

# **SANCTIONING CHILDREN IN CONFLICT WITH THE LAW FOR SMUGGLING MIGRANTS AND HUMAN TRAFFICKING IN NORTH MACEDONIA**

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## **Abstract**

In this article, the authors refer to the issue of children in conflict with the law for actions of human trafficking and smuggling of migrants. The authors make a distinction between smuggling of migrants and human trafficking concluding that they are fundamentally different, although, in practice, the distinction between the two crimes is not always easy to establish. Then, the international frameworks and North Macedonia's legislative framework is subject of examination.

Although children are at most times victims of these crimes, there are cases when their role is on the perpetrators side. Four cases from the Macedonian judicial practice are analysed in this respect showing that children are involved (often by and with adults) into criminal activities of this type. One of the four cases relates to child trafficking and three relate to the smuggling of migrants.

The authors conclude that although the prosecution of traffickers is more successful, the identification of victims and assistance to them are still elements of the fight against trafficking to which not enough attention is paid in our country and beyond. When children appear as perpetrators of these crimes, the urgency is even more pronounced as they are usually children that faced risk before they took part in criminal activities. Macedonian courts tend to impose educational and alternative measures rather than classical punishments.

**Key words:** justice for children, human trafficking, smuggling, sentencing, migrants.

## **1. Justice for children in North Macedonia – short introduction**

Justice for children is an issue that has been seriously taken into consideration in Republic of North Macedonia (hereinafter: RNM) in the last 15 years. Namely, in 2007 the first Law on juvenile justice has been adopted and it was subject to revision three times, until a new Law on Justice for children was adopted in 2013. The new legislative piece was better

corresponding to the terminology and substance to the provisions of the Convention on the Rights of the Child and other relevant international documents.

However, the reform process continued and a new draft – Law on Justice for Children was recently finished and is awaiting public debates and governmental and parliament procedures. The latest actions are performed in order to achieve the best interests of the child by defining this principle, upgrading the legal framework, creating consistency of the system of legal aid, strengthening of the protection of child victims and witnesses in the criminal procedure, introduction of new procedural provisions, strengthening of the mechanisms for prevention of child delinquency at local and central level and transposition of the Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132), and Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315).

A delegation of the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) carried out an evaluation visit to RNM from 14 to 18 March 2022 as part of the third evaluation round of the Convention on Action against Trafficking in Human Beings. The visit provided an opportunity to assess progress in the implementation of the Convention since the second evaluation report by GRETA published in 2018 in which several issues for immediate action were urged. GRETA will subsequently adopt a final report on North Macedonia in November 2022.

As to the practical aspects, in the last five years, the number of children in RNM reported for coming in conflict with the law by undertaking actions that constitute criminal offences are fluctuating but increasing in 2020. Namely, in 2016, 578 children were reported, whereas in 2020 that number went to 610. On the other side, the number of convicted children decreased from 468 in 2016 to 350 in 2020. The phenomenology of delinquency of children in RNM is characterized by the dominance of property crimes constituting almost 60% of total offences committed. Second on the list are the crimes against the public order and third, the crimes against life and body (State Statistical Office, Children Perpetrators 2016-2020).

The crimes against humanity and international law are very rare in practice when it comes to children in conflict with the law as perpetrators of such actions in RNM. In human trafficking and smuggling migrants, children are far more often victims than perpetrators.

Further in the paper, the legal and criminological aspects of human trafficking and smuggling of migrants are analysed, as well as, four cases where children were (co) perpetrators in actions that constitute offences of human trafficking and smuggling of migrants.

## **2. Human trafficking versus smuggling of migrants – legal and criminological aspects**

Human trafficking is the most serious violation of human rights. As a modern form of slavery, human trafficking is an international problem, a form of transnational organized crime, although internal human trafficking is on the rise.

