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## INTERNATIONAL LAW IN THE CONTEXT OF CONTEMPORARY MIGRATIONS: CASE STUDY SERBIA AND NORTH MACEDONIA

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original research paper

***Abstract:** During the second decade of twenty first century the migrant flows from northern Africa and Middle East to Europe has reached the top of the agenda of European states, especially within the European Union. But, at the same time, migrant routes brought into focus the migration question not only within the European Union member-states, but also in the states which are on the so-called migrant routes, in that context, including Serbia and North Macedonia. Such trends have opened various question in the field of security which are not only related to national borders protection, as well as borders of European Union, but also the questions focused on the treatment of the migrants, human trafficking issue, distinction between so-called economic migrants from one side and refugees from war areas from the other side. In that context, the leading research question of this paper is how international law contributes in the process of regulation migrant flows, as well as whether this question is directly related to national laws or migrants and refugees could rely on international law principles and thus protect their rights. Case study of Serbia and North Macedonia and the treatment of migrants, refugees and migrant flows on the territories of these states will be an empiric approach for answering the research question. From the theoretical point of view, this paper will contribute in the process of redefinition of the contemporary law from the perspective of jurisdiction between national and international law.*

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## **1. Introduction**

The migrant issue has come into the focus of national governments, primarily in countries that have appeared on the so-called migrant routes. Although international organizations have adopted numerous documents regulating the status of migrants in the past fifty years, the direct „confrontation“ with this group of people by national governments represented a kind of new multiple challenge. The migrant issue has become a security challenge, because national governments were not prepared to face large waves of migrants, and at the same time to protect both, national borders and their populations. The migrant issue has become an economic challenge, because it has caused to national governments large economic expenditures in the context of additional protection of national borders, the opening of temporary migrant camps, but also the gradual integration of a certain group of migrants who requested asylum in certain country which was on their migrant route. Then, the migrant issue also became a legal challenge, because it was difficult to establish which rules to apply in the treatment of migrants. When it comes more specifically to the so-called Balkan route, although the so-called European approach was established, which implied the coordination of migrant flows between the member states of the European Union and those that are not members of the European Union, and at the same time are located on the Balkan route, we are witnessing different treatments towards migrants by national governments.

This is precisely why numerous challenges and crisis situations appeared on the so-called Balkan route, which to a certain extent led in the direction of escalation. On the one hand, the member states of the European Union were directly focused on the protection of national borders, and thus the borders of the European Union, while, on the other hand, the states that were on the Balkan route and were not members of the European Union, were forced to “manage” migrant flows through various mechanisms - from closing migrant routes, to selective reception of migrants, and up to the creation of transit corridors. Over time, such a relation caused great consequences in the relations between migrants and transit countries on the Balkan route that are not members of the European Union. A large number of migrants, primarily directed to the member states of the European Union, did not want to stay long-term in the territories of the transit countries, while

at the same time the executive authorities of the transit countries began to use repressive mechanisms to deter migrant groups from continuing their “journey” to the states- members of the European Union. And at that moment numerous legal dilemmas appeared. Starting with whether the basic human rights of these groups of people are threatened, until applying violent methods to refugees and migrants who are facing violent regimes in their national countries.

These questions are still open, because the migrant waves on the so-called Balkan route are still current, however, a mechanism has not been established that will more precisely elaborate the treatment of migrants - from which group of migrants is “passed” on the way to the European Union, which group of migrants is temporarily remains in the transit countries, and which group of migrants returns to the countries of origin. The European Union continues to coordinate migrant flows with countries that are not members of the Union on the so-called Balkan route, but the past years have shown that there are numerous unsuccessful mechanisms that have contributed to endangering the security situation on the ground, and at the same time significantly increased economic and resource expenditures in that direction.

