



## LEGAL AND JUDICIAL INFORMATION ON MIGRANT SMUGGLING

### AZERBAIJAN

Last update 02/11/2023

#### GENERAL INFORMATION ON MIGRATION



#### MAIN FIGURES AND TRENDS

**International migrants are an important part of Azerbaijan's population and workforce.** After years of high emigration, the country is experiencing annual positive net migration. Currently the country is a destination, transit and origin country in terms of migration. Azerbaijan is a country of destination, especially for working-age migrants from neighbouring countries.

The development of a positive net migration rate clearly reveals a consolidation of outflows and inflows of international migrants. The positive net migration rate in the country is caused by factors such as economic development; the construction, energy and other sectors; and improvement and simplification of migration legislation, especially the adoption of the Migration Code – the main legal instrument regulating migration in the country and beyond – in 2013; the launch of electronic services; and the issuance of electronic visas.

The COVID-19 pandemic significantly reduced migration flows in both directions across all migrant groups, as pandemic control measures and associated travel restrictions were imposed globally. However, on the whole, the flows basically followed migration trends from previous years, with migration mobility increasing in 2021.

**Data on migrant mobility** is processed in the Unified Migration Information System (UMIS) run by the State Migration Service and the interagency "Entry-Exit and Registration" Interagency Automated Information Retrieval System. According to legal provisions in the Migration Code, foreigners or stateless persons who intend to stay for more than 15 days in Azerbaijan must register at their place of stay, which could be any accommodation (lodging houses, hospitals and sanatoriums, flats, or other places of residence). Persons arriving with visas are registered for the period indicated on the visa, while persons arriving under visa-free regime are registered for 90 days.

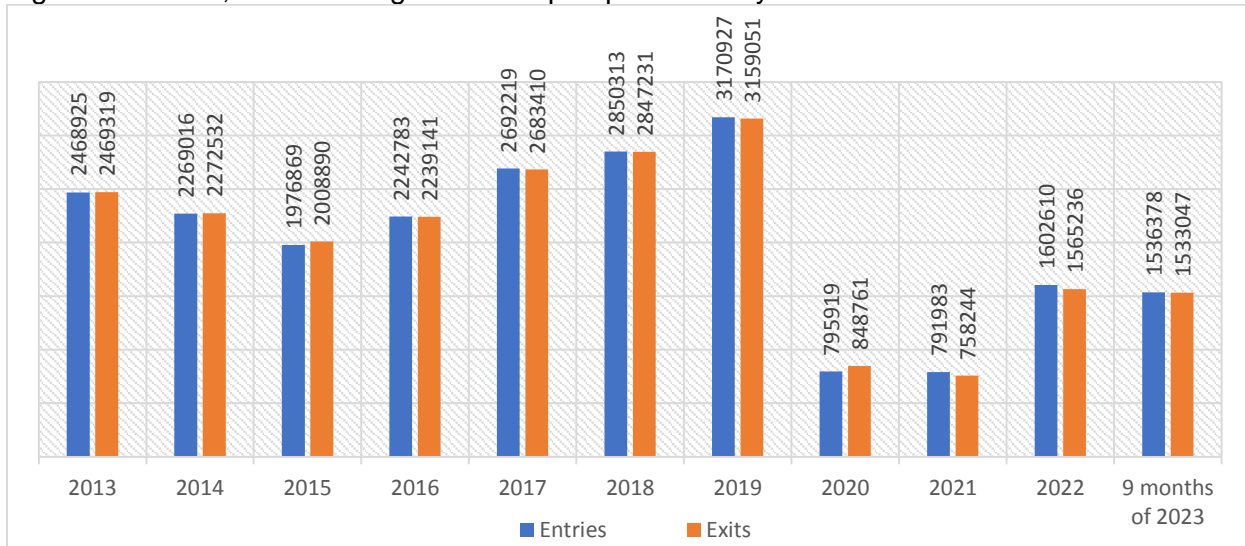
Roughly equal numbers of border crossings into and out of the country occurred every year between 2013 and 9 months of 2023. During the period observed, 22.3 million foreigners and stateless persons entered Azerbaijan and around the same amount left, on average, 2 million trips occurred a year. Mobility recorded a peak in 2019 with 3.1 million trips, the highest in this period. Afterwards, a drastic slump occurred due to the worldwide restrictive travel regulations introduced in the context of the COVID-19 pandemic. The numbers of border crossings by foreigners and stateless people into and out of the country increased starting in 2022.



