

Security for Human Beings and Borders

Combating Smuggling of Migrants
in the Western Balkan



This project is funded
by the European Union



Smuggling of migrants in Montenegro

an analysis of Montenegro's legal system
in combatting migrant smuggling



BALKAN
REFUGEE AND
MIGRATION
COUNCIL

DRU DANISH
REFUGEE
COUNCIL

Content:

SMUGGLING OF MIGRANTS IN MONTENEGRO: AN ANALYSIS OF MONTENEGRO'S LEGAL SYSTEM IN COMBATTING MIGRANT SMUGGLING

Abstract.....1

Introduction.....2

I. Montenegro's national legal framework.....5

II. Migrant smuggling cases in Montenegro8

Conclusion and recommendations12

Bibliography.....15

Human Smuggling in Serbia:

An Analysis of Serbia's Legal System in Combatting Human Smuggling

Abstract.....18

Introduction.....19

Analysis of the legal framework and punishment policies.....20

Links of smuggling groups with the police.....24

Interviews with experts from various fields related to human smuggling.....25

Naim Leo Beširi, EU integration expert, Institute for European Affairs.....27

Saša Đorđević, Global Initiative.....28

Jelena Hrnjak, ATINA.....29

Saša Dragojlo, Journalist, Balkan Investigative Reporting Network.....32

Research Findings.....35

Conclusion.....36

Bibliography.....38

SMUGGLING OF MIGRANTS IN MONTENEGRO: AN ANALYSIS OF MONTENEGRO'S LEGAL SYSTEM IN COMBATTING MIGRANT SMUGGLING

M.A. Arian Marini
arianmarini.ga@gmail.com

ABSTRACT

The smuggling of migrants is a global phenomenon affecting nearly every country in the world. Criminals utilize this practice for financial or material benefit at the expense of the infringement of the migrant's human rights and consequently their respective lives. In 2015, Europe experienced the highest influx of refugees and migrants fleeing from Middle Eastern regions affected by wars and conflict. With the increased influx of migrants and refugees a heightened sense for security arose within the EU. Fraudulent documents, illegal cross-border transportation, and other facilitating services are offered to migrants at enormous prices, who due to their vulnerability consent to such services. Montenegro, being a country of origin, transit and destination, faces a two-dimensional issue when it comes to migrant smuggling. Firstly, due to its strategic geographical location of being a constituent state in the Western Balkans route, the well-known transit pathway for irregular migrants willing to reach the EU, it has become vulnerable to transnational smuggling of migrants. Secondly, while lesser in degree than the first one, the country also faces internal migration issues, primarily due to internal socio-economic reasons. In this sense, the following question arises: How effective the Montenegrin legal system is in practice in preventing smuggling of migrants

and prosecuting smugglers within its borders, considering the grave violations that may be caused by such instances, i.e. human rights violations, security, illegal national and international activities, etc.? With this in mind, in order to provide an answer to the abovementioned question, this paper will briefly elaborate upon (a) Montenegro's national legal framework in combating migrant smuggling, while also displaying Montenegro's compliance to international legal norms and standards, and it will analyse (b) Montenegro's migrant smuggling record, displaying its implications and the various forms it can take, both at the national and international level. In order to successfully combat the rising issue of migrant smuggling, Montenegro should incorporate the abovementioned recommendations as part of its policy-making agenda for the future with the intent of strengthening and reforming its national legal framework, to make it more adaptable with the constantly changing nature of migrant smuggling. This can be done by pursuing a mid-term policy route, looking at what can be done in the near future, taking into consideration time, cost and institutional capacities. This however should be in alignment with a larger policy framework, that is, the long-term policy, which at its core should include the implementation of all of the abovementioned recommendations, the successful implementation of which would undoubtedly strengthen Montenegro's capacities in combatting migrant smuggling.

Keywords: *migrant smuggling, Montenegro, Balkan pathway, criminal organizations, international norms and standards.*

INTRODUCTION

The smuggling of migrants is a global phenomenon affecting nearly every country in the world. Criminals utilize this practice for financial or material benefit at the expense of the infringement of the migrants' human rights and consequently their respective lives.¹ In order to criminalise it under international law, approximately two decades ago the UN drafted the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing its established Convention against Transnational Organized Crime. The Protocol serves as a roadmap and common cooperation ground for signatory States in which the parties can address the issue, both from a national and international perspective. Article 3(a) of this Protocol defines smuggling of migrants as:

“The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”²

In 2015, Europe experienced the highest influx of refugees and migrants fleeing from Middle Eastern regions affected by wars³ and conflict. With the increased influx of migrants and refugees a heightened sense for security arose within the EU. Border pushbacks due to enforced border control policies at the external EU borders were amidst the priority agenda for the Union. These restrictive and conservative

measures have had its impact on the fleeing process of migrants, limiting regular migration and asylum seeking for migrants and refugees. The consequences were significant, with thousands being stuck in respective transit countries within the Balkan route, with no way to move forward and no willingness to return to the country of origin. Vulnerable to reach the EU as their end destination however, migrants and refugees seek out irregular and illegal pathways of entering, often time leaving them at risk to smuggling practices and thus becoming potential victims of human trafficking. As can be seen, smuggling of migrants becomes especially evident in times of armed conflict leading to migration crisis.⁴ The desperation to flee their country of origin due to such conflict, poor socio-economic conditions, and/or prosecution, is being exploited by smugglers and international criminal organizations predominantly for financial gain.

Fraudulent documents, illegal cross-border transportation, and other facilitating services are offered to migrants at enormous prices, who due to their vulnerability consent to such services. It is estimated, “according to Europol, more than 90 % of irregular migrants use these ‘facilitation services’ and in 2015 alone the estimated annual turnover related to migrant smuggling reached EUR 3–6 billion, with possible scenarios projecting a double or even a triple

¹ United Nations Office on Drugs and Crime (UNODC). “Toolkit to Combat Smuggling of Migrants”. United Nations, New York, 2010.

² United Nations (UN). “PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS BY LAND, SEA AND AIR, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST

TRANSNATIONAL ORGANIZED CRIME.” 2000. Accessed January 13, 2023

³ United Nations High Commissioner for Refugees, “2015: The Year of Europe’s Refugee Crisis,” UNHCR, accessed January 12, 2023.

⁴ “Human Trafficking Risks in the Context of Migration,” OHCHR, accessed January 12, 2023,

increase.”⁵ As can be seen, the migrant smuggling business is a highly profitable one with serious negative implications. Firstly, this highly profitable business model comes at a great price, which is that of human lives. In fact, referring to a 2022 report, since the start of 2021, the Missing Migrants Project of the International Organization for Migration (IOM) has “documented at least 5,684 deaths on migration routes to and within Europe”⁶, with rising numbers of deaths on routes across the Mediterranean, on land borders to Europe, and within the continent. Secondly, migrant smuggling undermines state sovereignty and jeopardizes its security, considering many of these smuggling channels can be utilized for smuggling drugs, weapons, money laundering, terrorism financing⁷ and other illegal instances. Thirdly, upon reaching their final destination, migrants are susceptible to increased xenophobia from nationals and are consequently faced with the issue of integration within the newly found society. As such, they are often vulnerable to working below minimum wage jobs and mostly fill in the bottom end of the societal hierarchy within the destination country.⁸ Therefore, addressing migrant smuggling is of crucial importance in order to promote human rights and ensure international peace and security.

Montenegro, being a country of origin, transit and destination, faces a two-dimensional issue when it comes to migrant smuggling. Firstly, due to its strategic geographical location of being a constituent

state in the Western Balkans route, the well-known transit pathway for irregular migrants willing to reach the EU, it has become vulnerable to transnational smuggling of migrants. Secondly, while lesser in degree than the first one, the country also faces internal migration issues, primarily due to internal socio-economic reasons. It is important however, to acknowledge the interconnection between internal and transnational smuggling of migrants, as these two in many cases complement one another and are not mutually exclusive. Therefore, the implementation of effective measures in combating smuggling of migrants at the national level can have positive impact at the international one and vice versa. The success of this is highly dependent on the state’s implementation and enforcement of the law. In most migrant smuggling scenarios however, the implementation of the legal frameworks remains rather slim, thus contributing negatively to the state’s overall migrant smuggling record. Many cases do not even get the chance of being addressed by the state’s legal system, considering the insufficient implementation and enforcement of the law within this respect.

In this sense, the following question arises: How effective the Montenegrin legal system is in practice in preventing smuggling of migrants and prosecuting smugglers within its borders, considering the grave violations that may be caused by such instances, i.e. human rights violations,

⁵ “Eurostat: Smuggling of Migrants,” IMF, accessed January 12, 2023.

⁶ “More than 5,000 Deaths Recorded on European Migration Routes since 2021: IOM,” International Organization for Migration, accessed January 28, 2023.

⁷ “Money Laundering and Terrorist Financing Risks Arising from Migrant Smuggling,” accessed January 28, 2023.

⁸ Joan Benach et al., “Migration and ‘Low-Skilled’ Workers in Destination Countries,” *PLoS Medicine* 8, no. 6 (June 7, 2011): e1001043, <https://doi.org/10.1371/journal.pmed.1001043>.

security, illegal national and international activities etc.?

With this in mind, in order to provide an answer to the abovementioned question, this paper will briefly elaborate upon (a) Montenegro's national legal framework in combating migrant smuggling, while also displaying Montenegro's compliance to international legal norms and standards, and it will analyse (b) Montenegro's migrant smuggling record, displaying its implications and the various forms it can take, both at the national and international level.

The first chapter of this paper will initially elaborate upon Montenegro's national legal framework in regards to the smuggling of migrants, displaying briefly the country's most important international agreements as well as national legal adoptions in combating migrant smuggling. UN and Council of Europe Conventions (that Montenegro is party to), Montenegro's Constitution and Criminal Code, comments from the office of the High Commissioner for Human Rights, as well as relevant reports from the International Organization for Migration have been utilized to elaborate upon Montenegro's situation and its national legal framework in the field of migrant smuggling. Furthermore, Montenegro's migrant smuggling record will be displayed, offering brief insights on the total number of case reports, victims identified, as well as the forms it can take. In conclusion, depending on the findings from the abovementioned chapters, this analysis will offer concluding remarks and recommendations (mid-term and long-term policy) with regards to combatting migrant smuggling in Montenegro, displaying the effectiveness of Montenegro's national legal framework regarding the protection of smuggling victims and the prosecution of

smuggling cases within the country. A roadmap for Montenegro to follow, which will be in alignment with UN and CoE practices, will be proposed.