## **2. Political and security challenges in North Macedonia and Serbia**

There is an increasing trend of mixed migration flows that transit through the Balkan route, mainly to reach the EU countries. These mixed flows are composed of economic migrants and persons in need of international protection, including asylum seekers and refugees. Among them there are different nationalities, most of them in recent years are Syrians, and they enter the countries of the Balkan route illegally, often with the help of smugglers. One of the problems that arose as a result of the migrant crisis is the issue of return/readmission. When these migrants are not registered in the country through which they transited, the relevant authorities will not accept their return. This complexity stems from the lack of readmission agreements with countries of origin, which means that illegal migrants will remain trapped in the SEE region, as they have not fulfilled the conditions for regular residency and, as a consequence, will not be able to return to their countries of origin. This will add to the problem of managing migration. The most common step taken by the European Union to control the flow of refugees is the quid pro quo agreement with Turkey, which entered into

force on March 20, 2016. The agreement between the EU and Turkey aims to stop illegal migration from Turkey to Greece. This has so far been the main trajectory of migrants heading to Europe. According to this agreement, Turkey will remove illegal migration routes to the EU and at the same time prevent the opening of new routes.<sup>1</sup>

Migration as a permanent process of movement of people and a constant increase in the number of migrants and the problems related to it, caused this process to be the main focus of a large number of countries from the European Union, but also of countries on the so-called Balkan route. Almost all countries without exception face challenges related to migration, regardless of the countries of origin, transit countries or final destinations of migrants. Apart from the purposes of border control (as one of the essential aspects of national security), the application of registration procedures was also necessary for the purposes of providing humanitarian aid, as well as to reduce the risk of exploitation of migrants and refugees by the regional human trafficking network – consequently, because of the safety of the refugees and migrants themselves. In order to provide adequate responses to all these dimensions of the refugee and migrant crisis, Serbia and North Macedonia have taken a number of measures - by amending the legislation and by applying appropriate migration policy mechanisms, relying both on their own resources and on cooperation with a large number of countries within and outside of the Southeast Europe region. The vast majority of refugees and migrants who entered the territory of Serbia and North Macedonia continued their journey through the so-called “Western Balkan route” to selected countries in Northern and Western Europe. Out of the total number of registered refugees and migrants who found themselves in the territories of these two countries, only a minimal number of people decided to apply for asylum in Serbia and North Macedonia. However, it is important to point out that during the critical periods of the migrant crisis, there were a number of organized attacks by groups of migrants and refugees on Serbian and Macedonian police and armed forces securing the borders of Serbia and North Macedonia.<sup>2</sup> These attacks led to a large number of injured police

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1 “Press Corner,” European Commission - European Commission, n.d., [https://ec.europa.eu/commission/presscorner/detail/en/MEX\\_16\\_1504](https://ec.europa.eu/commission/presscorner/detail/en/MEX_16_1504).

2 Parliamentary Institute, ed., “Ефектите на мигрантската криза во земјите од Југоисточна Европа,” *sobranie.mk* (Skopje, North Macedonia: Assembly of the Republic of North Macedonia, July 2016, 35, <https://www.sobranie.mk/content/Парламентарен%20институт/Ефектите%20на%20мигрантската%20криза%20во%20земјите%20на%20ЈИЕ%20-%20МК.pdf>

officers and soldiers, as well as the destruction of border control equipment.<sup>3</sup>

The Ministers of Interior of Serbia and North Macedonia also determined that no country alone can solve the problem of irregular migration and therefore it is necessary for the countries to react uniformly to find the best answer to this challenge.<sup>4</sup> An interesting fact is that it has been established that migrants enter both Serbia and North Macedonia from the countries of the European Union, which is why it is necessary to find an adequate solution for their return to the countries of origin. The head of the Macedonian police pointed out that the joint patrols with members of Frontex are yielding results and pointed out that during this year in North Macedonia, a reduction of irregular migration by as much as 50 percent was observed. “The joint patrols of the border police of the two countries are producing good results”, assessed the ministers of interior affairs of Serbia and North Macedonia.<sup>5</sup> In fact, it is a question of double challenges. On the one hand, Serbia and North Macedonia are faced with a wave of migrants who intend to reach the countries of the European Union. On the other hand, Belgrade and Skopje are facing pressure from the European Union in the process of repatriating migrants. Initially, it is very difficult to contain groups of migrants who intend to go to Northern and Western Europe. Second, it is difficult to establish an efficient and effective repatriation mechanism when it is almost impossible to cooperate with the migrants’ countries of origin.