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Figure 1: Entries, exits and registrations upon place of stay



During their stay, an average of about 24.5 percent of foreigners and stateless persons stayed longer than the period for which the registration upon place of stay was required (3 days until 17 October 2014, 10 days until 29 June 2018 and 15 days subsequently) over the observation period, with more in 2013 and 2014 due to the shorter registration period allowed. Notably, increasing the minimum time allowed for registration influenced the rate of registered migrants. Thus, although trips in and out peaked in 2019, overall registration numbers (21.4%) were lower than in 2013 and have fallen since the registration period was extended to 15 days. During the last two years, registrations upon place of stay remained at 18% of all entries into the country.

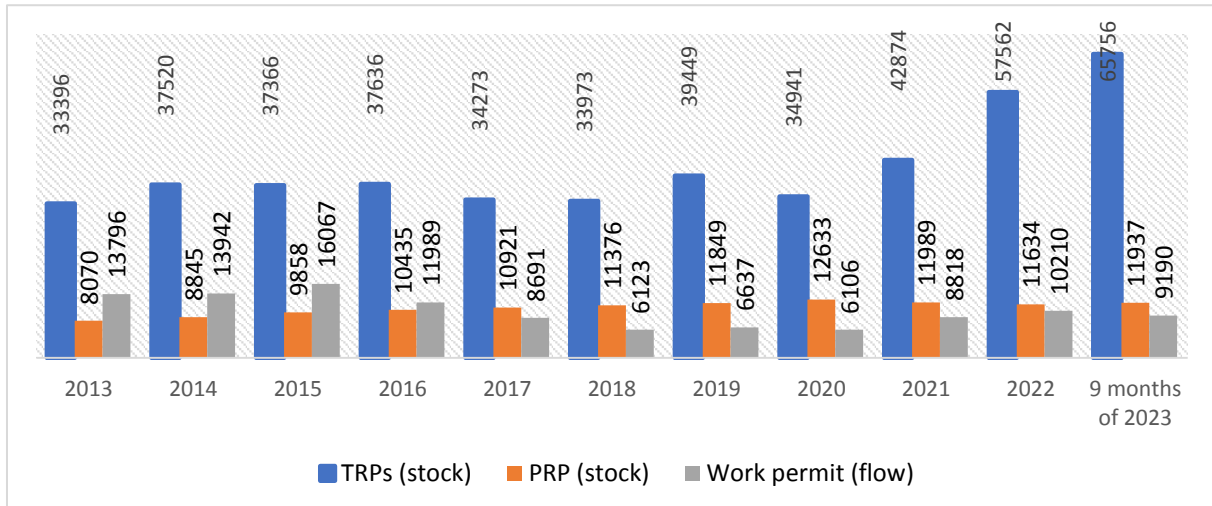
According to the Migration Code, a short stay (temporary stay under a visa or visa-free regime) can be extended up to a further 60 days on diverse grounds, such as, for instance, for urgent medical treatment, serious disease or death of a migrant's close relative residing in the country, incompleteness of the intended work, or an unexpected stop during transit (Migration Code Article 19.4). Foreigners and stateless persons are issued temporary residence permits (TRP) on the grounds envisaged in Article 45 of the Code, and after uninterrupted residence for the last 2 years, a permanent residence permit (PRP) can be issued on the specific grounds envisaged in Article 52 of the Code. Moreover, in order to engage in paid labour activity in the country, foreigners and stateless persons should obtain a work permit through their employers. The extension of temporary staying period, as well as TRP and PRP and work permit are issued by the State Migration Service (SMS). The following figure illustrates the trend of temporary and permanent residence permits during 2013-2023.



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Figure 2: TRPs, PRPs, work permits



According to the stock data, i.e. valid TRPs and PRPs by the end of 2013-2022 and by the end of 9 months in 2023, which constitutes the migrant stock of the country, 79% of immigrants in Azerbaijan is temporary. Throughout the years 2013-2019 the number of TRPs was around 36 thousand, however, starting in 2021 this rate is progressively increasing, reaching its peak during a decade, at the end of 9 months in 2023. In addition, the steady increase in PRP holders since 2013 (a 48 percent rise over the period) indicates that migrants who have access to long-term residence in the country choose to stay. It should be noted that no significant slump occurred during the pandemic years.