I. MONTENEGRO'S NATIONAL LEGAL FRAMEWORK

The Constitution of Montenegro, as a composed body of fundamental principles, represents the 'higher law' of the state, especially for matters concerning fundamental human rights and freedoms. It consists of 8 parts and an appendix, in which basic provisions, human rights and liberties, organization of powers, economic system, constitutionality and legality, constitutional court of Montenegro, change of the constitution, and the enforcement of the Constitution through Constitutional law, are included. Article 9 of the Basic Provisions in the Constitution of Montenegro specifically elaborates on the importance of international agreements and generally accepted rules upon their ratification, emphasizing that they "shall make an integral part of the internal legal order, shall have the supremacy over the national legislation and shall be directly applicable when they regulate the relations differently from the internal legislation." This is of significant importance when it comes to prosecuting cases of migrant smuggling, considering many of these cases are not properly addressed by Montenegro's legal system, namely from its national courts.⁹

Part two of the Constitution is concerned with the promotion of human rights and liberties. Common provisions within this part include various articles which cover gender equality, protection, legal remedy and aid, as well as the right to local self-government. There are also limitations on exercising human rights and liberties stated in the Constitution, namely they can be limited by law (Article

24) and on basis of emergency (Article 25), be it in a state of war or any other national security related emergency. Even during the state of emergency, provisions within Article 25 display that there are some fundamental rights that are not to be limited. This being said, limitations shall not include a) limitations based on sex, country of origin, race, religious or political beliefs, personal feature or financial standing; b) the rights to life, a legal remedy, and legal assistance, as well as to respect for one's dignity and the rule of law, the presumption of innocence, the right to a defense, the right to a fair trial, the right to legal representation, the freedom of thought, conscience, and religion, and the right to marry shall not be subject to any restrictions; and c) the prohibitions against inciting or encouraging hatred or intolerance, discrimination, being tried and found guilty of the same crime twice (*ne bis in idem*), and forced assimilation shall not be abolished.⁹

Prior to elaborating further in detail upon Montenegro's national legal framework in combatting migrant smuggling, it is important to state that the country has regional and international obligations in ensuring the promotion and protection of human rights within its borders. At the international level, being the 192nd member state of the UN, it promotes and protects human rights by abiding with the organization's directives as stated in its founding Charter. Upon signature and ratification of the UN Charter in 2006, Montenegro became legally-bound to UN resolutions passed down by the Security Council and the General Assembly. The UN aims to protect and promote human rights through its Charter and Treaty bodies.¹⁰ On

⁹ Constitution of Montenegro. "Montenegro's Constitution of 2007". Constitute.

¹⁰ "Human Rights Explained: Fact Sheet 8: Promoting and Protecting Human Rights in the UN System |

one hand, The Human Rights Council and the Office of the United Nations High Commissioner for Human Rights represent the Charter bodies, which generally have a broad mandate and oversee the fulfilment of “UN’s general purpose of promoting human rights” in all Member States.¹⁰ Treaty bodies on the other hand, are more specific and their purpose is the monitoring and ensuring compliance of State Parties with particular human rights treaties. These treaties are also known as Conventions, which are enforced through respective Committees. Besides fulfilling obligations at the international level, regionally as the 47th member state of the Council of Europe, the continent’s leading human rights organization, Montenegro has also ratified the European Convention on Human Rights (ECHR) and as such must ensure compliance with the articles therein.¹¹ Upon ratification of the ECHR, Montenegro became subject to the jurisdiction of the European Court of Human Rights. The ECHR is an important regional treaty as it grants individuals or group of people to file complaints against a State party to the Convention, should that individuals or group of people’s human rights per the ECHR be violated and domestic remedies be exhausted.

Within the general international and regional human rights obligations that Montenegro must fulfil within its borders, are also specific instruments tailored to combat migrant smuggling and protect the rights of migrants. To begin with, the most important legally binding document when it comes to combatting the smuggling of migrants

internationally is the Protocol against the Smuggling of Migrants by Land, Sea and Air, deriving from UN’s Convention against Transnational Organized Crime (UNTOC). State parties to the Convention must adopt the legal requirements as set forth in the Protocol and incorporate them within their own national legal framework. A major key point of this Protocol is defined in Article 6, which criminalizes the smuggling of migrants, while also protecting the rights of smuggled migrants, ensuring that they are treated humanely and not viewed as criminals.² In addition to that, the Protocol stands as the first international instrument which has achieved to define the issue of migrant smuggling, establishing an international consensus on the definition and thus enhancing cooperation in combatting the issue. The implementation of the Protocol is monitored by United Nations Office on Drugs and Crime (UNODC), which is the monitoring body of UNTOC. The UNODC aids the member states in several ways with the implementation of the UNTOC and its respective Protocols. Firstly, UNODC is the monitoring body of the newly established review mechanism, which was implemented by Member States with the purpose of self-assessing and evaluating the UNTOC implementation process within their borders.¹² Secondly, the monitoring body also provides technical assistance (primarily legislation reforms and capacity building) to Member States regarding the implementation of the UNTOC and its supplementing

Australian Human Rights Commission,” accessed January 25, 2023.

¹¹ “Montenegro - Member State - Portal - Publi.Coe.Int,” Portal, accessed January 24, 2023.

¹² “Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto,” United Nations: Office on Drugs and Crime, accessed January 29, 2023.

Protocols.¹³ Lastly, UNODC works closely with civil society and the private sector, thus enhancing a wider range of institutions in the fight against transnational organized crime, which includes the smuggling of migrants.¹⁴

When speaking of specific regional instruments, there are only indirect Council of Europe Conventions that can be applicable in combatting migrant smuggling. These include: the European Convention on the Legal Status of Migrant Workers,¹⁵ Convention on Action against Trafficking in Human Beings,¹⁶ the European Convention on Extradition,¹⁷ Convention on the Suppression of Terrorism,¹⁸ the European Code of Social Security,¹⁹ and the European Convention for the Prevention of Torture, and Inhuman or Degrading Treatment or Punishment.²⁰ With respect to the smuggling of migrants, CoE initially commissioned two studies, titled a) “*National Laws Relating to Smuggling of Migrants in Council of Europe Member States*” and b) “*Preventing and suppressing the smuggling of migrants in Council of Europe member States – ‘a way forward.’*” These studies identified opportunities for improvement and revealed that there are significant discrepancies in national criminal laws among Council of Europe member states, particularly in terms of crimes related to migrant smuggling. Consequently, one of the primary outcomes

was the consideration of member states to establish a new Council of Europe Convention concerned with the smuggling of migrants.²¹ That however, remains an ongoing process. With that being said, immense importance is being given from the Council of Europe to urging State Parties to make amendments within their national legal framework in combatting migrant smuggling. Model Laws on migrant smuggling represent some of the examples that state parties can refer to when undergoing such amendments. Simply being party to the abovementioned regional and international instruments when it comes to combatting smuggling of migrants is insufficient and will prove to be ineffective if such amendments are not made within the national legal framework of the state.

The smuggling of migrants (**‘smuggling of persons’ as it is referred to in the document**) is criminalized within Montenegro’s Criminal Code. Article 405 of the Criminal Code of Montenegro condemns smuggling of persons with imprisonment for both the smuggled person and the smuggler, the duration of which depends on how and in what way the act was conducted. According to Article 405 (1), “anyone who without the required permission crosses or tries to cross the state border of Montenegro, will be sentenced with imprisonment not exceeding

¹³ United Nations: Office on Drugs and Crime, accessed January 29, 2023.

¹⁴ “The United Nations Office on Drugs and Crime,” accessed January 29, 2023.

¹⁵ “International Organizations - European Convention on the Legal Status of Migrant Workers,” accessed January 30, 2023.

¹⁶ Council of Europe. Convention on Action against Trafficking in Human Beings.

¹⁷ Council of Europe. European Convention on Extradition.

¹⁸ Council of Europe. Convention on the Suppression of Terrorism.

¹⁹ Council of Europe. European Code of Social Security.

²⁰ Council of Europe. European Convention for the Prevention of Torture, and Inhuman or Degrading Treatment or Punishment.

²¹ Accessed January 30, 2023, <https://rm.coe.int/09000016809a4ac3>.

one year”. This paragraph is concerned mainly with punishing the smuggled person. The next two paragraphs, namely paragraph (2) and (3), are concerned with punishing the smuggler. These two differ from one another in the sense that paragraph (2) punishes with imprisonment individual smugglers which are not part of any group that operate in an organized manner. The duration of the imprisonment sentence within para (2) ranges from three months to five years. Supplementing this, paragraph (3) of Article 405 punishes smugglers with a prison penalty of one to 10 years, who operate in an organized manner, abuse office, endanger the life or livelihood of those unlawfully crossing borders, staying, or transiting, or who conduct smuggling of several people.²² As can be seen from the paragraphs of Article 405, more rigid measures are undertaken by the government in combatting organized groups who work as a part of a larger transnational network smuggling persons. While the Criminal Code criminalizes smuggling of migrants, sentencing both the migrant and the smuggler with imprisonment, provisions from international conventions demand that the migrant has several rights that must be respected. Provisions from the migrant smuggling Protocol and the respective Convention must be implemented as one within Montenegro’s national legal framework, as these supplement one another to provide a more unified approach to combatting smuggling of migrants.

²² “Montenegro-Criminal-Code-2003-Eng.Pdf,” accessed January 28, 2023.

II. MIGRANT SMUGGLING CASES IN MONTENEGRO

When it comes to cases of smuggling of migrants in Montenegro, there is a lack of information from relevant stakeholders, such as ministries, civil society sector, other credible national and international institutions which cover the subject of smuggling in persons within Montenegro. Hence, considering there is insufficient credible information when it comes to smuggling of migrants in Montenegro, I have mainly utilized national news reports on smuggling cases, which will be displayed in a chronological order from 2015 to newest. The reason I have chosen 2015 as a starting point to elaborate upon migrant smuggling cases, is because information prior to that year could not be found. This is not to say that Montenegro was migrant smuggling free before 2015. An explanation could be that this smuggling phenomenon came to light especially in Montenegro during the 2015 migrant crisis.