### **3. Economic challenges in migrant crisis on the so-called Balkan route**

Population migration is influenced by various factors, such as geographical, demographic, economic, ecological, political, cultural, religious, etc. However, the most dominant, and also the most significant, is economic. The Balkans have always been a bridge or a corridor that connects and mixes peoples, civilizations and cultures. The Balkan Peninsula is a crossroads between East and West, that is, a great civilizational border between Europe and Asia, which has been a transit area since the beginning of human civilization. The Balkans is a traditional area of migrants’

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3 Ibid.

4 Furkan Abdula, “Министерот за внатрешни работи на Северна Македонија, Спасовски, во посета на Србија,” *aa.com.tr*, November 14, 2023, <https://www.aa.com.tr/mk/балкан/министерот-за-внатрешни-работи-на-северна-македонија-спасовски-во-посета-на-србија/3052595>

5 Ibid.

movements. However, this area is not the first choice for migrants to stay, but is primarily a transit area, which is on the way to a specific final destination. The countries in Balkan are dominantly used for transit of migrants. Those countries, including Serbia and North Macedonia became veryvulnerable to the consequences of the refugee crisis without the ability to influence its causes. Important events in the world have never bypassed the area of the Balkans directly or indirectly reflected on its overall development. Because of that, it is not surprising that dramatic events in the Middle East, but also in the area of a significant number of African countries, so-called the “Arab Spring”, caused a new migration route across the Balkan Peninsula to the member states of the European Union, primarily Germany.

The actions, riskassessment and approaches taken by national governments in Balkans directly depend on European Union migrationand security policies and political situation in Turkey. In the first quarter of 2016, just before signing the EU-Turkey Agreement, the situation culminated when almost one million migrants were registered on the entry points on the Macedonian-Greek border.<sup>6</sup>The clash of civilizations and the import of different cultures represent a problem that will be relevant in the future as well. This is precisely one of the main problems of migrants who come to Europe from the Middle East.<sup>7</sup>Such demographic and security risks threatened and tested national, political, and institutional capacities and regional police cooperation, respectively.<sup>8</sup>The culmination of the recent migrant crisis in 2015 warned of the absence of effective joint action by the European Union, and the countries on the Western Balkan migrant route directly suffered the consequences of the unwillingness of their own and European institutions to face the challenges of the influx of migrants.<sup>9</sup> The role of the Republic of Serbia as a key transit country along the Balkan migration route began to become more complicated with the increasing importance of this “formalized

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6 Pavlovski, G. and Popovska-Aleksandrovska, J., January 2017. Risk of movements through the Western Balkans: Large scale migration flow and border management. Poster session presented by the representatives of the Macedonian Ministry of Interior at the meeting of the European Border and Coast Guard Agency (Frontex), Warsaw.

7 Hatidza Berisha, Milenko Dželetović, and Vladimir Tomašević, “CONSEQUENCES OF THE MIGRANT CRISIS,” *Knowledge* 30, no. 6 (March 20, 2019): 1427–35, <https://doi.org/10.35120/kij30061427b>.

8 Rajkovcevska, Rade. “Migrant and Refugee Crisis in Europe: Challenges, Experiences and Lessons Learnt in the Balkans.” In *International Conference Risks, Security and Citizenship Proceedings*, 2017, pp. 178-188. Municipality of Setubal.

9 Botić, Jurica and Marija Boban, “Geostrateški i sigurnosni aspekti potencijalnih utjecaja suvremenih migrantskih kretanja na Dalmaciju,” *Geoadria* 23, no. 1 (July 26, 2018): 7–27, <https://doi.org/10.15291/geoadria.1456>.

corridor” for the irregular migration of thousands of people since 2015. The unique development of events on the route allowed migrants to cross the territory of the Balkans within a few days, which caused an unprecedented increase in the total number of asylum seekers coming to Europe, mainly to Germany. The official closure of the Balkan route in March 2016 led to the creation of an increasing number of “stuck” migrants in Serbia, whose length of stay increased from a few months to two years.<sup>10</sup> This change also led to a blow to Serbia’s budget, because a large number of migrants had to be taken care of on its territory.