Human trafficking is often hard to distinguish from smuggling of migrants. However, they are fundamentally different, although, in practice, the distinction between human trafficking and smuggling of migrants is not always easy to establish. Smuggling of migrants typically involves crossing of borders in illegal manner and it is usually consensual on both parts – the smuggler and the migrant. The connection between the smuggler and the person terminates upon arrival to the destination country (Toney-Butler, Ladd, Mittel 2022). However, many trafficked persons, men as well as women, begin their journey as smuggled migrants, contracting with an individual or group for a fee to assist them in their illegal movement, but later some smuggled migrants are forced to continue this relationship in order to pay the high transport costs (Arnaudovski 2007). Therefore, often smuggling of migrants and trafficking in human beings take place in parallel and that is why they are often equated with each other. They differ, as noted above, in a way that the smuggling of migrants is voluntary, i.e., with the consent of the persons migrating from one place to another for a certain monetary compensation, while in human trafficking there is no element of consent from the persons who are the subject of this crime. The difference is obvious also in the very preparation and organization of these two criminal acts, the recognition which confuses the officials.

The difference can also be seen in the way the human trafficking process is analysed through the following stages: recruitment, transit and final destination. Recruitment is the stage in which people usually try to recruit their victims (mostly young people) by offering fake jobs through job advertisements abroad, mediation for obtaining visas to travel abroad, offering help to those who want to leave their home country for economic reasons, but do not have the appropriate documents for that, etc. Transit is the stage very difficult to distinguish

from migrant smuggling. At this stage, the potential victims or migrants are still not aware of their condition, i.e., they believe in what's promised. The migrant or potential victim of trafficking is convinced that that he or she will reach the desired destination. Some of them have paid for the services in advance, all in order to be transferred to the final destination. Most often, the first contact with potential victims or migrants is made by the authorized officials of the border police who control the traffic. The final destination is the last stage. The smuggled migrant reaches the desired country and this is where his contact with the criminal organization that secured him entry into the country ends. While the victim of human trafficking has no freedom, his/her documents are confiscated, he/she lives in miserable and inhuman living conditions, and at the same time he/she is blackmailed to provide sexual services to clients, sell drugs and do many other hard physical things for which no financial compensation will be paid to him/her or the money will be taken by his/her boss. Many of them end up in the markets for human organ trafficking. This is where the difference between human trafficking and migrant smuggling can often be made (National Commission, Annual Reports).

Human trafficking is subject of a number of international legal instruments. For example, the most important international instrument to combat trafficking is the Palermo Protocol, a supplement to the UN Convention against Transnational Organized Crime (2000); then the two International Labour Organization (ILO) conventions that focus on forced labour or services: The ILO Forced Labour Convention (Convention No. 29 of 1930) and its Protocol; The UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949); The International Covenant on Civil and Political Rights (ICCPR); The Convention on the Elimination of All Forms of Discrimination against Women; The Convention on the Rights of the Child (1989), and the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (2000); etc. In accordance with the Constitution of Republic of North Macedonia, these international documents are an integral part of the legislation of the country. Also, RNM has concluded several bilateral agreements with various countries that regulate: legal aid in criminal (and civil) cases, extradition agreements, return agreements, i.e., takeover of persons whose entry and/ or stay in the country is contrary to the applicable regulations, agreements for mutual execution of court decisions and for cooperation in the fight against terrorism, illicit drug trafficking and organized crime etc.

In addition to criminalizing trafficking in human beings (Article 418-a) and Smuggling of migrants (Article 418-b), other relevant criminal offenses in the Criminal Code

are: Organizing a group and inciting committing the offenses of trafficking in human beings, trafficking in children and smuggling of migrants (Article 418-c), Trafficking in children (Article 418-d), Abuse of the visa-free regime with the member states of the European Union and the Schengen Agreement (Article 418- e), Establishment of a slave relationship and transportation of persons in a slave relationship (Article 418).

The position and protection of these victims is especially strengthened by the provisions of the Macedonian Law on Criminal Procedure which regulates the special rights of vulnerable categories of victims (Article 54) and the examination of particularly vulnerable victims and witnesses (Article 232). Furthermore, important are the provisions of the Law on Justice for Children, regulate the Special Rights of Procedural Protection (Article 146) and the Special Measures of Procedural Protection of Child Victims and Child Witnesses (Article 150). There are provisions for protection of victims of trafficking in the Law on Witness Protection and in the Family Law in Articles 124 and Articles 177-a - 177-m. Social protection of persons victims of trafficking in human beings is envisaged in the Law on Social Protection (Article 11), as well as intervention care (Article 92), temporary residence services (Article 83), right to health care (Article 66) and the Law on Child Protection are also important.