During 2015, it has been estimated that more than 1.2 million people sought asylum in EU, with a report from Europol stating that “smugglers enable 90 percent of migrants to enter the EU, sometimes with the help of corrupt mercenary officials,” who enable ships to be released and vehicles to cross borders.²³ Related to this, it has been roughly calculated that the smugglers networks during the migrant crisis in 2015, earned 5 to 6 billion dollars from migrant smuggling.²³ In 2015, the Greek police arrested 49 year old Serbian citizen and 43 year old Montenegrin citizen under the accusation for migrant smuggling. These two prior to their arrest,

²³ “Krijumčari migranata u 2015. godini zaradili šest milijardi dolara,” vijesti.me, accessed March 1, 2023.

have driven a vehicle without the necessary travel documents. Their arrest took place not far from the border crossing point in Evzonoi in Greece. The police forces believe that these two tried to smuggle migrants into Macedonia. The Greek police seized the vehicle, owned by the Serbian citizen, as well as two phones.²⁴ Later in the same year, as has been noted by the news article written by Boricic, there was a major court hearing regarding migrant smuggling in Montenegro. J.D. was arrested on accusations related to migrant smuggling. However, his trial was prolonged considering that the accused eventually agreed to plea. Apart from J.D., on the indictment bench were S.P., N.G., D.S., Č.M., D.T., E.F., N.R., M.K., M.D., N.D. and R.D. from Podgorica. In addition to that, Dž.D., I.D., H.L., H.L. and F.B. from Rožaje, were also accused of asylum-seeking migrant smuggling.²⁵ The accused, in order to acquire property benefits, in an organized manner carried out the smuggling of 138 migrants, the majority of which were from Syria.²⁵ S.P. was sentenced to 17 months in prison and D.T. to 9 months in prison.²⁶ Judge Rabrenović accepted the plea agreement from 12 accused individuals, in accordance to which they have been sentenced to 11 years and two months of imprisonment altogether.²⁶

In 2018, Montenegrin citizen M.K. (then 35 years old) has been arrested under the criminal offence of illegal border crossing and smuggling of persons per the Criminal Code. The Bar police, in cooperation with Ulcinj's border security – South Regional

Center, arrested M.K. from Ulcinj, while he was on route to the capital city Podgorica with 6 Syrian nationals; two males, one woman and three children, who did not possess any travel or legal documents. M.K. was driving a 'Volkswagen Passat' motor vehicle with Ulcinj registration plates. It is believed that M.K. instructed the Syrian citizens, while they were negotiating in Albania, to cross the state border with Montenegro from Albania illegally, i.e. outside the Murićani-Sukobin border crossing, which they did. He then, as suspected, waited in the town of Sukobin and with an intent to earn 200 euros he planned to transport them from Sukobin to Podgorica using the route via Ostros, the police administration announced.²⁷ Additionally, the police administration stated that Ulcinj's state prosecutor was informed about the case, after which he ordered the arrest, with the intent of bringing him before the court due to the suspicion that he had committed the criminal offense of illegal crossing of the state border and people smuggling. The Syrian citizens were handed over to the inspector for foreigners of the Ulcinj Security Department for further processing.²⁷ However, one year after the arrest, the suspect was acquitted of the criminal offense of illegal crossing of the state border and people smuggling on May 7, 2018.

At the initial hearing, M.K. denied that he had committed the crime he was charged with. He claimed that although he has been a taxi driver for eleven years, he does not own a business and that he was in Tirana on that

²⁴ "Srbin i Crnogorac se vozili bez putnih isprava," vijesti.me, accessed February 28, 2023.

²⁵ "Krijumčari azilanata se pogađaju sa tužiocem," vijesti.me, accessed February 28, 2023.

²⁶ "Paunoviću pet, Tomanoviću devet mjeseci zatvora za krijumčarenje azilanata," vijesti.me, accessed February 28, 2023.

²⁷ "Ulcinjanin pokušao da prokrijumčari šest Sirijaca u Crnu Goru?," vijesti.me, accessed March 1, 2023.

particular day to purchase vehicle parts. He testified before the judge that the Syrian male, his wife, and three kids hitchhiked with him on the way back to take them to Montenegro. During the drive, they informed him they lacked documentation as they approached the border, so he stopped the car and ordered them to exit. After that, he crossed the border alone and went home to Vladimir (village in the municipality of Ulcinj) to rest. Later that day, he stated that he went out to meet with three adults and three children who were asking for a ride to Podgorica. During their encounter, M.K. told them that the ride to the capital costs 150 euros, and they offered 200. On the day of transport, he left Vladimir for Virpazar (village in the municipality of Bar), but was stopped and arrested by a patrol in Ostros. During the search, he emphasized that these were not the same individuals he drove through Albania. In explaining the verdict, the basic court prosecutor Mirović stated that there were a number of illogicalities and contradictions in the defendant's defense during the trials. Despite this, Mirović assessed that there are no decisive facts concerning the existence of a criminal act. Only the sum of 200 euros was found and confiscated from the defendant. Hearings of the Syrian citizens could not be conducted, considering that they were not registered in the Asylum Reception Center in Spuž, and as such their earlier testimonies (statements) had to be separated from the case file and not be used as evidence. This being said, the court wrote in the explanation, taking into account primarily the defendant's statement that he did not commit the crime and the established facts and presented evidence

²⁸ “Sud oslobodio Ulcinjanina, ali mu nije povjerovao,” vijesti.me, accessed March 1, 2023.

from the defendant’s lawyer, which are not sufficiently convincing, in accordance with the law, resorted to the rule that the presented facts in favor of M.K. are considered proven, even though there is doubt about them.²⁸

In October 2018, police forces arrested A.R. (then 38) from Podgorica, under the suspicion that he smuggled migrants from Montenegro into neighboring country Bosnia and Herzegovina. A.R. is suspected of executing the crime in an organized manner, in order to gain access to unlawful property benefits by smuggling many people whose lives and health were endangered considering the execution of the crime. He was suspected of driving three migrants from Montenegrin territory into Bosnia and Herzegovina in his car in a scheme in which he first drove them near the border, after which the migrants then crossed the border illegally on foot, and finally he picked them up in the area of Bilea again. The three migrants that A.R. smuggled compensated him with 450 euros at his very own request. Suspect A.R. was brought before the competent prosecutor, due to the well-founded suspicion that he has committed the abovementioned criminal act of smuggling in persons.²⁹

In addition to cases which have happened within the territory of Montenegro, there have also been reported cases of Montenegrin citizens carrying out smuggling of migrants acts outside the borders of Montenegro, possibly hinting towards an organized network of smugglers within the Balkans, which may potentially have links to transnational organized crime as well. In July of 2018, Bosnian police arrested Montenegrin citizen B.N. for smuggling of

²⁹ “Podgoričanin uzeo 450 eura od migranata da ih prebaci u BiH?,” vijesti.me, accessed March 1, 2023.

three illegal Syrian migrants, while he was on route Gacko - Foča, a town in Bosnia and Herzegovina, which is near the border with Montenegro. At the time of the arrest, he was driving a “Skoda Octavia” motor vehicle. In addition to that, in the same month, Montenegrin citizen M.R. (then 22), Bosnian citizen with permanent residence in Podgorica O.V., two Serbian citizens, T.P. (then 33) and K.P. (then 27), and Croat M.K. from Zagreb, were arrested for illegally transporting migrants in the Istrian town of Žejini.”³⁰ When the police stopped them, there were a number of people (alleged illegal migrants) who got out of the van, which was driven by M.R., and ran towards the forest. The judge sentenced the suspects to pretrial custody and imposed bail in the amounts of HRK 30,000 for the first and second suspect and HRK 15,000 for the women due to the possibility of escape and the fact that they are foreign nationals.³⁰ Furthermore, in 2020, there was a reported case of a Montenegrin citizen being returned to Montenegro from Bosnia and Herzegovina, after the abovementioned was arrested and sentenced to imprisonment for migrant smuggling within the territory of BiH. After serving his prison sentence, he was taken over by the Service for Affairs with Foreigners and imposed measures of expulsion and a ban on entry into Bosnia and Herzegovina for the next three years. He was under surveillance at the Immigration Center until his deportation.³¹

In 2021, Lj.Đ., the head of a criminal organization, which carried out smuggling of

migrants in Montenegro and Bosnia and Herzegovina, concluded a plea agreement with Montenegro’s Special Prosecutor’s office. Earlier that year, the defendants D.D. and Ž.D. “entered into plea agreements that they were part of Lj.Đ.’s criminal organization that was involved in smuggling migrants from Montenegro to Bosnia and Herzegovina in early 2019.”³² In addition to them, A.P., R.K., M.K., V.P., D.M. and M.D., were also accused. The indictment claims that the accused Lj.Đ. founded the abovementioned criminal organization that operated both in Montenegro and Bosnia and Herzegovina as of 2019. It is stated that every individual within Lj.Đ.’s group had specific duties within the chain of migrant smuggling, proving that they worked in an organized manner. Since its establishment, this group is believed to have smuggled at least 250 foreign citizens, 32 of whom have been identified, with the majority of smuggled migrants originating from Syria, Pakistan and Eritrea.³² In the same year, because of smuggling 52 migrants, D.N (then 40) and L.A. (then 31) were punished each with 4 years of imprisonment, when the judge of the Basic Court of Herceg Novi adopted the decision referring to paragraph 2 and 3 of Article 405 on ‘Illegal Crossing of the State Border and Smuggling of Persons’.³³ According to judge Vesna Gazdić, defendants D.N. and L.A., on 16 October 2020 in the morning hours, set sail from Marina 'Lazura' in Meljina, where they received 52 Turkish citizens on the vessel board near Budva, passed the port and border

³⁰ “Hrvatska: Crnogorski državljani uhapšeni zbog sumnje da je učestvovao u krijumčarenju migranata?,” vijesti.me, accessed March 1, 2023.

³¹ “Crnogorski državljani protjerani iz BiH zbog krijumčarenja migranata,” vijesti.me, accessed March 1, 2023.

³² “Odloženo ročište okrivljenom za krijumčarenje migranata,” vijesti.me, accessed March 1, 2023.

³³ “Osuđeni na četiri godine zatvora zbog krijumčarenja 52 migranta,” vijesti.me, accessed March 2, 2023.

points, placed them in the ship's cabins inside the vessel, and then, steering the said vessel, crossed with them across the borders of the territorial waters of Montenegro with the intention of transporting them past the border crossings to Italy for the promised reward. The reward was supposed to be received after disembarking the passengers in Italy, during which they were prevented by the competent authorities of Montenegro.³³

Apart from the abovementioned cases of migrant smuggling, recently in 2022, there was a joint police operation that revealed the interconnection of migrant smuggling with other criminal activities within Montenegro. In a joint operation of 28 countries called “SEE JAD 2022”, coordinated by EUROPOL, 16 000 police officers participated, under the intent of coordinating specific activities targeting human trafficking networks involved in sexual trafficking, forced begging and forced crime.³⁴ At the days of the joint police action, which happened between October 26 and 29, 74,924 persons, 32,665 vehicles, 2,044 parcels were checked and 998 locations were searched. There were 382 arrests in total, out of which 159 are suspected of migrant smuggling, 112 of drug trafficking, 38 of firearms trafficking, two of human trafficking and 71 of other crimes.³⁴ During the days of joint police action, Montenegro’s police administration carried out detailed controls of 1,220 individuals, 1,550 vehicles and two vessels. During the action, Montenegro’s police administration prevented illegal entry of 75 persons into the country, registered two cases of attempted use of forged documents, banned 10 individuals from entering the country, and found and confiscated 67

packages of marijuana.³⁴ V.P. from Nikšić was arrested during the days of the joint police action and was sentenced to prison under the accusation of smuggling narcotics. He was believed to be one of the heads of the Nikšić steel criminal group.³⁴ This joint police action carried out by 28 countries from EU and the region was of significant importance, as the arrests displayed the involvement of criminal organizations that operated within the well-known Balkan pathway, trafficking humans, weapons, narcotics and carrying out other illegal activities.

