

# REPUBLIC OF NORTH MACEDONIA AND THE PROTECTION OF HUMAN RIGHTS GUARANTEED BY THE EUROPEAN CONVENTION ON HUMAN RIGHTS DURING THE MIGRANT CRISIS

Elena Maksimova, PhD

Goce Delchev University

Stip, North Macedonia



[elena.ivanova@ugd.edu.mk](mailto:elena.ivanova@ugd.edu.mk)



# Introduction:

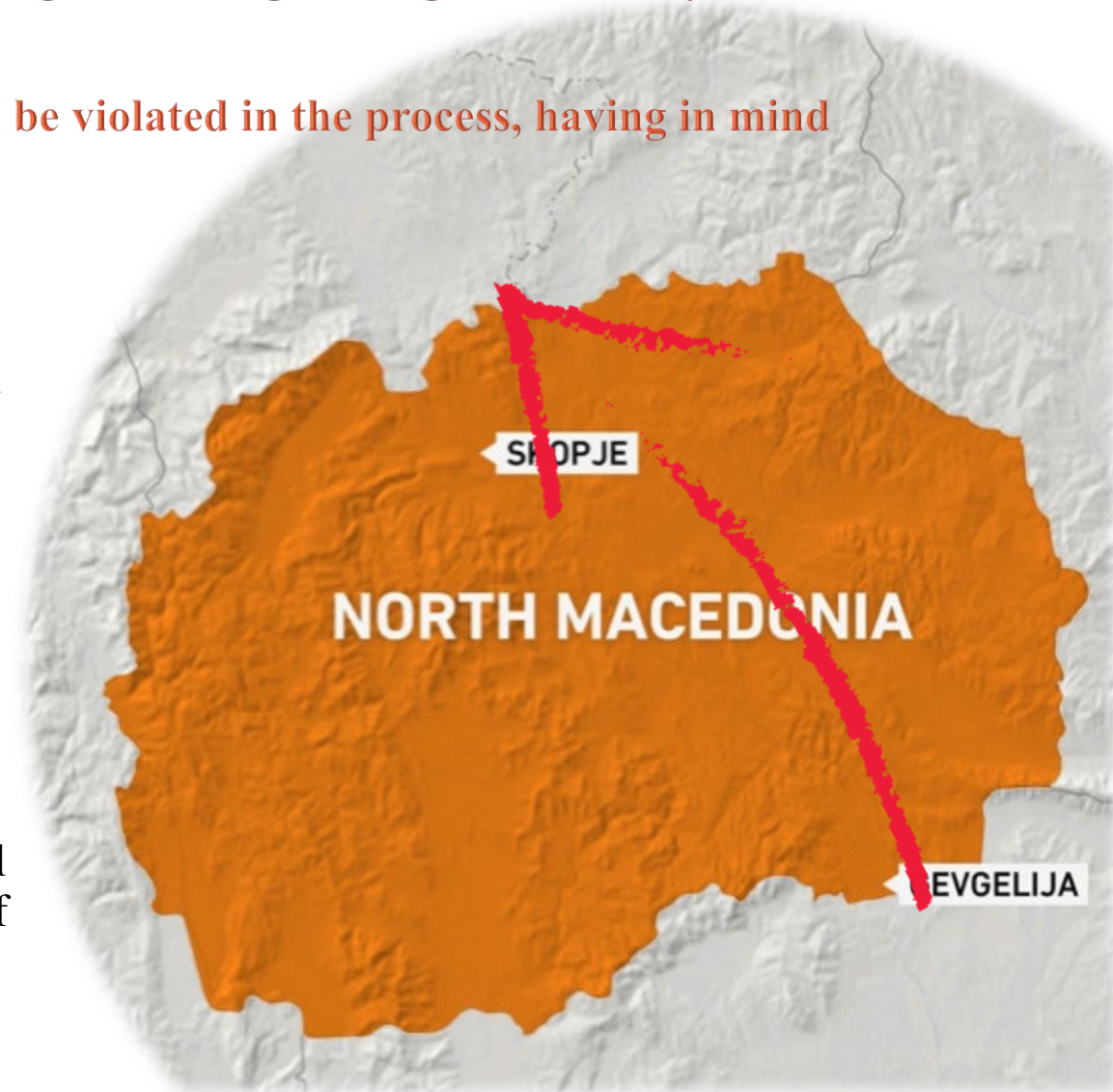


## Purpose →

1. to emphasize the importance of respecting the rights of refugees, migrants and asylum seekers in all countries involved in the process
2. highlight all the ways in which their rights can be violated in the process, having in mind national practice in the previous period.