Trafficking in human beings and children is characterized by a high dark figure due to: the large number of unreported cases; poor identification; fear of being reported by victims because they are or have been threatened by traffickers; fear of being detained as illegal migrants; distrust in the competent institutions that implement the law; and it often happens that victims do not recognize themselves as victims.

North Macedonia is a source, transit country and destination for men, women and children who are victims of human trafficking for sexual services and forced labour. According to the annual reports of the National Commission for Combating Trafficking in Human Beings and Illegal Migration, two thirds of the identified victims in RNM are between 12 and 18 years old. The foreign victims of sex trafficking in RNM, are mostly from: Albania, Bulgaria, Serbia, Bosnia and Herzegovina, Ukraine and Kosovo. Macedonian citizens are often victims in: Greece, Bulgaria, Croatia and other countries in southern, central and Western Europe.

According to the reports of the National Commission for Combating Trafficking in Human Beings for 2014-2020, we can conclude that the largest number of victims was identified in 2018. In 2014 there were eight victims with a tendency to decrease in the following years, but then sharply in 2018 the total number increased. All years are

characterized by a larger share of child victims in the total number of victims. Sexual exploitation has the largest share, followed by forced marriages. In terms of citizenship, people with Macedonian citizenship have the largest share. In terms of gender, the exploitation of females is more prevalent than males (National Commission, Annual Reports). Most of the victims are victims of sexual exploitation, forced marriages and labour exploitation (begging). Most of the victims of trafficking in human beings and children are domestic citizens (83.3%) and then foreign nationals (16.7%) (National Commission, Annual Reports).

According to the research conducted by the Ministry of Interior and the Annual Reports of the National Commission for Combating Trafficking in Human Beings and Illegal Migration, the following are the characteristics of the perpetrators of the crime of trafficking in human beings and children in RNM: gender - male; age: 20-45 years; citizens of Macedonia (most); nationality: Macedonian, Albanian and Roma ethnicity; education: primary or secondary education or no formal education; profession: owners of a catering facility or employees in the same, unemployed; perpetrators: criminal groups of 3-5 members; criminal past: most often perpetrators of crimes against life and body, sexual freedom and sexual morality, marriage, family and youth, against property, public order, against humanity and international law; method of commission: sexual exploitation through forced prostitution and labour exploitation committed by misleading the victim into being legally employed and reported; place of execution: catering facilities in the area of the north-western part of Macedonia; purpose of execution: gaining criminal gain/profit (National Commission, Annual Reports).

The most common causes of human trafficking are: poor socio-economic conditions; political factors; poverty; high unemployment rate of young people; employees, but low-income; Socially marginalized groups (including Roma communities and street children facing subsistence struggles and very limited opportunities for legitimate work and livelihoods for themselves and their families in their places of origin). "However, a fact that is particularly worrying and alarming about the need for vigorous action is the continued rise of child victims of trafficking." (Ministry of Interior 2020).

According to the USA State Department Report, RNM in the past six years (2016-2021) is ranked in the TIER 2 group, unlike the period 2015-2019 when it was ranked in the TIER 1 group. According to the latest report, "The Government of North Macedonia does not fully meet the minimum standards for the elimination of human trafficking, but is making significant efforts to achieve this." Authorities have identified several victims and stepped-up

overall prevention measures, including the preparation of the National Strategy and National Action Plan for 2021-2025 and the holding of regular virtual meetings of coordination bodies." (State Department Report 2021).

Smuggling of migrants as already mentioned is incriminated in Article 418 –b of the Macedonian Criminal Code. The international basis for this incrimination is the Protocol against the smuggling of migrants by land, sea and air, supplementing the United Nations Convention against transnational organized crime (Protocol 2000). The object of protection on one hand covers the basic freedoms and rights of migrants and on the other the internationally statutory regime of legal transfer of migrants from one country to another (Kambovski 2015).

This provision covers several forms of the crime including: violent smuggling, trafficking in migrants and more serious forms of crime related to endangering the life or health of the migrant, treating the migrant in particular humiliating or cruel way, preventing the migrant from exercising the rights that belong to him/her according to the international law; committing the crime against a child and committing the crime by an official in the performance of the service (Kambovski 2015).