CONCLUSION AND RECOMMENDATIONS

Throughout this brief analysis regarding human smuggling in Montenegro, particularly the effectiveness of Montenegro’s legal framework in combatting migrant smuggling within the country, an array of information was given. Firstly, the analysis began by displaying human smuggling as a global phenomenon that has been on a rise, specifically because of various conflicts and poor socio-economic situation in different parts of the world. Within the Balkans, while one can argue that human smuggling was always present, it has become especially evident in 2015, with the migrant crisis emerging from regions affected by wars and poor socio-economic conditions, especially the Middle East. The significance of the Balkan route utilized by migrants as a connecting bridge to their end destination, primarily the EU, has been outlined throughout this analysis. Issues and various implications deriving from such occurrence were also given, stressing out the importance

³⁴ “Prijović bacio drogu kroz prozor,” vijesti.me, accessed March 2, 2023.

of establishing a joint initiative between the region of the Balkans when speaking of tackling the increased influx of migrants, as border security was at heightened risk from other forms of illicit activities that could derive from such influx.

Secondly, in order to give a more detailed picture on the issue at hand, this analysis provided a brief elaboration upon Montenegro's national legal framework and its compliance to regional and international norms and standards with regards to migrant smuggling. In this part of the analysis, Article 9 of the Basic Provisions in the Constitution of Montenegro was displayed, which specifically elaborates on the importance of international agreements and generally accepted rules upon their ratification, emphasizing that they "shall make an integral part of the internal legal order, shall have the supremacy over the national legislation and shall be directly applicable when they regulate the relations differently from the internal legislation". This was done in order to pave the way for elaboration regarding regional and international agreements which Montenegro had ratified. This being said, I continued the analysis by emphasizing that Montenegro had regional and international obligations when it comes to combatting migrant smuggling. These are legally binding documents that need to be respected and integrated within the national legal framework of Montenegro. Additionally, within this part of the analysis, a detailed elaboration upon Montenegro's Criminal Code was given, article 405 of which has been shown to criminalize the act of migrant smuggling through imprisonment, for both the smuggler and the smuggled migrant.

Lastly, this analysis covered cases of migrant smuggling that have occurred in Montenegro since 2015 and up until now. Year 2015 was utilized as a starting point, because data regarding migrant smuggling prior to this year could not be found utilizing the abovementioned research method. Since 2015 there have been numerous cases of migrant smuggling, which have happened in Montenegro and were committed by Montenegrin nationals abroad, either individually or as a part of a larger criminal organization, who had as part of the agenda migrant smuggling among other illegal activities. The displayed cases show the complicated nature that migrant smuggling can take, beginning with individual taxi drivers offering migrants transportation services for a specific amount of money and ending with established Montenegrin criminal organizations that work in an organized manner to smuggle migrants among other illicit activities, both into Montenegro and broader. Considering the complicated nature that migrant smuggling can take, the national legal framework of Montenegro needs to be aligned and reformed in order to combat distinct issues deriving from such activity. Many cases which have gone to trial under the accusation of illegal border crossing and smuggling in persons have been acquitted primarily because there were insufficient legal tools that could adopt with complicated nature of migrant smuggled, thus aiding in the prosecution of the case.

In light of the abovementioned, the following have been offered as recommendations that should be taken into consideration for implementation in order to establish a more unified approach towards combatting migrant smuggling in Montenegro. The following recommendations have been

obtained from IOM's report on "*Countering Migrant Smuggling*",³⁵ as these are general in nature and are valid when speaking of Montenegro's situation regarding migrant smuggling. This being said, Montenegro must:

- Establish or amend, if appropriate, national legal frameworks that adhere to international legal norms, including the prosecution and punishment of migrant traffickers as well as the seizure and return of assets obtained illegally;
- Where applicable, decriminalize under national legislation the movement of migrants who have used services from smugglers, while guaranteeing that they have adequate access to protection, assistance, and services like legal, medical, and psychosocial support;
- Establish well-managed visa and entrance programs with short wait times, affordable costs, efficient identity management procedures, and, if necessary, pre-departure health checks can help create efficient and accessible legal migration routes. Family reunification chances, labor migration openings, access to asylum, humanitarian admission programs for refugees and migrants in need, various alternative pathways, community-based sponsorship programs, and/or academic scholarships should all be available through regular channels;
- Streamline border management processes and information systems to make it easier to gather intelligence and create risk profiles;

- Reinforce border management organizations and specialized anti-smuggling units by offering technical assistance. Examples of such assistance include the creation or modification of standard operating procedures, instruction on intelligence cycles, performing risk analyses, developing investigative skills, debriefing and interviewing, and giving advice on how to combat "document fraud, illicit financial flows, money laundering, and corruption"³⁵;
- Ensure that prospective migrants have access to fair information on the dangers of cooperating with traffickers and the existence of opportunities for legal migration;
- Increase knowledge among relevant stakeholders, such as "employers, consumers, and immigrant communities"³⁵, and their involvement in preventing smuggling and its effects on migrants.
- Organize training for border police officers and reception center officers in order to recognize victims of smuggling.
- Establish bilateral and multilateral procedures (mechanisms) for information sharing, operational coordination, and support of prosecution efforts among "judicial authorities, law enforcement, border control agencies,"³⁵ and other relevant stakeholders;
- Collect and disseminate data on the methods, travel patterns, and economic models used by smuggling networks, as well as information on the connections between these networks and other criminal activities such as human

³⁵ International Organization for Migration (IOM). "*Thematic Paper on Counter-Smuggling*." accessed March 2, 2023.

trafficking, money laundering and narcotics smuggling.

- Conduct studies on the social and economic factors that support smuggling processes, such as the range of individuals involved, the information and communications technologies used, the sources and types of fees, and the organizational and social networks employed.

In order to successfully combat the rising issue of migrant smuggling, Montenegro should incorporate the abovementioned recommendations as part of its policy making agenda for the future with the intent of strengthening and reforming its national legal frameworks, to make it more adaptable with the constantly changing nature of migrant smuggling. This can be done initially, by pursuing a mid-term policy route, looking at what can be done in the near future, taking into consideration time, cost and institutional capacities. The midterm policy plan however, should be in alignment with a larger policy framework, that is the long-term policy, which at its core should have the implementation of all of the abovementioned recommendations, the successful implementation of which would undoubtedly strengthen Montenegro's capacities in combatting migrant smuggling.

BIBLIOGRAPHY

- Adrović, Samir. "Sud oslobodio Ulcinjanina, ali mu nije povjerovao." *Vijesti*, 2019. Accessed March 1, 2023. <https://www.vijesti.me/vijesti/crna-hronika/398635/sud-oslobodio-ulcinjanina-ali-mu-nije-povjerovao>.
- Australian Human Rights Commission. "Human Rights Explained: Fact Sheet 8: Promoting and Protecting Human Rights in the UN System | Australian Human Rights Commission." Accessed January 25, 2023. <https://humanrights.gov.au/our-work/education/human-rights-explained-fact-sheet-8-promoting-and-protecting-human-rights-un>
- Beta. "Krijumčari migranata u 2015. godini zaradili šest milijardi dolara." *Vijesti*, 2016. Accessed March 1, 2023. <https://www.vijesti.me/svijet/globus/127617/krijumcari-migranata-u-2015-godini-zaradili-sest-milijardi-dolara>
- Benach, Joan, Carles Muntaner, Carlos Delclos, María Menéndez, and Charlene Ronquillo. "Migration and 'Low-Skilled' Workers in Destination Countries." *PLoS Medicine* 8, no. 6 (June 7, 2011): e1001043. <https://doi.org/10.1371/journal.pmed.1001043>.
- Boričić, Maja. "Krijumčari azilanata se pogađaju sa tužiocem." *Vijesti*, 2015. Accessed February 28, 2023. <https://www.vijesti.me/zabava/153774/krijumcari-azilanata-se-pogadaju-sa-tuziocem>
- Boričić, Marija. "Paunoviću pet, Tomanoviću devet mjeseci zatvora za krijumčarenje azilanata." *Vijesti*, 2015. Accessed February 28, 2023. <https://www.vijesti.me/zabava/151499/paunovicu-pet-tomanovicu-devet-mjeseci-zatvora-za-krijumcarenje-azilanata>.
- Council of Europe (CoE). "Montenegro // 46 States, one Europe" Accessed January 24, 2023. <https://www.coe.int/en/web/portal/montenegro>.
- European Committee on Crime Problems (CDPC). "Council of Europe Roadmap on Fighting the Smuggling of Migrants". CDPC Secretariat, 2000. Accessed January 30, 2023. <https://rm.coe.int/09000016809a4ae3>.
- Government of Montenegro. "Montenegro's Criminal Code 2003." Accessed January 28, 2023. <https://www.icj.org/wp-content/uploads/2013/05/Montenegro-Criminal-Code-2003-eng.pdf>.
- International Labour Organization (ILO). "International Organizations - European Convention on the Legal Status of Migrant Workers." Accessed January 30, 2023. https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=67235&p_country=OR&p_count=228
- International Monetary Fund (IMF). "Eurostat: Smuggling of Migrants." Accessed January 12, 2023. <https://www.imf.org/en/Data/Statistics/informal-economy-data/Reports/Eurostat-Smuggling-of-Migrants>.
- International Organization for Migration (IOM). "Countering Migrant Smuggling". United Nations (UN). Accessed March 2, 2023. https://www.iom.int/sites/g/files/tmzbd1486/files/our_work/ODG/GCM/IOM-Thematic-Paper-Counter-Smuggling.pdf
- International Organization for Migration. "More than 5,000 Deaths Recorded on European Migration Routes since 2021: IOM." Accessed January 28, 2023. <https://www.iom.int/news/more-5000-deaths-recorded-european-migration-routes-2021-iom>.