Asylum and reception-transit centers are managed by the Serbian Commissariat for Refugees and Migration (SCRM). SCRM provide accommodation, food and other basic services to asylum-seekers and refugees. In order to asylum-seekers and refugees enter an Asylum Centre or a Reception-Transit Centre they must have a valid Certificate on Intention to Seek Asylum (ISAC) or a valid Asylum-Seeker’s Card which are issued by police. Without ISAC or a valid Asylum-Seeker’s Card person will not be allowed to enter the Asylum Centre or a Reception/Transit Centre.<sup>11</sup> For unaccompanied and separated children there are five accommodation facilities in Serbia. Two state and one NGO-run institutions are based in Belgrade, one NGO-run is in Loznica, while the fifth one is in Niš, also run by state. The children are referred to those facilities specialized in accommodation and care of UASC upon assessment and referral of social welfare centers that are managed by the national child protection authorities. Other models of alternative care of unaccompanied children such as foster care, small group homes, and similar are not utilized in Serbia.<sup>12</sup>

UNHCR and its partner organizations provide refugees and asylum-seekers in Serbia with the services of: Legal counselling and assistance in the asylum procedure; Counselling on access to rights and services for persons with special needs; Psychological and psychiatric counselling; Educational activities and counselling related to integration; and Referral of uncolonized and separated children to childcare services. Additionally, and after reviewing the request for assistance, UNHCR and its partner organizations may also provide the services of: Interpretation during medical and legal

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10 Šantić, Danica. “Response of the Republic of Serbia to the” migrant crisis”: Laws and strategies for managing mixed migration flows.” *Zbornik Instituta za kriminološka i sociološka istraživanja* 37, no. 2 (2018): 115-128.

11 UNHCR Serbia, Asylum and Reception Centres, available at:<https://help.unhcr.org/serbia/where-to-seek-help/asylum-and-reception-centres/>

12 UNHCR Serbia, Asylum and Reception Centres, available at:<https://help.unhcr.org/serbia/where-to-seek-help/asylum-and-reception-centres/>

proceedings; Provision of Serbian language classes and vocational trainings; and Assistance in search for job and/or accommodation.<sup>13</sup>

Since 2010, the Republic of Serbia has been independently creating the Migration Profile of the Republic of Serbia. The Migration Profile is an overall overview of migration statistics and migration policies in the country. The Republic of Serbia does not represent a significant attractive destination immigration country due to economic potential and employment opportunities. According to the latest data for 2022, the countries from which the most immigrants come are China, India and Uzbekistan. After the single Readmission Agreement with the EU entered into force on January 1, 2008, a large number of citizens of the Republic of Serbia were returned from EU countries. Among these persons there are persons who have lost the legal basis of residence in the territory of one of the EU member states, but it is still predominantly persons who requested asylum in the territory of the EU member states after visa liberalization. Of the total number of requests for readmission received, in 2022, most were submitted from the Federal Republic of Germany, France and Austria. The largest number of returnees registered at the Readmission Office at “Nikola Tesla” Airport is from SR Germany, France and Sweden. A decrease in the number of requests and returns based on the readmission agreement was observed. Out of a total of 4,179 issued certificates of registration of a foreigner who expressed his intention to apply for asylum, the largest number of issued certificates were submitted in regional police administrations (59.7%). Out of the total number of expressed intentions, only 7.63% of persons applied for asylum. Out of the total number of asylum applications submitted, 57% of the applications were submitted by citizens of Burundi. In 2022, the Asylum Office made 30 decisions approving asylum applications.<sup>14</sup>

The beginning of the conflict on the territory of Ukraine triggered the mass migration of Ukrainian refugees from the territory of the war. The Republic of Serbia and its institutions, within the scope of their competences, implemented a series of measures that enabled refugees to enter, receive, accommodate, access to education, health care and the labor market. The most important measure adopted by the government was the institute of temporary protection for refugees from Ukraine, which enabled the stay of 1,111 people in the Republic of Serbia.<sup>15</sup>

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13 UNHCR Serbia, Where to seek help, available at:<https://help.unhcr.org/serbia/where-to-seek-help/>