The prescribed penalties for human trafficking and smuggling of migrants vary between the forms, but most of them provide for an imprisonment of up to 20 years (Criminal Code, article 418-a, 418-b).

According to the official statistical data, annually on average 50 adult perpetrators are convicted for smuggling of migrants (50 in 2017, 39 in 2018, 59 in 2019 and 52 in 2020), but only 1 person was convicted in 2017 for human trafficking, 6 in 2018 and no perpetrators were convicted in 2019 and 2020 (State Statistical Office, Perpetrators of Criminal Offences of Human Trafficking and Smuggling of Migrants). This means that the crime of migrant smuggling is more common in North Macedonia than the human trafficking when it comes to adult perpetrators and this might be due to the high dark figure (undiscovered cases) or the lack of evidence for different legal qualification of some of the cases.

When it comes to children – perpetrators of these offences, in the period 2017-2021, on the territory of RNM only 2 cases are registered. The perpetrators of one case of smuggling of migrants and one case of trafficking in children (total 2 cases) are children in conflict with the law over the age of 16. In both cases, the court sentenced them with the enhanced supervision by the legal custody authority (MAKSTAT State Statistical Office Database 2017-2021).

### **3. Presentation of cases: Children in conflict with the law for trafficking in human beings and smuggling of migrants**

The Basic Criminal Court Skopje - Department for Children, in the period from January 2019 to March 2022, issued four judgements in which children in conflict with the law over 16 years were found guilty for crimes of child trafficking and smuggling of migrants.

#### **Case 1 - Child trafficking**

The Council for Children at the Basic Criminal Court Skopje with a Judgement KM.br.44/19 of 02.09.2019 found guilty one child in conflict with the law over 16 years, a citizen of the Republic of North Macedonia, because he committed actions that according to the law constitute criminal offense Trafficking in a child under Article 418-d paragraph 1 and in accordance to Article 22 of the Criminal Code (joint perpetration). The court scheduled and held a private (not public) and oral trial at which verbal and material evidence were presented on the basis of which it found that in the second half of April 2019, the child in conflict with the law over 16 years agreed with the defendant S.O., who was at the age of 45 to sell him his female cousin, who was a child at the age of 16, for 1,600 EUR. Defendant S.O., although he knew that the victim was a child, bought the victim from the child in conflict with the law over the age of 16 for the purpose of forced marriage, after he had previously seen her at a wedding and he liked her. The child in conflict with the law over 16 years old called his female cousin for coffee and took her on a motorcycle to the agreed place where the defendant S.O. was waiting for them. Defendant S.O. after giving the agreed amount to the child in conflict with the law over the age of 16, he used force to drag the victim to the nearby forest where he told her that she would be his wife and that he will take her to his village where they would live. He also tried to rape her, but failed due to the resistance of the victim. The victim clearly told the defendant S.O. that she did not want to be his wife, but he called a taxi, using force and threatening her, but on the way, near the village R., the victim asked for water and the defendant went out to buy her water because the taxi driver refused to go to buy water. At that moment the victim fled to her relatives that lived in that village, she called her brother, who came to pick her up and they reported the incident to the police station.

The trial was attended by the public prosecutor, the child in conflict with the law over 16 years, his lawyer, the child's parent and a representative of the Centre for Social Affairs.



The child in conflict with the law over 16 years old described the event, pleaded guilty and stated that he sincerely regretted what he did and that he will not commit crimes in the future.

The court found that the guilty plea is corresponding to the verbal and material evidence presented and found the child in conflict with the law over 16 years of age guilty and that he had committed acts constituting a crime of Trafficking in a child under Article 418-d paragraph 1 in accordance with Article 22 of the Criminal Code and pronounced an alternative measure: suspended sentence - probation with protective supervision (giving obligation to apologize personally to the victim). The probation period determined by the court is 3 years, in which period the child should not commit a new crime, and if in this period he reappears as a perpetrator, he will be sentenced to 2 years in prison.

In determining the criminal sanction, the court took into account the aggravating and mitigating circumstances, as well as being guided by the child's personality and the material conditions of the family in which he lives. The court found that he is the third child in the family, his father earns a minimum wage of 200 EUR, his mother is unemployed and the family is engaged in agriculture. The child finished fourth grade of primary education and had not previously come into conflict with the law. The court considered that the sanction imposed, the warning with the threat of imprisonment would have a sufficient impact on his upbringing, re-education and proper development.