- Jovanović, Jelena. “Osuđeni na četiri godine zatvora zbog krijumčarenja 52 migranta.” *Vijesti*, 2021. Accessed March 2, 2023. <https://www.vijesti.me/vijesti/crna-hronika/540725/osudjeni-na-cetiri-godine-zatvora-zbog-krijumcarenja-52-migranta>.
- Jovanović, Jelena. “Prijović bacio drogu kroz prozor.” *Vijesti*, 2022. Accessed March 2, 2023. <https://www.vijesti.me/vijesti/crna-hronika/629225/prijovic-bacio-drogu-kroz-prozor>.
- Mina News. “Crnogorski državljani protjerani iz BiH zbog krijumčarenja migranata.” *Vijesti*, 2020. Accessed March 1, 2023. <https://www.vijesti.me/vijesti/crna-hronika/420718/crnogorski-drzavljanin-protjeran-iz-bih-zbog-krijumcarenja-migranata>.
- “Money Laundering and Terrorist Financing Risks Arising from Migrant Smuggling.” Accessed January 28, 2023. <https://www.fatf-gafi.org/en/publications/MethodsandTrends/Migrant-smuggling.html>.
- OHCHR. “Human Trafficking Risks in the Context of Migration.” United Nations, 2016. Accessed January 12, 2023. <https://www.ohchr.org/en/stories/2016/09/human-trafficking-risks-context-migration>
- Radević, Komnem. “Odloženo ročište okrivljenom za krijumčarenje migranata.” *Vijesti*, 2021. Accessed March 1, 2023. <https://www.vijesti.me/vijesti/crna-hronika/519425/odlozeno-rocište-okrivljenom-za-krijumcarenje-migranata>.
- Spindler, William. “2015: The Year of Europe’s Refugee Crisis.” UNHCR, 2015. Accessed January 12, 2023. <https://www.unhcr.org/news/stories/2015/12/56ec1ebde/2015-year-europes-refugee-crisis.html>.
- Otašević, Vladimir. “Srbin i Crnogorac se vozili bez putnih isprava.” *Vijesti*, 2015. Accessed February 28, 2023. <https://www.vijesti.me/zabava/183026/srbin-i-crnogorac-se-vozili-bez-putnih-isprava>.
- United Nations Office on Drugs and Crime (UNODC). “Index.Html.” Accessed January 29, 2023. [//www.unodc.org/unodc/en/legal-tools/index.html](http://www.unodc.org/unodc/en/legal-tools/index.html)
- United Nations Office on Drugs and Crime (UNODC). “Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto.” Accessed January 29, 2023. [//www.unodc.org/unodc/en/organized-crime/intro/review-mechanism-untoc/home.html](http://www.unodc.org/unodc/en/organized-crime/intro/review-mechanism-untoc/home.html)
- United Nations (UN). “PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS BY LAND, SEA AND AIR, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME.” 2000. Accessed January 13, 2023. https://www.unodc.org/documents/middleeastandnorthafrica/smuggling-migrants/SoM_Protocol_English.pdf.
- United Nations Office in Vienna. “The United Nations Office on Drugs and Crime.” Accessed January 29, 2023. <https://www.unov.org/unov/en/unodc.html>.
- United Nations Office on Drugs and Crime (UNODC). “Toolkit to Combat Smuggling of Migrants”. United Nations, New York, 2010. <https://www.refworld.org/pdfid/4f1e8ca22.pdf>
- Vijesti Online. “Hrvatska: Crnogorski državljani uhapšeni zbog sumnji da je učestvovao u krijumčarenju migranata?” Accessed March 1, 2023. <https://www.vijesti.me/zabava/27803/hrvatska-crnogorski-drzavljanin-uhapsen-zbog-sumnji-da-je-ucestvovao-u-krijumcarenju-migranata>.
- Vijesti Online. “Podgoričanin uzeo 450 eura od migranata da ih prebaci u BiH?” *Vijesti*, 2018. Accessed March 1, 2023. <https://www.vijesti.me/zabava/16810/podgoricanin-uzeo-450-eura-od-migranata-da-ih-prebaci-u-bih>.

Vijesti Online. "Ulcinjanin pokušao da prokrijumčari šest Sirijaca u Crnu Goru?" Vijesti, 2018. Accessed March 1, 2023. <https://www.vijesti.me/vijesti/6374/ulcinjanin-pokusao-da-prokrijumcari-sest-sirijaca-u-crnu-goru>.

Human Smuggling in Serbia:

An Analysis of Serbia's Legal System in Combatting Human Smuggling

Bojan Lazić

Bachelor of Laws

Abstract

The focus of this analysis will be on explaining the phenomenon of people smuggling in Serbia and what are the problems of the Serbian legal system in preventing smuggling. At the beginning, it will be explained what human smuggling is and how it differs from human trafficking. After that, the legislative system of the Republic of Serbia will be analyzed in terms of people smuggling and what are the problems of the legal system. In the continuation of the analysis, a holistic approach will be used, which will include interviews with representatives of the professional public who deal with the issue of people smuggling from different aspects, as well as the analysis of reports and publications on the same topic. In the conclusion, everything that the analysis showed will be summarized and a personal opinion will be presented on what should be done in order to suppress people smuggling. The goal of this analysis is to help professionals and the general public to understand the phenomenon of people smuggling in Serbia, to recognize it, and to fight against it.

Introduction

People smuggling in Serbia is a big problem both for the professional public that deals with this problem and for the whole society. Although people smuggling in Serbia is prohibited by the Criminal Code, the human smuggling remains the activity of a large number of criminal groups. Refugees who come to Serbia from Middle Eastern and African countries are at greatest risk of smuggling. They want to reach Western European countries as soon as possible, and domestic criminal groups are using that situation to profit. The professional public in Serbia does not deal with the phenomenon of people smuggling in a sufficiently systematic and detailed manner. Most often, the issue of people smuggling is associated with human trafficking, which is wrong, because they are different phenomena.

First, a distinction should be made between human smuggling and human trafficking. In Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational

Organized Crime, trafficking in persons shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs (United Nations 2000, 53). In Protocol against the smuggling of migrants, Smuggling of migrant shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident (United Nations 2000, 53). So, we can draw several differences between human trafficking and human smuggling: the smuggler enables the illegal crossing of the border and after the payment is no longer in contact with the person he transported; victims of human trafficking remain in a tight relationship with the trafficker who exploits them in various ways; victims of smuggling usually knowingly agree to be smuggled in order to reach the country where they want to live; victims of human trafficking do not enter into human trafficking voluntarily, but are most often deceived and lured.

The problem of migrant smuggling is not new in Serbia, but it gained significant importance after 2015 and the beginning of the migrant crisis. Numerous criminal groups saw the possibility of big profits and started to deal with the smuggling of migrants who came to

Serbia. It is equally important to understand how the human smuggling system works and what the legal framework is to fight against human trafficking. European Union officials also talk about the importance of the fight against people smuggling in Serbia in their reports on Serbia. The fight against migrant smuggling is a condition for Serbia's further progress on the road to the European Union.

Analysis of the legal framework and punishment policies

The Criminal Code of the Republic of Serbia provides for one criminal offense related to people smuggling. Article 350 of the Criminal Code, paragraph 1, stipulates that anyone who crosses or attempts to cross the border of Serbia without a prescribed permit, armed or using violence, will be punished by imprisonment for up to one year. The second paragraph of this article states that whoever, with the intention of obtaining some kind of benefit for himself or another, allows another to illegally cross the border of Serbia or illegally stay or transit through Serbia, shall be punished by imprisonment from one to eight years. If the offense referred to in paragraph 2 of this article was committed by a group, by abuse of official position, or in a way that endangers the life or health of a person whose unauthorized crossing of the border of Serbia, residence or transit is facilitated or a large number of persons are smuggled, the perpetrator will be punished with imprisonment from two to twelve years. If the act referred to in paragraph 2 of this article was committed by an organized criminal group, the perpetrator will be punished with imprisonment from three to fifteen years. Funds intended or used for the execution of the act shall be confiscated.

The Republic of Serbia ratified the Protocol against Smuggling of Migrants by Land, Sea and Air in 2001, and it came into effect in 2004 (United Nations 2000, 53) This protocol complements the United Nations Convention against Transnational Organized Crime. By confirming this protocol, Serbia undertook to:

1. Criminalize 'smuggling of migrants', use of forged personal and travel documents (for the purpose of smuggling migrants) and enabling smuggled migrants to stay legally into a country - while recognizing that migration in itself is not a crime.
2. Improve international cooperation to prevent smuggling of migrants and to track and prosecute smugglers.
3. Adopt such legislation and other measures as may be necessary to provide for more severe punishment in cases where smuggling activities endanger or may endanger the lives or safety of the migrants in question; or when they involve inhumane or degrading treatment, including exploitation, of such migrants.
4. Exchange among themselves, in accordance with their domestic legal and administrative system, relevant information related to the routes, modus operandi and identity of organized criminal groups and gangs involved in migrant smuggling, as legislative experiences and practices and scientific and professional experiences, and to prosecute perpetrators;
5. Strengthen such border control as is necessary to prevent and detect migrant smuggling, regardless of international obligations regarding the free movement of people (United

Nations Office on Drugs and Crime 2010, 12)

The UN Protocol against Smuggling of Migrants details certain specific forms of cooperation that are considered to be particularly important for migrants smuggling cases. These measures include:

1. Exchange of information about smugglers or suspected smuggling gangs.
2. Exchange of information on routes, carriers and means of transport used by smugglers.
3. Exchange of information on misuse of travel documents.
4. Exchange of information on means and methods of concealing and transporting persons.
5. Establishment of connections and exchange of experiences in the field of legislation and practice and measures to prevent and fight against migrants smuggling.
6. Exchange of scientific and technological information that is useful for law enforcement authorities, in order to increase their capacity to prevent, detect and investigate migrants smuggling cases;
7. Strengthening cooperation between border control agencies, among other things, through the establishment and maintenance of direct communication channels (United Nations Office on Drugs and Crime 2010, 23).

The migrant crisis that began in 2015 did make legislators in Serbia turn more to the criminal offense under Article 350 of the Criminal Code. Thus, in 2017, amendments to this article entered into force, which

provided for tougher penalties for people smugglers. Before the changes in 2017, whoever enabled another to illegally cross the border of Serbia or illegally stay or transit through Serbia, with the intention of obtaining some benefit for himself or another, was punished by imprisonment from six months to five years. After changes in 2017, the sentence increased to between one and eight years in prison. It is clear that these changes occurred due to the increase in the number of migrant smuggling cases due to the migrant crisis.

Therefore, when it comes to the legal framework, the Republic of Serbia punishes the smuggling of migrants with stricter penalties than a few years ago. Also, Serbia has aligned itself with international standards in this area and ratified the relevant conventions and protocols. For these reasons, we can say that the legal framework for combating people smuggling in Serbia is good. The key to the problem of migrant smuggling in Serbia lies in two groups of problems. The first group concerns the implementation of existing regulations and punishment policies. The second group of reasons are allegations of police and smugglers collusion. In the following, both groups of problems will be explained.

First, problems in practice with the implementation of the existing legal framework related to people smuggling will be presented. It was mentioned earlier that in 2017, stricter penalties for people smuggling came into force due to the migrant crisis. However, there were many problems then, because our legal system was not adapted to the new situation. The difficulties related to the recognition, prosecution and punishment of the responsible persons. In his article on Pravni Portal, lawyer Marko Marjanović

clearly notes a paradox: In the current Criminal Code for the criminal offense of illegal crossing of the state border and people smuggling, the high range of penalties (prison) should be highlighted, up to a maximum of 15 years. This is how we come to banal situations where people who are engaged in their profession (passenger transport - taxi driver or restaurateur who provides accommodation services), and for a regular price of about 10 euros, can commit the crime of human smuggling and be sentenced to several years in prison. The decisions of the courts themselves are often not clear or sufficiently explained, so sometimes doubts remain about this issue - when such actions constitute a criminal offense, i.e., how the guilt is determined and in general, is there awareness of the illegality of these actions (Marko Marjanovic: Migrant crisis and illegal border crossing and people smuggling 2019).

As Marjanović further states, the perpetrators of this criminal act of migrant smuggling often plead negligence and legal error in order to avoid responsibility. In the decision of the Appellate Court in Novi Sad No. Kž1 1494/2016 of December 13, 2016, it is stated, among other things, if the truck driver, while crossing the border, enabled and allowed a person to cut the cable and place a large number of foreign nationals in the cargo area of the trailer, and it is not possible for the actions taken not to be noticed by the accused, and for nothing to be done on his part, given that he failed to act in terms of active activity (but the accused enabled and allowed someone else to do it), this means that the accused acted with intention. Although the driver pleaded negligence, i.e. said that no one approached him and offered money, the court dismissed it as an unfounded defense.