## North Macedonia:

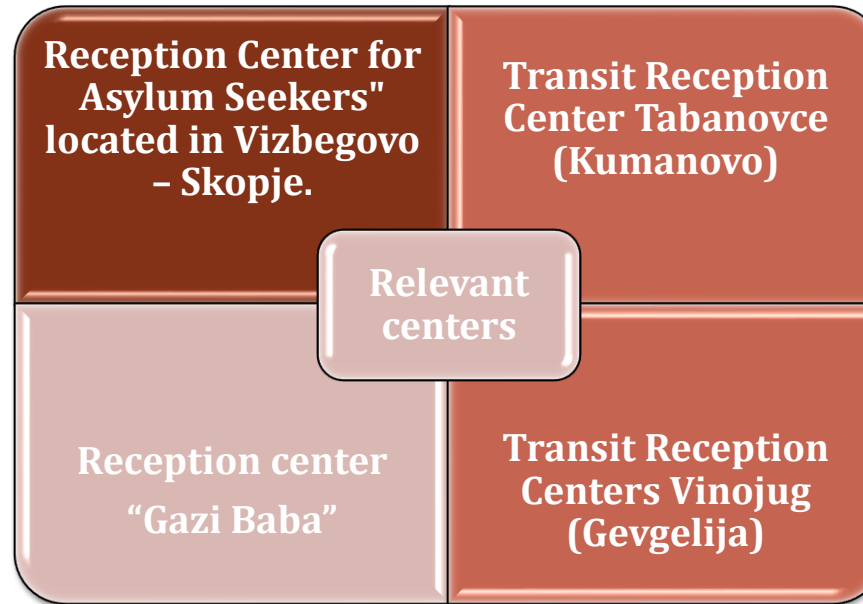
- **difficulties in providing the basic human rights and freedoms** of persons who found themselves on the territory in the period,
- Migrants/refugees only tried **to stay here as short as possible**
- **mainly a transit country**
- From the very beginning of the crisis - inhumane, degrading treatment of the passing people was noticed.
- Illegal opening, selective approach, discrimination, collective ill-treatment ..... The closure of the Balkan route - reduced legal entry but stimulated illegal crossings accompanied by a series of crimes → lives of migrants were endangered more often, their rights were violated more often and more severely



# About the situation on the field

Public institution for accommodation of asylum seekers -to accommodate and care for asylum seekers. Main activity - acceptance, accommodation, food, cultural-entertainment and recreational activities, social work services and other services

All those migrants that were detected by the police were either deported back to Greece, the country of origin, or were detained and taken to the reception center for foreigners in Gazi Baba



June 2015 - Government of the RSM - started construction of the Reception Transit Centers

Camp in Tabanovce – open regime. After the closure of the borders - closed regime was established in the camp in Vinojug - the refugees were not allowed to leave the camp (lots of reactions);



Refugees and migrants - **detained like criminals (not** afforded the procedural legal guarantees under the Macedonian Criminal Code nor under the Macedonian Law on Foreigners; they were **under-criminalized**", deprived of their liberty and subjected to degrading treatment."

Inadequate sanitation, insufficient access to basic facilities. not able to receive adequate medication or adequate medical care.

Balkan route shut  
– illegal attempts – many victims  
- received copies of detention decisions - problematic - not in opportunity to understand the content of the document, nor informed about the right to legal representation and the right to appeal  
Not receiving enough food

Course of the refugee crisis - calmer, with significantly fewer developments  
restriction of freedom of movement, limited access to territory, use of excessive and unjustified force by police , practice of illegal "deportation", ie expulsion of refugees and migrants from the country without proper procedure.