### **Case 2 - Smuggling of migrants**

The Council for Children at the Basic Criminal Court Skopje with a Judgement KM.br.168/21 of 12.01.2022 found guilty one child in conflict with the law over 16 years, a citizen of the Republic of Serbia, because he committed actions constituting a criminal offense Smuggling of migrants under Article 418-b paragraph 1 in accordance with Article 22 of the Criminal Code (Joint perpetration). The court scheduled and held a private (not public) and oral trial at which verbal and material evidence were presented on the basis of which it was determined that on 04.12.2021 the child in conflict with the law over 16 years together with his adult brother, the defendant F.D., smuggled migrants across the border between the Republic of Serbia and the Republic of North Macedonia for a fee of 300 EUR. Defendant F.D. drove an Opel Corsa vehicle in which was the child in conflict with the law over 16 years old and there were 9-nine illegal migrants in the vehicle who were transported at an illegal border crossing from the Republic of Serbia to the Republic of North Macedonia. In front of the toll station "Gevgelija" during police traffic control, the vehicle was stopped by a police patrol team and the migrants were detected. Six Cuban migrants with

identification documents were sitting in the back of the vehicle, while 3 undocumented migrants from India were found in the trunk.

The trial was attended by the public prosecutor, the child in conflict with the law over 16 years, his lawyer, the child's parent and a representative of the Center for Social Affairs. The child in conflict with the law over the age of 16 described the event, which corresponded to the verbal and material evidence presented, but stated that he did not know that the actions undertaken constituted a crime, and that he did not know that the people in the vehicle were illegal migrants. The court considered that with this statement the child did not deny the actions taken which constitute a crime and considered that the child admitted that he was transporting illegal migrants with his brother, as well as that he regrets and promises that in the future he will not appear as a perpetrator of other crimes.

The court found the child in conflict with the law over 16 years of age guilty because he committed actions that constitute a criminal offense Smuggling of migrants under Article 418-b paragraph 1 in accordance with Article 22 of the Criminal Code and imposed a sanction – Deportation (expulsion) of a foreigner from the country for a period 5-five years starting from the day of expulsion from the territory of RNM.

In determining the criminal sanction, the court took into account all the relevant circumstances and the conditions in which he lives. The Court found out that he lives in a family of five in Preshevo, Serbia, with father a lumberjack and a mother - a housewife. The child finished sixth grade of primary education in the Republic of Serbia. In Serbian records the child figures as perpetrator of theft and aggravated theft.

The court considered that the fact that the child is a foreigner and decided to pronounce a sentence of deportation from the country for a period of 5 years, in order to apply more permanent and intensified measures on the child for his family upbringing and re-education and protection of the best interest of the child.

### **Case 3 - Smuggling of migrants**

The Council for Children at the Basic Criminal Court Skopje with a Judgement KM.br.150/21 from 16.02.2022 found guilty a child in conflict with the law over 16 years, a citizen of the Republic of North Macedonia, because he committed actions that constitute a criminal offense Smuggling of migrants under Article 418-b paragraph 2 in accordance with Article 22 of the Criminal Code. The court scheduled and held a private (not public) trial at which it presented verbal and material evidence on the basis of which it was determined that on 11.03.2021 the child in conflict with the law over 16 years of age together with the already

convicted adults S.R., F.A. and A.K. accepted and transported on the territory of Republic of North Macedonia, 25 - twenty-five illegal migrants from Pakistan and India who illegally entered the Republic of North Macedonia from Republic of Greece, in a way that the convicted S.R. drove a Citroen Jumper truck transporting illegal migrants, the child in conflict with the law over the age of 16 drove a Golf vehicle in which was also the convicted F.A. and the convicted A.K. drove a Seat Leon vehicle, which vehicles were moving in front of and after the vehicle of the convicted S.R. in order to inform him of possible police patrols and thus enable the smooth transport of illegal migrants.

During the investigation, special investigative measures on covert surveillance of persons and telephone communications were applied.