The same applies to legal error. From the practice of the Appellate Court in Novi Sad, there is also the following case: If a professional taxi driver, for a certain increased monetary compensation, drives on side roads leading directly to the state border without a border crossing, there is an awareness and intention of the defendant to enable these persons to cross the border illegally. However, what if the taxi driver did not know or was unaware that this criminal offense even existed? So, there is no awareness that his actions are punishable? Why should the driving of certain persons from place A to place B be a criminal offense, punishable by several years in prison? Why did he have to know or inquire whether the passengers have travel documents? Most people, citizens, and even lawyers do not know about all the forms of this criminal act because it is not immoral and evil in itself, as we saw in the case when it comes to the transportation of certain persons to the border, and it can have a very serious consequence -punishment. In the aforementioned court verdict, the court does not mention this circumstance, most likely because the defendant does not base his defense on this possibility, or it is simply not possible in the specific case. In our legal system, this kind of situation is brought under the institute of legal error, and it is regulated by Article 29 of the CC. Legal error excludes guilt only for direct legal error. As the lack of awareness of the illegality of the act is an independent element of guilt that is assumed, its existence does not have to be established in each specific case, but only the existence of grounds that exclude such awareness is established (Marko Marjanovic: Migrant crisis and illegal border crossing and people smuggling 2019).

These are some of the problems faced by judicial practice in Serbia when prosecuting people smuggling.

When it comes to punishment policy, the numbers are different. What is clear is that the courts always impose lesser sentences than the maximum possible. Due to the mild criminal policy against smugglers, smuggling remains a frequent activity of criminal groups, and many individuals also decide to engage in this illegal business. For example, the High Court in Piroć sentenced M.A. to 2 years in prison for the criminal offense of illegal crossing of the state border and people smuggling. In a similar example, the Appellate Court in Belgrade sentenced M. B. to a prison sentence of four years and two months, as the organizer of a criminal group that carried out the illegal transportation of 177 migrants across the state border. Such lenient penalties encourage smugglers to continue smuggling. When it comes to the number of convictions, the prosecutor's offices present the following data: According to the statistics of the Higher Public Prosecutor's Office in Vranje, the investigation for human smuggling was conducted against 369 defendants in the period from 2015 to 2021, and in addition to 300 convictions, 137 acquittals and 65 rejections were made. The Basic Public Prosecutor's Office in Senta, also on the border with Hungary, stated that in 2020 a total of five final verdicts were handed down for the criminal offense of illegal border crossing and people smuggling, in 2021 there were six such final verdicts, and in 2022, seven final verdicts. According to information from the Basic Public Prosecutor's Office in Subotica, a city on the border with Hungary, in the period from January 1, 2020, to November 30, 2022, a total of 24 verdicts were handed down for the criminal offense of illegal border crossing and people smuggling. Of those, three verdicts imposed a suspended sentence, while

other verdicts imposed prison sentences against the perpetrators.

It should be concluded that the penal policy for people smuggling in Serbia is mild and that one of the ways to fight against smuggling would have to be a stricter penal policy.

Links of smuggling groups with the police

In addition to the legal problems associated with people smuggling, there are other reasons why people smuggling is difficult to combat in Serbia. Non-governmental organizations in Serbia have been warning for several years about the connection between smuggling gangs and Serbian police and security structures. Gordan Paunović from the non-governmental organization Info Park from Belgrade, which helps migrants or refugees who have come to Serbia, told Radio Free Europe that the MUP (Ministry of Internal Affairs) is responsible for the situation with smugglers: "Smugglers and smuggling groups for the past seven years functioned and continue to function under the protection of individuals from the Ministry of Interior of Serbia. Serbia enabled the criminal activity of those smuggling groups on its territory. Why doesn't the police control their territory? The number of people kept increasing and no one reacted. Sometimes the police visited them to see what was going on and there was no action."

The Belgrade Center for Security Policy (BCBP) and the Lawyers' Committee for Human Rights YUKOM, in a statement dated July 15, demanded that the Prosecutor's Office for Organized Crime, when prosecuting migrant smugglers, investigate their connection with high-ranking officials

in the Ministry of Internal Affairs. The reaction of these organizations followed the announcement of the Ministry of Internal Affairs of Serbia (MUP), published on July 14, which stated that six migrants were arrested, including two suspected of committing criminal acts, in an action aimed at suppressing criminal acts and misdemeanors that they commit. In their statement, the BCBP and Yukom refer to the statements of the research portal BIRN, which in a text dated June 22 states that the smuggling of migrants in Serbia is carried out with the support of the police, which they say they can support with audio recordings of secretly recorded conversations, video recordings, and internal correspondence. BCBP and Yukom state that the information provided by BIRN, as well as the scale of the escalation of violence among migrants and smugglers, a few days after the publication of the mentioned text, indicate that the MUP bears a large part of the responsibility for endangering the safety of citizens.

The fact that there are police officers among those arrested for people smuggling in Serbia also shows that these allegations are true. Thus, in 2021, members of a criminal group involved in migrant smuggling were arrested in Serbia, including several police officers.

The fact that the police and security services participate in people smuggling makes the process of fighting people smuggling even more difficult. The state should investigate every allegation about the involvement of members of the state authorities in people smuggling. In addition, stricter penalties should be provided for members of state authorities who participate in human smuggling.

Interviews with experts from various fields related to human smuggling

The analysis will now present interviews conducted with experts from various fields covering the issue of people smuggling. The idea is to show different views on the problem of smuggling and to find a way that we can all contribute to the fight against human smuggling and human trafficking.

I did not receive a reply to the email sent to the Ministry of Internal Affairs with questions until the drafting of this analysis was completed.

1. Marija Anđelković, ASTRA

(Astra is an organization dedicated to the eradication of all forms of exploitation and trafficking in human beings, especially women and children, as well as providing support in the search for missing children)

Q: How do you evaluate the legal framework of the Republic of Serbia in the field of combating human smuggling and human trafficking? What can be improved?

A: The legal framework of the Republic of Serbia in the field of human trafficking is more than solidly established today, but in some areas there is a lack of consistent application of the appropriate provisions in practice (deciding on property claims within the framework of criminal proceedings, exclusion of the public from the entire main trial or part of it, application of the principle on the non-punishment of victims of

human trafficking despite the existence of evidence that a criminal offense was committed, etc.), while on the other hand, certain provisions require certain changes, i.e. complete abolition (in the previously valid Criminal Code, there was a qualifying circumstance according to which, among other officials, police officials who were involved in human trafficking also bore criminal responsibility; children used for the purpose of prostitution are victims of human trafficking in the sense of Article 388 paragraph 3 of the Criminal Procedure Code, and the existence of paragraph 2 of Article 184 - mediation in prostitution, is not in accordance with international standards in the field of protection and promotion of children's rights as the aforementioned Article 388 of the CC).

Q: How do people smuggling and human trafficking as phenomena affect the state of human rights in Serbia?

A: Human trafficking represents one of the most serious forms of violation of human rights and children's rights, as shown by global and national official statistics, as well as statistics by specialized civil society organizations. Human trafficking includes various manifestations, from sexual exploitation, which is still in the first place according to representation, mostly women and girls, then the increasingly present human trafficking for the purpose of labor exploitation of men and women

of domestic and foreign workers when, in addition to the violation of labor rights, there is also the violation of basic human rights, and some other forms such as forced begging, forced marriage, coercion to commit criminal acts, etc. What is worrisome is that there are still no serious steps and concrete activities by competent authorities in the field of combating human trafficking in the form of organized crime. As one of the forms of gross violation of human rights, human trafficking - both in theory and in practice - should be recognized as the most extreme form of violation of human rights, given that there are violations of basic human rights.

Q: What is the effectiveness of state authorities (police, prosecutor's office) in combating people smuggling and human trafficking?

A: The police and the prosecutor's office are the bodies that in practice are often initially involved in activities such as securing evidence, filing reports and accusations of the criminal offense of mediation in the practice of prostitution, when the position of the potential victim of human trafficking is not taken into account before them. Mere inducement to prostitution cannot fail to presuppose the absence of intent or established exploitation. In addition to these two important institutions, the role of the court is also significant. What has been shown in practice is that the position of girls and women involved in prostitution in criminal proceedings in cases for the criminal

offense of intermediation in prostitution is practically invisible because they are not recognized as potential victims of human trafficking, nor do they have the status of injured persons in these proceedings nor witnesses. ASTRA, as one of the three specialized organizations dealing with the fight against human trafficking in Serbia, points to the need for better intersectoral cooperation, first of all with an available list of contact points in the police administration that work on cases of human trafficking (the list was not provided despite several inquiries) and by improving cooperation in higher public prosecutor's offices with public prosecutors who work on human trafficking cases and coordinate work in this area.

2. **Naim Leo Beširi, EU integration expert, Institute for European Affairs**

(Institute for European Affairs (former Youth Education Committee) is an independent, non-governmental, non-partisan organization founded in 2010 by a group of young professionals, like-minded people with an idea and a vision of Serbia as a full, active and equal member of the Euro-Atlantic family. The Institute's work is based on empowerment and promotion of European values such as human dignity, human rights and minority rights, freedom, democracy and the rule of law, peace, prosperity and the fight against social exclusion and discrimination)

Q: Which EU regulations should Serbia observe in the field of combating people smuggling as a candidate country for EU membership?

A: The European Union primarily expects Serbia to apply its own laws. The Constitution of Serbia from 2006 prohibits any subordinate position, slavery or exploitation of people, and the criminal code is precise in the categories of trafficking and people smuggling. Reforms in the last twenty years have specified criminal acts with special reference to women and children. The Criminal Code prohibits trafficking in human beings (Article 388), children for adoption (389), establishing a slave relationship (390) and illegal border crossing and human smuggling (350). It is the position of the state authorities that the policies and regulations are in accordance with domestic and international practice, and that they are harmonized with the directive 2011/36/EU and the directive of the Council 2004/81/EC. However, implementation is not the strong point of Serbia's judicial and prosecuting authorities on the way to EU membership, and this is shown by the European Commission's annual report from 2022, as well as the reports of non-governmental organizations.

Q: To what extent has Serbia complied with those regulations?