**According to national legislation, “labour migration”** means “a change of place of residence of a natural person who migrates legally from one country to another with the aim of carrying out paid labour activity”. This natural person under the legal definition is called a migrant worker. Work permits are based on the labour quotas established by the Cabinet of Ministers, which reflect the country’s labour needs. According to national law, the purpose of this labour market-related quota is to control labour migration to Azerbaijan in accordance with foreign workforce demand. The quota is recalculated and decided annually.

Figure 2 also shows the trends in issuances of work permits (including extensions/ renewals) between 2013 and 1 October 2023. During this period, 111,569 migrant workers from roughly 100 countries were issued work permits or had them extended. On average, 10,000 work permits are issued each year, with the highest number (16,067) issued in 2015, and the lowest (6,106) in 2020. As a result of the expansion of reconstruction projects carried out in the liberated territories of the Republic of Azerbaijan, the demand for foreign labour force has increased, and since 2021 there is steady growth in the issuance of work permits.

Article 64 of the Migration Code specifies cases where work permits are not required. As the data in Figure 2 covers work permits, it does not include categories exempted from the obligation to obtain a work permit (such as permanent residents, refugees and asylum seekers, and migrants married to Azerbaijani citizens etc.).



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**Entry to Azerbaijan can be refused in several cases**, such as non-possession of legal and valid travel documents, document fraud, a valid entry ban or violation of rules of stay or residence. Under the Criminal Code on illegal border crossings and Article 18 of the Migration Code, migrants who have attempted to cross the state border without a passport or visa, or with an invalid passport or other document, and thus violating legal requirements, shall not be allowed to enter but shall be returned to the country from which they arrived. Moreover, they are liable under law for attempts to cross the state border with fraudulent documents or with documents that belong to others.

Foreigners and stateless persons who have violated the rules on stay, residence in or transit through Azerbaijan – namely for staying or residing without necessary permits, registration and valid documents, failing to comply with the declared purpose of entry, engaging in illegal labour activity, or overstaying the permitted stay or residence periods – are issued with decisions to voluntarily leave the country or legalise their residence, or on restriction of entry to the country with or without of expulsion depending on the nature of the infringement.

Between 1 January 2013 and 1 October 2023, a total of 228,794 decisions (including entry bans) were made on violations of migration-related legislation by foreigners and stateless persons, of which 135,467 (59 percent) were issued on leaving the country voluntarily, and 60,854 (26.5 percent) on administrative expulsion from and/or restriction of entry to the country and orders to leave. Furthermore, stay and residence were legalised for 32,473 persons (14 percent).

In 29 June 2018, Article 16.1.8 of the Migration Code was changed and the previous clause (*restriction of entry of persons who have violated migration legislation two or more times in three years*) was replaced with a new provision that envisages a temporary entry ban on migrants about whom administrative sanctions in the form of administrative fines have been imposed without enforcing administrative expulsion, for violation of rules of stay and residence until the fine is repaid (including calculated late payment interest). The opportunity for payment of administrative fines after leaving the country has considerably decreased the number of administrative expulsion decisions. In 2017, a total of 7,241 decisions were made to restrict foreigners and stateless persons' entry to Azerbaijan, 87.4 percent (6,330) of which included expulsion from the country. Since the amendment was made, the number of administrative expulsion decisions has fallen by 41 percent in 2018, and 82 percent in 2019 compared to the 2017 figures.



## MIGRATORY ROUTES

During 9 months of 2023, a total of 1,536,378 entries into the territory of the Republic of Azerbaijan by foreigners and stateless persons were recorded. Regarding temporary residence in Azerbaijan, on 1 October 2023, 65,756 migrants from 153 different countries were living in Azerbaijan with valid TRPs. In terms of permanent residence, on 1 October 2023, a total of 11,937 PRPs were held by migrants from 60 countries. According to the statistics on work permits, during the 9 months of 2023, 9190 work permits were issued to migrant workers from 107 different countries.

During 9 months of 2023, 16,687 decisions were made by the State Migration Service regarding the violation of migration related legislation of the Republic of Azerbaijan by

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foreigners and stateless persons. Within this period, a total of 5,500 voluntary departures were ordered. This category of decisions constitutes 33 percent of decisions related to irregular migration. Another measure to combat irregular migration is the legalisation of the residences of irregularly staying migrants. Within the observation period, residence of 3,762 migrants in the Republic of Azerbaijan was legalised.

