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## LEGAL AND JUDICIAL INFORMATION ON MIGRANT SMUGGLING

### BOSNIA AND HERZEGOVINA

Last update 31/10/2023

#### GENERAL INFORMATION ON MIGRATION



#### MAIN FIGURES AND TRENDS

Prosecutors Office of Bosnia and Herzegovina is in charge of conducting investigations and prosecutions of smugglers and organised criminal groups for smuggling of migrants, among other offences. Police agencies act under the supervision of the Prosecutors Office and they gather evidence and submit reports on committed criminal offences of Smuggling of Migrants. Smuggling of migrants in general based upon the geographical placement of Bosnia and Herzegovina puts us into a transit country for migrants. Trends indicate that this offence increases during spring/summer as migrants and smugglers are using rivers that represent natural borders to cross illegally. We have seen an increased flow of migrants from Serbia via the river Drina, and some migrants are coming from Montenegro and are exiting over the river Sava in the northern part of Bosnia. Main modus operandi includes guides and the usage of boats, as well as hidden compartments in vehicles. In terms of figures this year, we have recorded an increase in the number of indictments and convictions for this offense. Since a final report is not yet prepared, we can not share an exact number but mere projections which involve a significant rise in number of indictments in comparison with last year. We predict, given current results in the prosecution of these offences, that department for THB (Trafficking in Human Being) and SoM (Smuggling of Migrants) will achieve over 40 indictments for smugglers this year.

In the first nine months of 2023 the Border police of BiH (Bosnia and Herzegovina), detected 55 criminal offences, including “Smuggling of persons” which is about 30.95 % higher, compared to the same period last year. Also, Border police carried out two operational actions related to the smuggling of persons across the territory of BiH, which had the character of organised criminal acts.

The largest number of suspects are still citizens of BiH, but also in organised criminal acts, we could see international interconnection between members of organised criminal groups, i.e different nationalities (BiH, Serbia, Croatia, Türkiye). Also, migrants by themselves (i.e Pakistanis, Afghans, Turks etc.) were processed for these criminal offences, which was not often the case in the past years. Actually, we could see, that they learned local language, local routes and territory, connected with local people, and took a chance to smuggling the other migrants by themselves, as organisers, guides etc.

We recorded presence of different nationalities on the territory of BiH, but still mainly those are : Afghans, Pakistanis, Indians, Bangladeshis, Iranians, Syrians etc. Some of them were present while it was enabled along with visa free regime with other countries, i.e Burundians,



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and they have not been registered during the 2023. During 2023, citizens from Russia (territory of Chechnya) were registered coming to BiH, over Airport Sarajevo from Istanbul, with intention to leave in EU countries. Another significant appearance is the misuse of visa free regime by Turkish citizens, which are coming mostly via the airport Sarajevo, legally entering and illegally leaving to Croatia, and other EU countries. This is confirmed by significant divergences regarding the ENTRY and EXIT in and out of BiH by citizens of Türkiye.

Also during 2023, we recorded some cases where Chinese individuals were legally entering to BiH, mainly from Serbia, and then trying to reach Croatia and other EU countries illegally.

During 2023, Border Police of BiH discovered a few cases of smuggling of persons in trucks, where all of those who were supposed to be smuggled were Turks and Chinese. This modus operandi continued from 2022. The drivers were mainly BiH citizens but also Croatians. The trucks, i.e the interior space, would be rebuilt with a purpose of smuggling of people. Also, there are cases where illegal migrants were discovered by police officers, while hiding themselves under the trucks, but in these incidences there were no features of criminal offences, only an attempt at illegal border crossing according to the legal regulations.

### **The factual situation regarding the migrant crisis established by the Service for Affairs with Foreigners:**

The migration situation in Bosnia and Herzegovina is still complex, considering that we have an increasingly pronounced change in the route of movement through Bosnia and Herzegovina due to the fact that Serbia has managed to a significant extent to solve the illegal crossing to Hungary, and therefore the route has changed. Likewise, in the first nine months of 2023, a markedly higher number of requests based on readmission agreements for the acceptance of illegal migrants from the Republic of Croatia were noticed, which may ultimately complicate the situation considering that we have very few implemented readmission agreements with Serbia, regardless of the fact that the largest number of illegal entries into BiH are from the direction of Serbia. The largest number of illegal migrants is still from Afghanistan, Morocco, Pakistan, Bangladesh, Iran and others.

### **The factual situation regarding the abuse of legal residence established by the Service for Affairs with Foreigners:**

An increased number of Turkish, Russian and Chinese citizens are also present. Turkish citizens come to Bosnia and Herzegovina legally and then cross to Croatia illegally. Due to the situation in Ukraine, the majority of Russian citizens come to Bosnia and Herzegovina on the basis of a privileged visa-free regime, and then enter legally in and into Croatia, after which immediately at the border crossing they express their intention that the Border Police of the Republic of Croatia will carry out the asylum procedure for them. Recently, there has been an increase in the number of Chinese citizens who also have a privileged visa-free regime and enter Bosnia and Herzegovina legally and then illegally enter the Republic of Croatia. So far, there have been no major problems regarding the return of these citizens of the above-mentioned three countries to their countries of origin.