The public prosecutor, the child in conflict with the law over 16 years old, his lawyer, the child's parent was present at the trial, but a representative of the Center for Social Affairs was not present, although he was duly invited. The child described the event, pleaded guilty, stated that he sincerely regrets what he did and that he will not commit crimes in the future.

The court found that the guilty plea corresponds to the verbal and material evidence presented, and found the child in conflict with the law over 16 years of age guilty because he committed acts constituting an offense Smuggling of migrants under Article 418-b paragraph 2 in accordance with Article 22 of the Criminal Code and pronounced an alternative measure - probation with protective supervision. The probation period was determined to 2-two years, in which period the child should not commit a new crime, if in this period he reappears as a perpetrator, he will be sentenced to imprisonment for a period of 1 year.

In this case, the court with the probation with protective supervision imposed special obligations that the child is obliged to adhere to at the time of probation, i.e. to accept work for children over 15 years, to use his free time usefully, not to contact persons who adversely affect him, to be trained and re-trained to create employment possibilities for children over 15 years of age and to be involved in regular sports, cultural and entertainment organization or association with the obligation to attend regular rehearsals or trainings. Supervision and protection is to be performed by the Centre for Social Affairs. If the child does not fulfill these obligations at the time of probation, the court may revoke the suspended sentence and replace it with imprisonment.

In determining the criminal sanction, the court found that the child comes from a large family, the mother and father are with primary education and are not employed, the family exists from guaranteed minimal social assistance. The child in conflict with the law has completed primary education, while he interrupted secondary education due to poor success

and irregularity at school and is now a part-time student. In the Centre for Social Affairs he is registered as a perpetrator of theft, forgery of a document and traffic violations for which he has been repeatedly reprimanded and got discipline (educational) measure - protective supervision by a parent.

In determining the sentence, the court considered that the warning with the threat of imprisonment and the application of measures of assistance, protection and supervision of liberty will have a sufficient impact on his upbringing, re-education and proper development.

#### **Case 4 - Smuggling of migrants**

The investigation for this case was conducted with international legal assistance in criminal matters between North Macedonia and the Serbia. The investigation started after a report of an illegal migrant who reported to the competent authorities in the Republic of Serbia that she was raped in a migrant camp located on the territory of Republic of North Macedonia near Kumanovo.

The Council for Children at the Basic Criminal Court Skopje with a Judgement KM.br.165/21 of 22.02.2022 found guilty two children in conflict with the law over 16 years, citizens of Afghanistan, because they committed actions constituting a criminal offence “Organizing a group and abetting the commission of the offenses of trafficking in human beings, trafficking in children and smuggling of migrants” under Article 418-c paragraph 2 of the Criminal Code and criminal act “Smuggling of migrants” under Article 418-b paragraph 4 in accordance with paragraphs 2 and 3 of the Criminal Code. The children in conflict with the law over the age of 16 were also given detention.

The court scheduled and held a private (not public) trial at which were presented verbal and material evidence on the basis of which it found that in the period from August to November 2021 in Kumanovo, K.N. originally from India and one unidentified person originally from Pakistan, after illegally entering the territory of RNM, formed a group to which children in conflict with the law over the age of 16 became members, who also illegally entered RNM. This group aimed at committing the crime of smuggling of migrants and for that purpose, near the border with the Republic of Serbia, they set up four improvised camps in which they continuously accepted and sheltered migrants who illegally entered the territory of RNM from the Republic of Greece. The role of children in conflict with the law over 16 years and the members of the group was to secure the improvised camps from the arrival of the police, they guarded the migrants, provided them with the necessary stuff for their temporary accommodation, accepted them in certain places and then were taking them

to the improvised camps. Furthermore, all of them together physically abused them, using force and threats, extorted money from them, forcibly kept them in the camp for two to three days, photographed them, after which they sent the photos to their relatives to extort additional money and with some of them, they also had sexual relations. Thirty-five illegal migrants from Syria, Pakistan and Afghanistan, including nine children, were found in these camps. The illegal migrants - victims, in their statements recognize the perpetrators -children in conflict with the law over 16 years as persons who carried out the migrants, that were taking care not to let anyone escape, that were usually at the end of the column, physically abused migrants if they moved slowly or wanted to rest, because they were tired, they took their mobile phones, their money, beat them and then took photos of them in order to send the photos to relatives to extort more money and make sure that no one escaped from the camp.