An entry ban can be imposed on foreigners and stateless persons for violations of the Code of Administrative Offences or the Migration Code. Decisions issued for violating the requirements of Articles 575.1 (staying or residing without documents or registration) and 575.2 (staying or residing with invalid documents) of the Code of Administrative Offences envisage either administrative expulsion from the country with a ban on entry into the country or voluntary departure without administrative expulsion, or legalisation of residence. The period of the entry ban depends on the type of infringement. For instance, entry bans under the Code of Administrative Offences are issued from 1 to 5 years, while entry bans under Article 16.1.8 (unpaid administrative fine) of the Migration Code are issued until the fine and its calculated late payment interest are paid (but not more than 5 years).



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## INSTITUTIONAL ORGANISATION

According to the "Regulation on the State Border Service of the Republic of Azerbaijan", **the State Border Service of the Republic of Azerbaijan** is a central executive authority exercising the competences established by the legislation of the Republic of Azerbaijan in the field of protection of the state border of the Republic of Azerbaijan. It should be noted that, in accordance with Article 9.4 of that Regulation, one of the duties of the State Border Service is to ensure the prevention of illegal crossing of the state border of the Republic of Azerbaijan by persons, and in order to implement effective border control, to take measures to prevent the deployment of terrorists and terrorist groups, as well as illegal migrants, by preventing the forging of identity documents and other documents or using them illegally.

According to the "Regulation on the State Migration Service of the Republic of Azerbaijan", **the State Migration Service of the Republic of Azerbaijan** is a central executive body with the status of a law enforcement body, which implements state policy in the field of migration, the competencies defined by the legislation of the Republic of Azerbaijan in the management and regulation of migration processes. As one of the activity directions provided for in the aforementioned Regulation, the State Migration Service also participates in the development and implementation of measures related to the prevention of illegal migration in interaction with the relevant state bodies.

Moreover, other government bodies, such as Ministry of Internal Affairs, are also involved in the measures carried out to prevent illegal migration in the country.



## LEGISLATIVE FRAMEWORK

According to the Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime, which is a part of the national legislation of the Republic of Azerbaijan, "**smuggling of migrants**" means 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.

### Criminal Code of the Republic of Azerbaijan

**The organisation of illegal migration is regulated by Article 318-1 of the Criminal Code of the Republic of Azerbaijan.**

- Thus, organising the illegal arrival of a foreigner or a stateless person in the Republic of Azerbaijan, illegal stay in the territory of the Republic of Azerbaijan, illegal transit through the territory of the Republic of Azerbaijan, or the illegal departure of any person from the Republic of Azerbaijan is punished with a fine of four thousand to eight thousand manats or correctional works for a period of up to two years or deprivation of liberty for a period of up to three years.
- When the same acts are committed by an organised group, when they are committed by an official using his/her official position, when they are committed repeatedly or when they are committed in a way that is dangerous to human life, they are punished with





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deprivation of liberty for a period of two to five years, with or without being deprived of the right to hold a certain position or engage in a certain activity for a period of up to two years.

In the criminal legislation of the Republic of Azerbaijan, **illegal crossing of the state border of our country is defined in Article 318 of the Criminal Code of the Republic of Azerbaijan.**

- Thus, Article 318.1 of that Code envisages a fine in the amount of one thousand five hundred up to three thousand manats or imprisonment for a term of up to two years for crossing the protected state border of the Republic of Azerbaijan without the specified documents or outside the checkpoints of the state border.
- According to Article 318.2 of the aforementioned Code, the acts provided for in Article 318.1 of the Code are punishable by up to five years of imprisonment if they are committed by a group of persons or an organised group who conspired in advance, or by using force or threatening to use such force.
- However, the provisions of Article 318 of the Criminal Code do not apply to a foreigner or a stateless person who came to the Republic of Azerbaijan by violating the rules of crossing the protected state border of the Republic of Azerbaijan in order to use the right to political asylum established by the Constitution of the Republic of Azerbaijan, if there is no other criminal element in his/her actions.

## Code of Administrative Offences of the Republic of Azerbaijan

**According to the Article 575 of the Code of Administrative Offences of the Republic of Azerbaijan** foreigners and stateless persons are fined in the amount between three hundred manats and four hundred manats with or without deportation from the Republic of Azerbaijan for violating the rules of stay, residence and passing by transit through the territory of the Republic of Azerbaijan, including:

- residing without the documents that give them the right to stay or live in the Republic of Azerbaijan, or without registration;
- staying or living in the Republic of Azerbaijan with invalid documents;
- engaging in activities irrelevant to the stated purpose of his/her arrival in the Republic of Azerbaijan during the period of temporary stay and temporary or permanent living in the territory of the Republic of Azerbaijan;
- in case a work permit is required, engaging in a paid labour activity in the territory of the Republic of Azerbaijan without a permit;
- failure to comply with the rules of registration at the places of residence or stay while moving from one place to another;
- evade leaving after the expiration of the period of staying or living;
- failure to comply with the rules of passing by transit through the territory of the Republic of Azerbaijan.