A: The EU has been working with Serbia to combat human trafficking since 2001, and Serbia has taken steps to improve its legal framework and law enforcement efforts in

this area. Serbia has adopted a number of laws and regulations to combat human trafficking, including a law confirming the Council of Europe Convention on Combating Human Trafficking and reformed the laws on foreigners, the prevention of domestic violence, and the Criminal Code. These laws define human trafficking as a criminal offense and provide for the prosecution of human traffickers and the protection of victims. Serbia has also established a National Mechanism for Referral of Victims of Human Trafficking in the Republic of Serbia, as well as a network of specialized prosecutors and judges to combat human trafficking. However, despite these efforts, Serbia still faces challenges in implementing its anti-trafficking laws. Serbia has been criticized for inadequate measures to protect victims, including a lack of shelters and support services for victims of human trafficking, as well as for the low number of prosecutions and convictions of traffickers. Although Serbia has made progress in harmonizing with the EU legal acquis on human trafficking, there is still room for improvement in terms of coordination of relevant bodies, as well as the actual implementation of the legal framework. The EU continues to work with Serbia to strengthen its anti-trafficking efforts and ensure that it is fully aligned with EU standards and regulations.

Q: How does people smuggling in Serbia affect the EU integration process?

A: Serbia has made efforts to align with the EU acquis on people smuggling, but there are still challenges to be addressed. People smuggling is a serious issue in Serbia, as it is the main transit country for migrants and refugees who want to enter the EU. Serbia has adopted several anti-trafficking laws and policies, including the Law on Aliens, the

Law on Asylum and Temporary Protection, and the National Strategy to Combat Human Trafficking. These legal frameworks are aligned with the EU acquis on human trafficking and demonstrate Serbia's commitment to addressing this issue. However, Serbia's capacity to detect and investigate people-smuggling cases is limited, and there have been reports of corruption among law enforcement officials. In addition, Serbia has been criticized for its treatment of migrants and refugees, including reports of violence and abuse by border police.

According to the European Commission's 2022 report, Serbia has made some progress in strengthening its legal framework to combat human trafficking and smuggling. However, significant challenges remain, including a lack of effective investigations and prosecutions of perpetrators, inadequate protection and support for victims, and concerns about the treatment of migrants and refugees. The report states that Serbia needs to improve its efforts to identify and investigate cases of human trafficking and smuggling, including better coordination and cooperation between law enforcement authorities. The report also calls on Serbia to strengthen victim protection measures, including providing specialized services and support to victims of human trafficking and smuggling.

As the issue of human smuggling and trafficking is the subject of the negotiation process under Chapter 24, Serbia is expected to improve the implementation of its own laws, but also to strengthen capacities, including the knowledge and skills of people who carry out their responsibilities on the ground.

3. Saša Dorđević, Global Initiative

(The Global Initiative Against Transnational Organized Crime, sometimes shortened as Global Initiative, is an international non-governmental organization headquartered in Geneva. The organization is composed of a network of law enforcement, governance and development practitioners, who share the objective of developing innovative strategies and responses to organized crime)

Q: How do you evaluate the legal framework of the Republic of Serbia in the area of combating human smuggling? What can be improved?

A: Article 350 of the Criminal Code includes two crimes against public order and peace, which is not a good solution. Illegal crossing of the state border and people smuggling are different crimes. The perpetrator of the criminal offense of human smuggling can only be a person who enables another person to illegally cross the state border, while the perpetrator of the criminal offense of illegal crossing of the state border can be any person. Also, the individual who smuggles does not have to cross the state border illegally at the same time. In the next amendments to the criminal legislation, these two criminal acts should be separated.

Q: How does human smuggling as a phenomenon affect the state of human rights in Serbia?

A: In fact, respect for human rights affects people smuggling. Every violation of the rights of irregular migrants and illegal practice of state authorities during, for example, registration or removal from the

state border, is a new opportunity for smugglers to make money. Unable to legally cross the state border or if irregular migrants are denied certain rights, they will always seek help from smugglers and thus enter a vicious circle, especially if they do not have enough funds to pay the smuggler. In that case, smugglers will ask them to find new victims and thus pay their way to Western Europe.

Q: What is the effectiveness of state authorities (police, prosecutor's office) in suppressing people smuggling?

A: For now, the consequences of the problem whose origin is neither in Serbia, nor in the Balkans, nor in the European Union, but in war, crisis and economically vulnerable regions in Asia and Africa are being resolved. The effectiveness depends on the migration policy of Turkey and the position of individual member states of the European Union. In the case of Serbia, it is mostly Hungary and Austria. For now, mostly fixers are caught, who usually work within the borders of one country and deal with the internal transport of migrants. Gatekeepers, who open the passage to the next country on the route, are less often caught. Violent incidents between smuggling groups using firearms are of concern. In any case, the activities of the police and prosecutor's office in the last six months have been intensified in the field of preventing people smuggling. In 2022, 5 out of 28 prosecuted organized crime groups are charged with human trafficking. Also, the presence of the police in critical hotspots, which are mostly around the state border in the north and south of the country, has been increased.

4. Jelena Hrnjak, ATINA

(NGO Atina is fully dedicated to the respect of victims' human rights, cooperation and participation of victims throughout the process of influencing root causes of trafficking, such as: relations in the primary and secondary family, poverty, previous experiences of marginalization and discrimination, deprivation from basic rights, unemployment and educational deprivation)

Q: How do you evaluate the legal framework of the Republic of Serbia in the area of combating human smuggling? What can be improved?

A: According to Article 3 of the United Nations Protocol against Smuggling of Migrants by Land, Sea and Air, which supplements the Convention against Transnational Crime, and which was ratified by Serbia (FRY) in 2001, smuggling is defined as "providing illegal entry into a member state for a person who is not citizen, and does not have a permanent residence in it, for the purpose of obtaining, directly or indirectly, financial or other material benefits". In the Republic of Serbia, the act of people smuggling is punished according to Article 350 of the Criminal Code, which in paragraph 2 stipulates that anyone "who, with the intention of obtaining some benefit for himself or another, enables another to illegally cross the borders of Serbia or illegally stay or transit through Serbia, shall be punished with imprisonment from six months to five years". Smuggling, therefore, has a transnational dimension (illegal crossing of the border is its essential element), and it can be voluntary, but it is not necessarily excluded from human trafficking, that is, trafficking can be smuggling at the same time, and vice versa.

The Criminal Code normally provides for a sentence of up to one year in prison for those who try to cross the border without a permit, while for smugglers a sentence of six months to five years is provided, with harsher penalties for perpetrators who are found to be members organized criminal groups. However, since smuggling has grown significantly in Serbia in the last few years, especially after 2015 and the beginning of the big refugee crisis, it is obvious that such normative solutions, even though they are multi-year prison sentences, are not enough. It is necessary to envisage different types of sanctions, especially when it comes to children, but also various preventive measures that would reduce the risk of smuggling. Also, the implementation of the law itself is highly questionable, because in the majority of cases, only the "ultimate executors"/taxi drivers, transporters who transported migrants from one place to another/are punished, but not the principals, those who manage the entire operations, etc...

Q: How does human smuggling as a phenomenon affect the state of human rights in Serbia?

A: Smuggling certainly has a negative impact on the state of human rights in Serbia, especially the human rights of those most exposed to it, namely refugees and migrants, asylum seekers. It is important to point out that in the circumstances of the refugee crisis and in general migrations that take place via the Balkan route, it is not easy to distinguish between human trafficking and smuggling. Here, first of all, it is questionable to what extent the consent to smuggling is actually voluntary, especially if it concerns children. From the various reports and testimonies of the refugees, it can be seen that smuggling involved some form of exploitation, that is, that it represented human trafficking at the same time. Refugee women, who were in contact with smugglers, and who went to the

"game", confided to the field workers that they were forced to have "survival sex", sexually assaulted by the smugglers, that they heard that that other women were sexually harassed and exploited, that they suffered pressure and extortion, and that individuals were forced to carry out certain criminal activities, even to recruit other refugees, in order to provide money to smugglers, i.e. to ensure that they would bring them to their desired destination .

From the experience of the association ATINA, we know that smuggling often ends in violence, extortion, and often debt slavery and exploitation, and we also see a link with human trafficking itself. We also heard a lot about debt obligations from the migrants themselves, most of the minors' destination countries were Italy or Germany, and they were forced to commit crimes there in order to pay off the debt to the smugglers, which never happens (unless someone recognizes them as victims and introduced into the protection system). Therefore, regardless of the fact that the victim "gave consent" to the smuggler to take her across the border, she did not give consent to violence and exploitation. And this raises the question of when the voluntariness ends in the whole process. According to the research conducted by the association ATINA on violence against refugee and migrant women, a significant percentage (30%) of the women who participated in it talked about how they survived violence by the organizers of the trip (smugglers) and that they are aware that they will such experiences repeat themselves, given that they want to continue their journey, and that they have no choice but to turn to smugglers.

The main risks that refugees and migrants are exposed to during their refugee journey and that lead to smuggling, as well as human trafficking, are unregulated legal status, lack of regular safe ways of travel, language and

cultural barriers, lack of knowledge about available rights and assistance, lack of resources, and exposure to threats and violence. All this speaks of the great threat to the human rights of persons who are at risk from smuggling. On the other hand, although suspicions of human trafficking among migrants and refugees are still mostly linked to acts of smuggling, the acting authorities did not recognize it in any case of smuggling.

Q: What is the effectiveness of state authorities (police, prosecutor's office) in suppressing people smuggling?

A: After the change of migration policies in countries on the transit route in 2016, and the closing of borders between individual countries, there was also an increase in people smuggling, since people continued to arrive via that route. In this regard, smuggling has become a very profitable business for the smugglers themselves, especially in a situation where a large number of people want to move to a neighboring country, but are prevented from doing so.

As for the efficiency of state authorities, it largely depends on the will of state authorities to solve the problem of smuggling at all. Literally, in practice, it seems that if there is pressure from some of the European countries, for Serbia to regulate smuggling to a greater extent, that will be the case, if there is no such pressure, there is no proactive approach. In contact with the police officers that the association ATINA makes, they often complain that they lack legal bases and procedures for actions, that is, that existing laws make it impossible for them to do their job - so this is also a problem in practice.

There are numerous testimonies about contacts between smuggling groups and the police, which investigative journalists have reported on several times. Therefore, the solution to the problem comes only as a result

of public pressure. Problems in countries of origin or transit directly affect the spread of smuggling: if there was no corruption, there would be no smuggling; if states and smugglers did not share the same interest, migrants would not be smuggled across countries; if some regimes wanted to sincerely help people in other countries, they would not create crises and wars for their own interests.

Q: How do you evaluate judicial practice in the area of people smuggling (number of convictions for these crimes, court proceedings...)?

A: In the last few years, basic courts in Serbia have handed down a large number of convictions for smuggling. According to Free Europe, only the Basic Court in Subotica in the period 2020-2022 handed down 24 verdicts for illegal border crossing and people smuggling, while (according to Danas) the Basic Court in Vranje in the past six years handed down as many as 300 convictions against 292 persons for the criminal offense of smuggling. This means that a large number of illegal crossings of the state border and people smuggling were found in the border areas, which these two courts are responsible for, and that the judiciary had a lot of work to do on these issues. However, the fine amount prescribed by the Criminal Law obviously does not contribute to the reduction of this form of crime. In some cases, suspended sentences were imposed, and in others - prison sentences. In other words, the profit made from smuggling (and it is several thousands of euros just for one smuggled person, and on an annual level it is millions of euros) exceeds the amount of fines and the length of prison sentences many times over. In this regard, as long as there is such a huge financial benefit from smuggling, that is, as long as it pays, it will continue to flourish. Therefore, the punishments must be

significantly tightened, but also extended to the parts of the system that look through the fingers of smugglers.