14 Vlada Republike Srbije, Migracioni profil Republike Srbije za 2022. godinu, available at: <https://kirs.gov.rs/>

15 Ibid.



In terms of external migration, the Republic of Serbia is traditional emigration area. Although incomplete, the data on emigration indicate a significant outflow of the population of the Republic of Serbia towards the more developed countries of the EU, North America, Australia and New Zealand. Today, it records a clear negative migration balance. The fertility crisis and its consequences related to population aging and open depopulation will continue and deepen in the time to come.<sup>16</sup>The weak economic performances, unstable and corrupt public and political infrastructure, as well as the high rate of emigration of its citizens, as a consequence of internal instability, have brought the sustainability of North Macedonia into question.<sup>17</sup>Therefore, both countries have a large number of challenges in front of them, both with internal migrations and with external transit migrations, and above all with the emigration of their resident population, so strong and well-directed structural measures are necessary at all levels of government, both administrative and executive, and also local, in order to stop these negative trends in the beginning, and then try to reverse them.

#### **4. How European Union has financially supported North Macedonia and Serbia**

The Republic of Serbia and the Republic of North Macedonia are signatories to the Geneva Convention from 1951 and the Protocol from 1967, as well as a number of international documents that are important in the field of migration management.

The European Union is an area of open borders and freedom of movement. In the EU, countries share the same fundamental values and need to have a joint approach to guarantee high standards of protection for migrants. Procedures must at the same time be fair and effective throughout the EU and impervious to abuse. This was one of the reasons for the establishing of the EU's Common European Asylum System (CEAS) that aimed to ensure that the rights of migrants under international law are protected in its member states. The migration crisis that caught the EU has put to the test not only the respecting of the laws from the member states but also has disturbed the respecting of the basic principles that are in the foundation of the EU, such as the principle of solidarity. Migration had become a problem

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<sup>16</sup>Ibid.

<sup>17</sup>Arnaudov, Mitko. "A contemporary security threat to North Macedonia: Securitization of emigration and the corruption in public institutions. Contemporary Macedonian Defence", XXII (43). 2019, pp. 25-36.

of the highest priority in the EU.<sup>18</sup> Serbian and Macedonian migration policy is thus a reaction to the EU migration policy, which is often introduced to external states as combined with economic and political potentials arising from closer cooperation with the EU on this matter.<sup>19</sup>

EU distributed funds to Western Balkans countries for migration management. Overall EU preaccession support for migration-related activities since 2007 to January 2016 were in total: € 129 m, as follows:

- Serbia € 54 million
- Macedonia € 24 m.
- Montenegro € 22.6 m.
- BIH € 16.8 m.
- Kosovo\* € 7.1 m.<sup>20</sup>
- Albania € 4.5 m.<sup>21</sup>

Ahead of the High Level Conference on the Western Balkans route, in October 2015, EU approved an additional €17 million to assist the North Macedonia and Serbia in particular. November 2015 marked the start of a multi-country IPA II programme ‘Regional support to protection-sensitive migration management in the Western Balkans and Turkey’, with a three-year implementation period and a budget of €8 million. It was aimed to facilitate migrant identification, improve information exchange and lay the groundwork for sustainable return solutions. The Commission implemented it through Frontex, IOM and UNHCR.

Additional Funding was EU/ECHO - leading donor for alleviating the Syria crisis, the EU has also allocated €1.74 million in humanitarian aid to Serbia and the North Macedonia alone. Some €1.5 million of this amount was dedicated for providing basic emergency services in winter (drinking water, hygiene, healthcare, shelter, improvement of reception centres, and coordination and reporting on migration issues in the region). An additional €240 000 (€90 000 for the North Macedonia and €150 000 for Serbia) has been allocated via the Disaster Relief Emergency Fund (DREF) of the

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18 Kosevaliska, Olga, Ana Nikodinovska Krstevska and Elena Ivanova, “‘Structured’ Solidarity of the European Union for Illegal Migration Challenges in North Macedonia.” (2022): 61-76.

19 Stojić-Mitrović, Marta, “The Reception of Migrants in Serbia: Policies, Practices, and Concepts,” *Journal of Human Rights and Social Work* 4, no. 1 (October 22, 2018): 17–27.