After the arrest of the children in conflict with the law over 16 years of age, they were immediately detained, in order to ensure their presence during the procedure.

The trial was attended by the public prosecutor, children in conflict with the law over 16 years, their defence counsel, for one child an ex-officio lawyer was appointed, a guardian for special cases was appointed by the Centre for Social Affairs and a representative of the Centre for Social Affairs was also present. The children in conflict with the law over 16 years of age stated that they did not commit the crime, i.e., did not take the actions that are charged against with the proposal for application of a sanction of the public prosecutor and during the whole procedure they claimed that they are also illegal migrants, so they were placed in camps and were victims. The court assessed the defence of children in conflict with the law over the age of 16, but did not give faith to their statements because it did not correspond to the verbal and material evidence presented and thought that these statements were given in order to avoid criminal liability.

The court found them guilty and for the two criminal acts determined a prison for child sentence of 1-one year and 6-six months, during which the time spent in detention was calculated in the determined prison sentence.

In determining the criminal sanction, the court took into account the aggravating and mitigating circumstances and took into consideration the personality of the children and the family conditions and material conditions in which they lived. The court found that they grew up in a large Afghan family, both children lived in Afghanistan until their departure, one child completed eighth grade and the other fourth grade, one child stayed in Greece for two months before being detained by RNM police, while the other - three years.

In this case, the court in choosing the criminal sanction considered that it is not justified to impose an educational or alternative measure due to the gravity of the crimes and their consequences, the international nature of the crimes, as well as the envisaged punishment of at least one year in prison for one offense and at least eight years in prison for the other offense.

#### **4. Conclusion**

Smuggling of migrants and trafficking in human beings and children is a serious problem in the country. Migrations made the smuggling more present and the human trafficking is not just a form of organized crime, but a flagrant violation of basic human rights and freedoms, a form of modern slavery.

In the last five years, in RNM victims of trafficking in human beings and children are domestic and foreign citizens and victims from RNM are exploited abroad. But domestic nationals and foreign citizens also take the role of perpetrators of these crimes committed on the territory of RNM.

As notable from the analysis, smuggling of migrants is more present in the official statistic data, but the undiscovered and unprosecuted cases are more common when it comes to human trafficking. Irregular migrants and refugees travelling or smuggled through RNM are vulnerable as potential victims of trafficking, especially women and unaccompanied children.

Children make a large portion in the number of victims of smuggling migrants and human trafficking, but often appear on the opposite side – the side of the offender as well.

Common to all four judgements that are part of the analysis is that all convicted children fall into the category of children in conflict with the law over the age of 16 and are male. Two of the children are citizens of RNM, one is from Serbia and two from Afghanistan. When determining the personal and family circumstances of the children covered by the judgments, it is characteristic that all of them have a very low level of education and they are from socially endangered families. All convicted children are co-perpetrators, i.e., they committed the acts together with adults. It is obvious that children are often dragged into criminal activities due to their youth, inexperience and lack of parental and state control on their development as persons in the society.

In respect of the sanctioning, taking into account the two cases declared in the Statistical Office Database for the period 2017-2021, we can conclude that the court did not

impose a punishment, but an educational measure. In both cases it is the measure enhanced supervision by the legal custody authority. In the four presented cases, we can also note the tendency of the court to avoid the prison for children if possible and take more lenient approach. Namely, in three of the four cases, the court imposed alternative measure – probation with protective supervision and in only one case – prison for children sentence. Therefore, the educational and alternative measures are the first choice of the courts (rather than prison) when it comes to children offenders for these crimes.

To break the vicious circle of human trafficking and smuggling, one solution is to provide not only direct and short-term assistance to children in risk, but also to make efforts for long-term involvement in social and economic circles and for ensuring a healthy family and social environment. Although the prosecution of traffickers is more successful, the identification of victims and assistance are still elements of the fight against trafficking to which still enough attention is not paid in our country and beyond. Children are often pulled into criminal activities of smuggling and trafficking not only as victims per se but also as (co)perpetrators. But, even in the cases when children are perpetrators of these serious actions, we should observe them as victims of the weaknesses of the societies that proved unable to protect them and prevent their deviant behaviour in a timely manner.

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