Borders remained closed,  
most dominant problem -the practice of illegal "deportation", ie expulsion of refugees and migrants from the country without proper procedure. provided with effective medical care available.  
Material conditions in the reception centers - improved

Collective deportations of refugees continue to be carried out, without any formal procedures being followed  
difficulties with access to the asylum procedure despite the Ombudsman's instructions, cases of juvenile detention have been noted

Pandemia, state of emergency, quarantines  
Borders closed - not prevent the irregular migration  
After 15th of March -no visits in Reception Transit Centers due to Covid 19 restrictions. Restrictive measures  
Witnessing in criminal proceedings -most common reason for immigration detention, although **not a ground for detention**

2015  
first half

2015  
second  
half

2016

2017

2018

2019

2020

# About the problems on the field -Conditions in reception center “Gazi Baba”, 2015 :



Amnesty International

- grossly inadequate in the overcrowded center
- hundreds of refugees, asylum seekers and migrants of all ages - unlawfully detained in inhuman and degrading conditions with no access to legal aid or protection



Helsinki Committee

- recommended that Macedonia take immediate steps to improve the living conditions at Gazi Baba



NGO "Pro Asylum

- center resembles to a prison, fenced with wire and video surveillance. In small rooms, estimate to be no more than 10 meters square, there were 10 migrants accommodated, and many of them were sleeping on the floor

Republic of North Macedonia  
M B U

The Ombudsman - National Preventive Mechanism (NPM)

- Center still continues the practice of detention persons in the Center on the basis of Solutions for temporary detention of foreigner brought by an incompetent authority, the rights of detainees are still not fully respected and guaranteed



Macedonian authorities

- the legal status and the time period for holding foreign nationals at Gazi Baba are governed by the Law on Foreigners and the Rulebook for the House Order of the Reception Center



Observed human rights  
violations guaranteed by the  
European Convention on  
Human Rights



From the end of 2014 until September 2020, 39 migrants lost their lives!

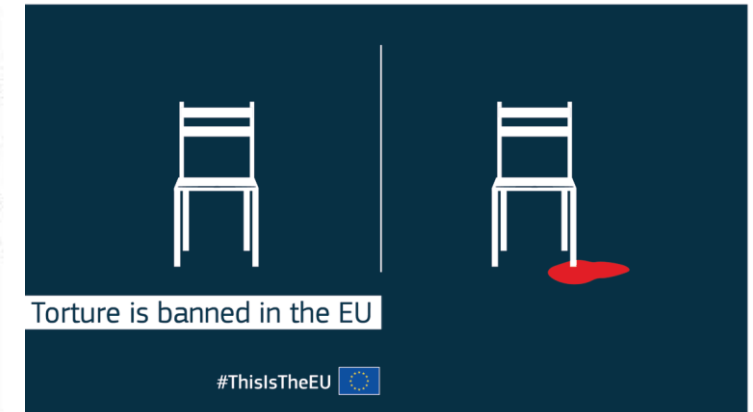


Article 10 of the Constitution of the Republic of Macedonia - human life is inviolable

- During 2014, until June 2015- Macedonia **did not allow migrants to use public transport** → forced to walk throughout the country to reach the Republic of Serbia → following the railway tracks from Gevgelija to Tabanovce.
- April 24<sup>th</sup>, 2015, near Veles, a train killed 14 refugees, at least six of whom were minors.
- December 2017 incident -RTC Tabanovce - **one of the refugees in an alcoholic state** showed aggressive behavior, after a short time, this person began to injure himself - was overpowered by the present representatives of the civil organizations. The reaction of the police officers that were present, was almost absent
- In 2018 - critical case -Iraqi refugee - **suffered an electric shock on the railway in Gevgelija** - severe burns all over his body. Initially taken to a hospital in Skopje → soon released with serious wounds and taken to the camp in Tabanovce. Due to pain and bleeding, - transferred to the hospital in Kumanovo. The doctors **refused** to accept him, claiming that the hospital in Skopje was responsible → returned to the transit camp. After a while he was accepted to the hospital, where he remained for ten days.