20 Kosovo\* - All references to Kosovo in this document should be understood in the context of United Nations Security Council Resolution 1244 (1999).

21 Vukomanović, Dijana. “Development of migration management portfolio in Western Balkans region.” In *Forum za sigurnosne studije*, vol. 4, no. 4/5, 2021, pp. 97-123. Fakultet političkih znanosti-Centar za međunarodne i sigurnosne studije.

International Federation of Red Cross and Red Crescent Societies (IFRC).<sup>22</sup>

Western Balkans countries are becoming significant partners of the European agenda of a migrant problem solution, and they are willingly accepting the obligation to adjust their national policies to EU migration policy standards, having in mind their long-term goal of EU membership.

## 5. Conclusion

The migrant crisis, and everything that accompanies it, will be on the agenda of both countries – Serbia and North Macedonia, and also in all countries of the region, but in the whole of Europe, as well. Solving this problem does not depend on one country, but on the most important international factors, and especially on the great powers that can only stop or seriously slow down the wave of migrants towards the European continent. The Balkan route from the direction of Asia and Africa to the countries of the European Union, it is not even close to closing and will always exist in some form in the future. That is why it is necessary for these migrations to be legally and financially regulated at the best possible manner, to be sustainable and for the countries through which this route passes to learn from the previous experiences and to be ready for some new future migration challenges.

Effective and efficient management of migration requires the collection of quality data and regular evaluation of the success of policies and measures designed to achieve the established goals. Therefore, it is necessary to continuously work on improving the process of creating various reports on the basis of which national policies will be created. Such activities directly contribute to the achievement of the first goal of the Global Compact for Safe, Orderly and Regular Migration (A/RES/73/195) and sub-goals 17.8 and 17.9 of Agenda 2030.<sup>23</sup> The Republic of Serbia and the Republic of North Macedonia are committed to fulfilling the Sustainable Development Goals, the Global Compact for Migration and the Global Compact for Refugees.

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<sup>22</sup> Source: EPRS, 2016. According to Vukomanović, Dijana. “Development of migration management portfolio in Western Balkans region.” In *Forum zasigurnosnestudije*, vol. 4, no. 4/5, pp. 97-123. Fakultet političkih znanosti-Centar za međunarodne i sigurnosne studije, 2021.

<sup>23</sup> The Global Compact for Safe, Orderly and Regular Migration (A/RES/73/195), is the first intergovernmental agreement, prepared under the auspices of the United Nations, to cover all dimensions of international migration in a holistic and comprehensive manner. It was adopted at an intergovernmental conference on migration in Marrakesh, Morocco on 10 December 2018.

Our analysis led to the conclusion that migration management in Serbia and North Macedonia was a highly politicized process. The entire process is politically controlled, at one point restrained, while at another point accelerated by coordinated decision-making by key actors from the EU as well as the Western Balkans region itself. North Macedonia and Serbia worked to harmonize their migration management frameworks mainly with the standards of the EU (*EU acquis*), which was related to their obligations to harmonize national legislation and standards, according to the Chapter 24 (Justice, freedom and security).

However, the question of the legal status of migrants will still remain open due to different approaches in solving these issues by the national governments of the European Union member states, as well as countries that are on the so-called Balkan route, but are not part of the European Union. In fact, it is a kind of legal vacuum that exists in the process of regulating the legal status of migrants on the so-called Balkan route, which causes multiple damage to the management of the entire process, even though there is a so-called European approach coordinated by the European Union, as well as countries that are not part of the Union, but are part of the so-called Balkan route. The damage is multiple because:

- it prevents migrants from permanently resolving their status;
- leaves space for migrants to be abused in criminal structures;
- It causes damage to the local population, because it creates a discourse that identifies migrant and criminal groups.

On the other hand, in this context, this will be a long-term security challenge for Serbia and North Macedonia, because in such a legal vacuum, these two countries will neither have mechanisms for the “passage” of migrant groups to Western and Northern Europe, nor will be able to carry out repatriation, nor national governments of Serbia and North Macedonia will succeed in managing the dissatisfaction of migrant groups who remain in the territories of these two countries, and do not want to.