5. Saša Dragojlo, Journalist, Balkan Investigative Reporting Network

(Balkan Investigative Reporting Network is a network of non-governmental organizations promoting freedom of speech, human rights and democratic values in Southern and Eastern Europe)

Q: Does the media in Serbia sufficiently deal with the problem of people smuggling?

A: It is difficult to answer this question. The media doesn't deal too much with people smuggling, but that's not always a bad thing. The way in which the media, guided by the market logic of maximizing clicks/profits, deals with the subject of migration and refugees from Asia and North Africa is most often sensationalist, unprofessional and socially irresponsible. When writing about people smugglers, they do not talk about a specific criminal group of people, but often generalize to "all migrants/refugees" or to entire ethnic groups. In this way, they further worsen the status of migrants/refugees, persons who, by their very status, are without state protection, a roof over their heads, personal documents, etc. - among the most vulnerable social groups. In this sense, the question is not whether they do enough, but how they do it. The topic of people smuggling is a specific topic, and it should be dealt with by media professionals who are well versed in the matter and respect the journalistic code of ethics.

Q: You have discovered the connections of people smugglers with the police and security services. How does that connection work?

A: People smugglers cannot do their job effectively without the support of the police and/or security sector. Also, what is

important to say - the interests of the Serbian state coincide with the interests of smuggling criminal groups. According to representatives of the authorities, Serbia does not want to become a "parking lot for migrants", which means that the goal is for migrants and refugees to leave the territory of our country as soon as possible. Smugglers, who earn millions of euros in this business, naturally help the state of Serbia in this.

Also, smugglers often serve as informants, that is, sources of information, for the police and security services, and in order to monitor the so-called "persons of security interest" such as criminals wanted by other countries, potential terrorists or (former) members of extremist groups such as ISIS. In this way, they have a double function for the state, while the third one is corruption. That's what I dealt with in my research. Specifically, as a BIRN journalist, I dealt with the case of Alen Basil Dayoub, a person of Syrian-Serbian origin, who managed to create a criminal organization that smuggles refugees in the northwest of the country, based in Sombor, working as a police and court interpreter. In addition to the aforementioned, Mr. Alen Basil derived his power in the migrant community precisely from the fact that he is a police translator, who is also directly connected to numerous police officers. His main collaborator is police major Dejan, so-called "Major Deki" from the Criminal Intelligence and Undercover Investigations Service (SKOP), which is under the Criminal Police Directorate (UKP), and for whom numerous sources, recorded on audio tapes, claim that he took money to protect Alen and his group. Mr. Alen, during the police actions, even planted weapons on his rivals, in order to get them off the street and/or make them pay him for the racket. His group physically harassed unruly migrants, i.e. those who do not cross the border with their help, but go with competitors or on their own.

The story also revealed that Mr. Alen boasted of his relationship with former police minister Vulin and showed pictures of them together. The contact was allegedly made through Milenko Nikić, a longtime associate of Vulin's from the time of the Office for Kosovo and Metohija, who was arrested in 2019 and is currently on trial for influence peddling in the case of extorting money from a humanitarian organization.

Basil is just one of many. They all have certain police officers on their payroll, and sometimes the state sides with one group to deal with another. The policemen who are involved are those on the premises, who protect the crossing locations, certain people at the borders (both Serbian and Hungarian policemen), but also policemen deeper in the MUP structures who have a strategic agreement with certain migrants.

Q: How can the media contribute to the fight against human smuggling?

A: The media should respect the code of ethics, not generalize and identify cruel criminals with the entire migrant population, or with specific ethnic groups.

Research Findings

While researching the topic of people smuggling in Serbia, I realized that this is a topic that is written about very little. No scientific work in Serbia is dedicated to smuggling, but smuggling is always mentioned in passing, most often human trafficking. Given that the research topic was the legal framework of smuggling, the challenge was even greater. Lawyers in Serbia did not deal much with this topic. However, what helped me were the reports of international organizations as well as the texts of individual lawyers on portals. Also, the media reports on this topic meant a lot to me, especially investigative journalists who wrote about people smuggling. My colleagues from non-governmental organizations that deal with human rights and the fight against human trafficking and smuggling made an exceptional contribution to my research.

By researching the legal framework of the Republic of Serbia in the fight against people smuggling, it can be said that the legal system of Serbia is aligned with international norms in this area. This also applies to the directives of the European Union in this area, with which Serbia has complied. However, as representatives of the civil sector observe, the application of these standards is often absent from the judicial authorities. Also, experts from the civil sector warn that the penal policy itself should be changed, different sanctions should be introduced, as well as prevention measures. Therefore, when it comes to the legal framework, the conclusion would be that the legal framework for the fight against human smuggling is relatively good, harmonized with international

standards, but that much can still be done to improve and implement it.

When it comes to judicial practice and penal policy in the area of people smuggling, the conclusion is that the penal policy is extremely lenient, that sentences are imposed at the legal minimum. This is bad because it encourages smugglers to continue smuggling because they will know the consequences will be mild.

An important part of the research also concerned allegations about the relationship between the police and smuggling groups. Civil society organizations from Serbia and investigative journalists have been warning for years about the connection between smuggling gangs and the police and security services. This relationship was described by BIRN journalist Saša Dragojlo, who dealt with this issue in detail for a long time. The interview I conducted with him as part of this analysis clearly showed that the connection between smugglers, the police, the security service and the state in general is so great that they cannot do without each other.

Conclusion

As we saw in the analysis, people smuggling is a problem that needs to be analyzed from several aspects. First, human trafficking and human smuggling should be distinguished. Unfortunately, people smuggling is often not perceived as a problem, but rather as a way to help refugees. Migrants who come to Serbia often do not choose the ways of reaching European countries. Criminal organizations took advantage of this and created networks of smugglers. That is why it is important to

work on ensuring that all relevant actors recognize when it is about people smuggling.

The legal framework for combating human trafficking is not bad, but it should be implemented more consistently and strictly. This means that it must not happen that someone who has been involved in people smuggling for years and is the organizer of a criminal group receives the smallest possible prison sentence. Such punishment only encourages existing criminal groups to continue smuggling people.

A particular challenge is the allegations of non-governmental organizations about the connection between the police and smuggling groups. If it wants to fight human smuggling, Serbia must tackle the problem within the ranks of state authorities. The state must investigate all allegations of the involvement of police officers and members of the state security in the chain of people smugglers. It is particularly worrisome when police officers are also arrested as part of police operations to arrest people smugglers.

In order to successfully fight human trafficking as a society, it is necessary to educate people about this topic. Media and internet campaigns should be implemented to inform citizens how to recognize cases of human trafficking and to whom to report. The public must be aware of the problem and understand the consequences of ignoring it. This problem should be discussed in schools and colleges and students should be educated about this topic. Social networks used by young people can be an excellent tool for quickly identifying and reporting people smugglers. It should be emphasized that anyone can be a victim of human trafficking or smuggling and that this is not something that happens far away from us. The media

play a key role in spreading knowledge and information about human smuggling. The media often only report the arrests of smugglers when they happen. However, the media should actively work on educating citizens on how to recognize human trafficking as a phenomenon. This will contribute to reducing the number of cases of smuggling, because then all of us as citizens will be participants in the fight against smugglers. A good example of journalism is the investigative network BIRN, which revealed the connection between people smugglers and the police and security services.

It is good that the police in Serbia cooperates with the police authorities of neighboring countries. Human smuggling by its very nature is a cross-border activity, so it is understood that the police of at least two countries will participate in the investigation of smuggling. That is why it is important that Serbia continues to cooperate and improve cooperation with other countries, because this is the only way to fight against criminal groups involved in people smuggling.

Of course, the police are not alone in the fight against people smuggling. As stated earlier, it is important that the whole society is involved in the struggle. Everyone in their own way. This implies the active cooperation of the police, prosecutor's office, ministries, media, non-governmental organizations and others. Unfortunately, the state authorities of Serbia often do not see allies in the media and the non-governmental sector. One of the reasons is precisely that some non-governmental organizations have discovered the connection between criminal groups involved in smuggling and the police. Several non-governmental organizations are active in

Serbia, which deal with the fight against migrant smuggling and human trafficking. Experts in the field of human rights, migration and the fight against money laundering and people smuggling work in these non-governmental organizations. State authorities are obliged to cooperate with everyone who fights against all forms of crime. It is a feature of every democratic society.

Although Serbia has aligned itself with international standards in the area of migrant smuggling by ratifying the relevant conventions and protocols, this is not enough. As a candidate country for membership in the European Union, Serbia must be much more dedicated and more effective in fighting human trafficking. Serbia also receives financial assistance from the European Union in the fight against smuggling. In the process of European integration, two chapters in the negotiations with the European Union are relevant to the issue of the fight against people smuggling. Those are Chapter 23: Judiciary and fundamental rights and Chapter 24: Justice, freedom and security. Both chapters instruct Serbia to strengthen the rule of law. This means respect for human and minority rights, respect for all freedoms and the fight against all forms of criminality. As one of the forms of crime is people smuggling, any case of people smuggling that is not processed and in which the perpetrators are not punished will be a step back in the process of European integration of Serbia.

In order to be a country where democratic standards prevail, where human rights are respected and where there is a rule of law, Serbia must pay more attention to the fight against people smuggling in the future.

Bibliography

Marko Marjanovic. 2019: “Migrant crisis and illegal border crossing and people smuggling”
<https://www.pravniportal.com/migrantska-kriza-i-nedozvoljen-prelaz-drzavne-granice-i-krijumcarenje-ljudi/>

Pirotske Vesti.rs. 2019: “Higher court in Pirot: 2 years in prison for smuggling people”
<https://www.pirotskevesti.rs/visi-sud-u-pirotuza-krijumacernje-ljudi-2-godine-zatvora/>

Republic of Serbia. 2005. “Criminal Code”: 81.

Radio Free Europe Portal. 2022: “In Serbia, smugglers take 1,000 to 6,000 euros per migrant”
<https://www.slobodnaevropa.org/a/srbija-migranti-krijumcarenje-presude/32158751.html>

Radio Free Europe Portal. 2022: “Activists are demanding an investigation into allegations of police and smuggler ties in

Serbia” <https://www.slobodnaevropa.org/a/31944878.html>

United Nations. 2004. “United Nations Convention Against Transnational Organized Crime and the Protocols Thereto”: 53.

United Nations Office on Drugs and Crime. 2010. “Human trafficking and smuggling of migrants: Guidelines for international cooperation”: 12, 23.

‘This publication is published in the framework of the project “Security for Human Beings and Borders-Combating Smuggling of Migrants in the Western Balkans.

This publication was funded by the European Union. Its contents are the sole responsibility of Youth initiative for human rights and do not necessarily reflect the views of the European Union.’