## JUDICIAL FRAMEWORK

According to the Criminal Code the crimes mentioned in Article 318-1 (organisation of illegal migration) are considered less grave crimes. According to the Code of Criminal Procedure the preliminary investigation regarding the crimes mentioned in Article 318-1 of the Criminal Code



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is conducted by the prosecutor's office at the place where the crime was committed (administrative territorial unit).

The preliminary investigation of the crimes provided for in Article 318 of the Criminal Code (illegal border crossing) is conducted by the State Border Service in accordance with Decree N° 387 of the President of the Republic of Azerbaijan dated 25 August 2000.

In accordance with Article 218 the Code of Criminal Procedure, the preliminary investigation of criminal cases involving less grave crimes should be finalised within 3 months since the start of the criminal case. Due to the complexity of the criminal case, the period can be extended for a period of not more than 10 months.



## INTERNATIONAL COOPERATION

The Republic of Azerbaijan has acceded to the United Nations Convention against Transnational Organised Crime, its complementary Protocols to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and against the Smuggling of Migrants by Land, Sea and Air. Azerbaijan has multiple bilateral agreements containing clauses that address migrant smuggling. Agreements with Georgia (2018), the Islamic Republic of Iran (2005), Pakistan (2004), Poland (2008), Romania (2009), Türkiye (2010) and Ukraine (2000) detail formal cooperation in the fields of irregular migration, organised crime or smuggling. Agreements with Belarus (2019), Kazakhstan (2019), Turkmenistan (2020) and Uzbekistan (2022) outline close coordination and information exchange specifically on "irregular migration" and migration routes, as well as training and mutual capacity-building support in migration management.

Azerbaijan is also party to the European Union (EU) Mobility Partnership, formalised through a Joint Declaration (2013) between Azerbaijan and eight EU Member States which, *inter alia*, includes cooperation on the prevention of smuggling of migrants.

The regional consultative processes in the migration field are one of the important platforms to extend cooperation on migration, including preventing irregular migration and migrant smuggling. Azerbaijan is an active member of the Budapest, Prague and Almaty Processes. The State Migration Service is represented in the Community of Law Enforcement Practitioners (COLEP) established within the Budapest Process. The initiative aims to establish capacities for international and regional cooperation between countries of origin, transit, and destination by adopting a Whole-of-Route approach, encompassing coordinated and simultaneous efforts of law enforcement across different jurisdictions in the prevention, investigation and prosecution of crimes related to the smuggling and trafficking of migrants.



## RELEVANT CASES

In the first nine months of 2023, 3 illegal migration channels were discovered that led to the illegal migration of a total of 86 foreigners to the country.



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- ❖ For instance, in September 2023, within the measures taken by the State Migration Service against illegal migration, 20 foreigners who overstayed their visas at various addresses and participated in organising illegal migration were detained in Baku city. It was determined that 18 of these individuals were arranged to enter the country's territory with promises of being transported to the territories of EU member states by using the territory of Azerbaijan in exchange for 5-8 thousand dollars. The organisers spread propaganda about the easy transportation of foreigners to the territories of the European Union through a tourism company located in a foreign country, seized the passports of 18 foreigners with the aim of convincing them in the "process of preparation" of their documents and embezzled their money. As a result of the measures taken, two foreigners who committed the mentioned illegal acts were identified and the materials related to the detected cases were sent to the Office of the Prosecutor General for legal assessment and subsequent legal proceedings.
  
- ❖ In October 2023, within the joint operations conducted against illegal migration by the State Migration Service and the State Security Service in Baku, 31 foreigners who had overstayed their visas at various addresses were detained. It was identified that these individuals were arranged to enter the territory of Azerbaijan through tourism companies abroad under the pretence of engaging in labour activities in return for 2500 USD. The organisers placed the foreigners at various addresses in Baku and created conditions for them to become irregular migrants in the country by preventing them from leaving their apartments. Materials related to the detected cases were sent to the Office of the Prosecutor General for legal assessment.