East Europe to seek asylum in various European countries. It is a crisis because of the loss of life involved, the hardship to which these persons are exposed and the difficulties encountered by the authorities in the recipient countries in their efforts to accommodate them.

[6] Strictly speaking, it is not an agreement; rather, it is a common statement issued on 18 March 2016.

[7] The programme figures in Appendix II.

[8] In the Ministry of the Interior, there are two alternate ministers, one of them being Mr Yiannis Mouzalas, Alternate Minister of Migration, with whom I had an exchange of views in Geneva on 30 March on the sidelines of the UNHCR Conference on Pathways for the Admission of Syrian Refugees. The General Secretary dealing with Population and Social Cohesion Issues works with the alternate minister for migration.

[9] According to the bill referred to in the next footnote, the administrative unit headed by Mr Papadopoulos would become the General Secretariat for Migration Policy.

[10] This bill was meant to create some of the conditions that were necessary for the application of the EU-Turkey Agreement. The bill was submitted to Parliament on 30 March and was enacted on 1 April.

[11] Mr Papaioannou had the courtesy of accompanying me on my visit to the northern part of Greece.

[12] It is in Chalkios.

[13] Where the Athens metropolitan area is.

[14] Many of them are non-Greek nationals.

[15] The Greek word for hospitality, which (by many accounts) represents a core Greek value.

[16] According to some of my interlocutors, the issue had been neglected for years, when migrant flows were still manageable.

[17] During the visit, I was informed that by the end of March there would have been 50 000 places. By 24 March, it was clear that this goal could not be achieved.

[18] The EU Emergency Relocation Mechanism provides for the relocation of 160 000 persons, including 66 400 out of Greece and 39 600 out of Italy. However, the process is rather slow. Thus, as of 21 March, only 7 015 places had been made available and only 953 persons had been relocated, of whom 569 out of Greece.

[19] According to the UNHCR, recent arrivals spiked on 29 March at 766, after several days of arrivals averaging about 300 people a day.

[20] At the time of the visit: the Eleonas camp hosted 712 persons, while it has 720 places; the Souda camp on Chios was operating close to full capacity, which is 900 persons; in the part of the Eliniko camp I visited, 1 500 persons were accommodated in overcrowded conditions; the Diavata camp hosted 1 980 persons (capacity of 2 200); and in Nea Kavala there were 3 300 persons, while officially it has 4 200 places.

[21] On 1 April, the UNHCR reported that the reception centre next to the Moria hotspot on Lesbos hosted 2 300, while its stated capacity was 2 000; and that the reception centre next to the Vial hotspot on Chios hosted up to 1 700 people, while its maximum capacity was 1 100.

[22] The Idomeni site is a case apart, given the authorities' reluctance to be involved.

[23] Very often, they are the ones who provide food.

[24] Some NGOs are reluctant to operate in places of deprivation of liberty or even camps run by the armed forces.

[25] See also footnote 33.

[26] Eliniko is not part of the municipality of Athens.

[27] It was reported to me that the facility had been cleaned the day before my visit.

[28] *Inter alia*, in order to persuade those camping in Idomeni to abandon the site; see below.

[29] It is planned to create 500 more places in Eleonas and, possibly, 100 more in Diavata.

[30] Some of the issues concerning the operation of the centres for unaccompanied children are discussed in point 4.

[31] Due to time constraints, I did not ask to visit the port of Piraeus, where an ever increasing number of refugees and migrants are hosted. By all accounts, despite the involvement of many NGOs and other civil-society actors, the situation there is serious. It seems that the Greek authorities are planning to move these persons out of the Piraeus port.

[32] See the statement I issued at the end of the visit in Appendix III.

[33] In the reception centre next to the Chios hotspot I met a number of persons who were supposed to be sent back to their countries of origin. According to the authorities, they were kept there because there was insufficient space in the overcrowded local police facility. The legal device used for their continued stay in the reception centre was delaying their formal registration. It would appear that it was assumed that these persons were not entitled to international protection because of their citizenship. This assumption seems to apply to Moroccans, Algerians, Tunisians, Bangladeshis and Pakistanis. In practice, it results in their quasi-automatic deprivation of liberty.

[34] The term is understood here as including all forms of protection.

[35] Some of these appeals - for example those against decisions rejecting asylum claims on the ground that the applicant has crossed a safe third country - could suspend automatically the removal of the persons concerned from Greek territory.

[36] While Greece registered 2 300 UAMs in 2015, "the former Yugoslav Republic of Macedonia" claims that 15 000 such children crossed its borders from Greece from mid-June to late November 2015. As for Sweden, it registered 23 300 asylum claims from UAMs from January to October 2015.

[37] 432 beds are currently available. During our discussions, EKKA officials referred to a waiting list of 120 minors, which by the end of the day would have increased to 140.

[38] It was reported to me that two full-time and two part-time staff were dealing with these issues.

[39] METAction, via its founder Ms Laura Papa, was awarded the 2015 North-South Prize of the Council of Europe.

[40] Those subject to a removal order, or whose parents are subject to such an order, do not.

[41] Many persons who left Asia Minor, following the Greco-Turkish war of 1919-22, settled in Chios.

[42] Not being prepared to compromise, for example, on its policy of non-discriminatory access to services and welfare benefits.

[43] The well-known wild camp in Victoria square, Athens was dismantled shortly before my mission.

[44] The municipality of Athens has put in place structures for refugees' and migrants' integration, also involving refugees' and migrants' representatives.

[45] On the basis of schemes taking their wishes into account.

[46] At the time of my mission, only four out of the 56 foreseen ships had arrived. Their role would be limited to conducting reconnaissance, monitoring and surveillance of illegal crossings in the Aegean Sea in cooperation with the national authorities.

[47] The programme figures in Appendix iv.

[48] The camp had been built with a contribution by, *inter alios*, CEB.

[49] 12 Syrians, who did not have the means to buy train tickets, had remained there.

[50] The Gevgelija camp has a capacity to host 1 000 persons. The Tabanovce camp was initially planned to provide shelter for 500 persons for few hours; during the visit there were about 1 100 persons in Tabanovce - with 400 persons camping in front of the border with Serbia (see point 4).

[51] 15 asylum applications have been filed. 10 more persons have made known their intention to apply but have not been able to do so so far. Two UAMs have been granted subsidiary protection.

[52] On 4 April there were about 1 040 persons in the Tabanovce camp, 125 persons inside the Gevgelija camp and 10 outside (these had been involved in the Suva river incident, see footnote 54), 40 persons in a reception centre for asylum seekers, and 12 persons in a "safe house".

[53] The latter cannot engage in any kind of operations without being accompanied by at least one police officer from "the former Yugoslav Republic of Macedonia".

[54] As a matter of fact, after my mission to "the former Yugoslav Republic of Macedonia" there was an attempt to cross into this country via Suva river; it involved a sizeable group of persons and tragic deaths by drowning.

[55] See Appendix III.

Related documents

↳ Committee of Ministers; Council of Europe

CM(2016)78-final / 11 May 2016 / English / CM-Public

126th Session of the Committee of Ministers (Sofia, 18 May 2016) - 2.c. Responding to the refugee crisis - Status report on the Council of Europe's responses to the migrant and refugee crisis –...