- Published media materials and the direct observation of representatives of the Helsinki Committee → showed the **inhumane treatment of refugees by special police officers** - **excessive and unjustified force**, and coercive measures, using **tear gas** and **stun grenades** in a failed attempt to prevent refugees from crossing the country
- Hundreds of refugees and migrants - **victims** of armed robberies by groups of Macedonian citizens or were discovered accompanied by smugglers.
  - As a witnesses - **sent** with order of the public prosecutor to the Reception Center for Foreigners - **Gazi Baba** – conditions mentioned before:
    - detention without existing written act ,
    - inability to apply for asylum,
    - overcrowding of about 300%,
    - dilapidated living conditions,
    - the impossibility of short walks in the open air,
    - the ban on communication with the outside world,
    - kitchen and toilet dysfunction,
    - inadequate medical services and detention of juveniles together with adults)



## Article 3, ECHR

*"No one shall be subjected to torture or to inhuman or degrading treatment or punishment"*

Article 11 of the Constitution



## Article 4

1. No one shall be held in slavery or servitude.
  2. No one shall be required to perform forced or compulsory labour.
- The ECtHR has held that trafficking falls within the scope of article 4.

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## Constitution of the Republic of Macedonia in Article 11

### NOT ONLY CASE!

- some cases in the period were not properly resolved mainly because:
  - of the ping - pong game with the procedure that the authorities were playing at the time.
  - very often, the charges ended up with an easier qualification for the perpetrators
  - Migrants refuse to collaborate – leave country illegally

On April 5, 2015 - British media Channel 4 (News 4 News) published a video about the notorious house in the village of Vaksince, Kumanovo region → hundreds of refugees were held hostage by smuggling group, armed group extorted money from refugees and forced them to work in order to let them continue their journey to EU countries, while keeping them in unbearable, inhuman conditions.

→Macedonian police needed 6 days to investigate the allegations. During the action, according to the Interior Ministry, 128 migrants were found hiding in houses in the village and several people were detained suspected of smuggling, including a police officer.

While the migrants were staying in the country, information that was spread about the same crime from the authorities said that there is no such treatment



Article 25 of the Constitution provides that every citizen is guaranteed respect and protection of the privacy of his personal and family life, dignity and reputation.

## Article 8, ECHR

1. *Every body has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*



- ❑ Republic of Macedonia does not take any more serious measures to reunite the families
- ❑ The news crews - continuously photographed the refugees and later posted photos of the refugees without their consent. Their intrusiveness was non-selective, that is, it did not distinguish between men, women, children or whole families
- ❑ Reception Center for Foreigners Gazi Baba in 2015 - overcrowding in the facility was more than 300%, 20 refugees together in room at the same time and toilets without or with makeshift doors - the private lives of refugees was not only endangered, but completely absent

## Article 9, ECHR

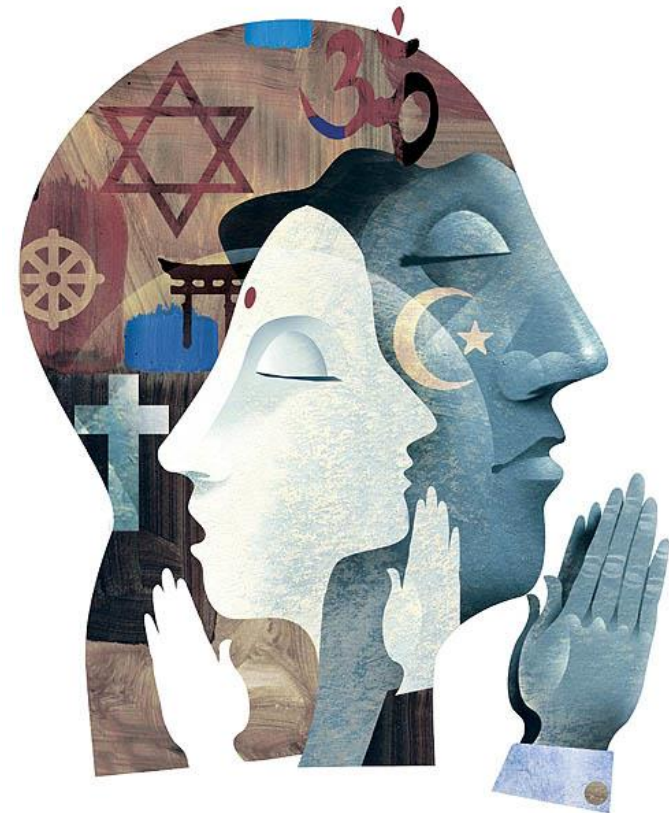
*9(1). Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*

*9(2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.*

It was noted that refugees are forced to perform religious rituals in their rooms, in presence to other persons or hidden in a certain angle.

Article 19 of the Constitution guarantees freedom of expression, which includes the practice of religious rituals and ceremonies

During the refugee crisis and the overall stay of refugees in transit and reception centers, in no case were refugees provided with a suitable room for praying and performing religious rituals and rites, nor were they provided with access to religion object.







Ineffectiveness of existing legal remedies, due to the fact that they in this case are not sufficiently reliable in practice and because they guarantee rights that are only theoretical and illusory!

Article 15 of the Constitution - the right to appeal against individual legal acts adopted in a procedure in the first instance before a court, administrative body or organization or other institutions exercising public authority

Although it is true that for violations of their rights, refugees and migrants were able to bear lawsuits or appeals against decisions of state authorities or in connection with their treatment of refugees, in this case, these remedies can not be considered **real and effective** because without the ability to participate in administrative and later, in court proceedings, refugees were not able to understand the Macedonian legal system.





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## RIGHT NOT TO BE DISCRIMINATED AGAINST



- ❖ Second half of 2015 and the beginning of 2016, public company “Makedonski Zeleznici AD Transport” (Macedonian Railways) made a correction of the ticket price for the refugees who transited through the country twice.
  - ❖ The price of each individual ticket for these users **was 25 euros, ie 3.5 times higher** than the regular ticket price which is around 7 euros
- ❖ During November 2015, Slovenia launched a discriminatory selection for the reception of refugees based on their country of origin. Consequently, only refugees from Syria, Afghanistan and Iraq were allowed through the Republic of Macedonia, and refugees with documents from other countries were not allowed. At the beginning of 2016, the border was closed for people coming from Afghanistan
- ❖ 2017 - Tabanovce - selective policy the passage of refugees and migrants admitted to the camp and allowed to stay. This selection was made according to unspecified criteria and without a rule.

Protection against discrimination is established through Article 9 of the Constitution, Article 29 paragraph 1 of the Constitution Article 2 of the Law on Prevention and Protection against Discrimination

- ▶ *Protocol No. 4*
- ▶ *ARTICLE 1; Prohibition of imprisonment for debt.*
- ▶ *ARTICLE 2; Freedom of movement.*
- ▶ *ARTICLE 3; Prohibition of expulsion of nationals.*
- ▶ *ARTICLE 4; Prohibition of collective expulsion of aliens.*

With the massive "deportation" of refugees to Greece, the Republic of Macedonia indirectly violates the principle of **non refoulement** - possibility from Greece → deported to their countries of origin, ie crisis and military areas where they are brought at risk their lives and physical integrity.

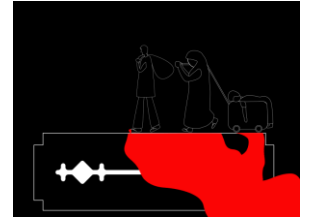
Official address by the President : "The army and police prevented over 15,000 attempts to cross the the border", without realizing that these attempts were prevented precisely through collective deportation of foreigners, that is, contrary to the ECHR

Refugees illegally crossed the Macedonian-Greek border in Greece near the village of Moin → members of the Macedonian police and army deployed along the southern border responded with tear gas and smoke bombs → refugees who crossed the border were placed in trucks and transported to Greek territory

Having in mind the significantly increased illegal crossing after the closing of the borders, the state assumes the right to "deport" all refugees found on Macedonian territory. A barbed wire fence was also erected, meaning that refugees could simply pass under/trough the wire and were left in the open field on Greek territory.



# Republic of North Macedonia in front of the European Court of Human Rights



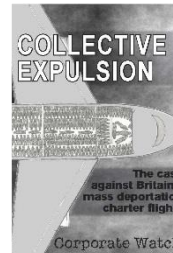
## *Facts of the case:*

Applicants –

- part of large group of refugees, around 1500, known as “The March of Hope” on 14<sup>th</sup> of March 2016 and by foot crossed Macedonian – Greek border (wading across a river Suva Reka), and entered Macedonian territory, one of them is a person reliant on a wheelchair.
- Macedonian soldiers threatened the refugees, with violence if they do not return to Greece. Applicants walked 3-4 hours and arrived in Idomeni.
- In village Moin they were intercepted and surrounded by Macedonian soldiers, who threatened to confiscate their phones and cameras if they do not turn them off.
- Macedonian police officers were guarding the border fence, soldiers formed two lines and ordered the refugees to run between them toward the fence, while beating them with stick.

*A.A. and Others against the former Yugoslav Republic of Macedonia and 4 other applications, application no. 55798/16*  
*-four more application were appended*

## *Alleged violations*

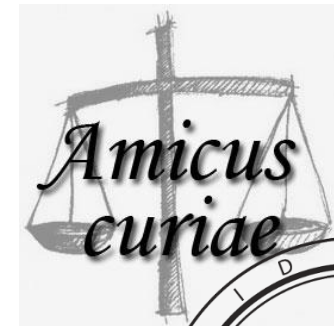


article 4,  
Protocol 4



article 13

## *Third side intervention*



MACEDONIAN YOUNG LAWYERS ASSOCIATION

## Possible outcomes:

### Article 4, Protocol 4

- Macedonian authorities **did not utilize the procedure and barred access to the protections and guarantees accorded by the law** (Macedonian Law of Foreigners)
- The **procedure for forcible return** as prescribed by law **was not followed**
- Migrants - **did not undergo any identification procedure**
- **Systematic push-backs**, carried out within a **short time frame following their arrest** -which made it impossible to carry out reasonable and objective examination of the case
- All the push-backs carried out without any form of examination of each person's individual situation.

*(Hirsi Jama and others v. Italy)*

*(Georgia v. Russia)*

*Henning Becker v. Denmark*

### Article 13

- Without the expulsion decision the refugees/migrants did not have the opportunity to challenge the decision
- deprived access to a remedy
- without access to an effective remedy with suspensive effect to challenge their expulsion

*(Čonka v. Belgium)*

*Cambell and Fell v. the United Kingdom*

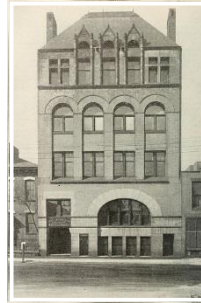
*"The push-back practices have also been confirmed by the Macedonian authorities. A spokesperson for the Macedonian Ministry of Interior has stated that from 8 March 2016 until 13 May 2016, the Macedonian authorities have returned 11.803 migrants to Greece. These push back practices continue throughout 2017. From 19 November 2015 until 31 May 2017,, the Macedonian authorities have pushed-back **10377** refugees/migrants to Greece" MYLA*



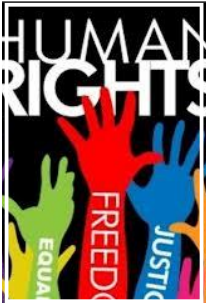
# Importance instead conclusion



Will highlight the problems of the domestic system



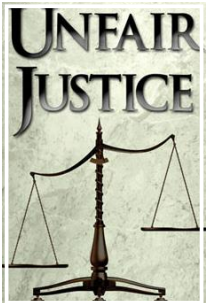
will "awake" the domestic institutions involved in the process



Will encourage more consistent respect for human rights



Will contribute to the rule of law



encourage others to seek protection of their rights and strengthen the sense of justice and fairness



will contribute to intensive cooperation of migrants / refugees with domestic authorities