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## → MIGRATORY ROUTES

BiH is a transit country, hence police agencies have established, pursuant to the reports on committed criminal offences and intelligence information, **migratory routes as follows:**

1. Serbia over the river Drina to Eastern part of Bosnia – Bratunac and Zvornik region
2. Montenegro over rocky terrain and forests in South-eastern part of Bosnia, Čajniče region
3. Citizens of the Republic of Türkiye exploiting non-visa regime via International Airport Sarajevo

In terms of exit routes, migrants are using Northern and North-Western part of BiH. More accurately Gradiška and Velika Kladuša region, citizens of Türkiye are using South-Western part for illegal transit Posušje region. Intelligence agency and Service for Foreigners' Affairs obtained copies of detailed maps and instructions for the transit located on seized phones.

### **The main routes detected during 2023 by the Border Police:**

Legal entries over the Airport Sarajevo, coming to BiH, mostly Istanbul-Sarajevo, and moving of persons across the territory of BiH, to the north or south of BiH, with the intention of illegal exit from BiH to Croatia and beyond to other EU countries. This modus is mostly used by Turkish citizens, but also Syrians (with a false/forged BiH visa) and Russians (with false EU permits).

Illegal entries from the territory of Serbia, especially on the east part of BiH, on the territory of Zvornik and moving to central Bosnia in Sarajevo, then moving to northwest BiH or west BiH with intention to illegally exit from BiH to Croatia and beyond to other EU countries. This modus operandi is used by all other migrants who are trying to reach EU countries (Pakistanis, Afghans, Bangladeshis, Indians, Iranians, Morocco etc).

Illegal entries from the territory of Montenegro, also concerns Pakistanis, Afghans, Indians and Bangladeshis, who are trying to reach Croatia and other EU countries.

These are also routes used for human smuggling as well.

The biggest migrant pressure is on the northwest part of BiH, on territory of Velika Kladuša, northeast BiH, Gradiška and east BiH, Zvornik, where on daily basis we can see a lot of illegal crossing attempts by migrants, in smaller or very large groups.

**Means of transportation for smuggling of persons:** vehicles, boats, trucks, taxi vehicles, by foot. Different applications are used for communication between migrants and smugglers, such as : WhatsApp, Viber, Telegram, Signal, also all social platforms: Facebook, Instagram, Tik Tok.

Looking at the current issue of migration, the Service for Affairs with Foreigners notes that the trend of the influx of migrants to Bosnia and Herzegovina has continued, which was particularly emphasized in 2018 (23,902), 2019 (29,302), 2020 (16,190), 2021 ( 15,812), 2022 (27,429) and in the period from January 1, 2023 to October 17, 2023. (27,449). In 2008, the work of the Service for Affairs with Foreigners included a total of 140,395 foreign citizens.

# COUNTRY FACTSHEET\* – Smuggling of migrants



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Based on past experience and current trends, illegal migration and movement routes come from the direction of Serbia and Montenegro and continue to Croatia, and most of these activities are carried out from the eastern border to Sarajevo and East Sarajevo (wider area around the bus station, etc.) where they are staying for a short time, and further towards Banja Luka, Gradiška, Srbac, Brod, Kostajnica, etc., as well as the areas of Bihać and Velika Kladuša. They stay in these areas for a certain period until they manage to move to the Republic of Croatia and further to the Republic of Slovenia, the Republic of Italy and other EU countries, which is their final goal.



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## INSTITUTIONAL ORGANISATION

**Prosecutor's Office of BiH** has a Section for the Fight against Trafficking in Persons and Smuggling of Migrants within the Special Department for Organized Crime, Economic Crime and Corruption. Prosecutors of the Section conduct investigation in accordance with CPC (Criminal Procedure Code) and are directly supervising activities of the police agencies. There are several police agencies dealing with smuggling of migrants investigations such as Border Police of BiH, State Investigation and Protection Agency, Ministries of Interiors and local police stations. Once they complete their investigative activities they submit a report on committed criminal offence to the POBiH (Prosecutor's Office of BiH).

**The role of Border police of Bosnia and Herzegovina**, which is related to Border police and Border Control Law. Border police is the first in charge for inviolability and protection of the BiH state border. Since the smuggling of persons is closely related to the border, the Border police of BiH found it one of the first tasks to combat the smuggling of migrants, as well as other organised crimes that are related to the border.

With operational plans, redirecting police forces to the zones that are especially hit by migrant pressures, collecting data about organised criminal groups on the territory of BiH, analysing them, conducting investigations, and, in the end, conducting operational actions that result in prosecuting the suspects, we are trying to alleviate migrant pressure, but also detect organised criminal groups and eliminate their actions as much as possible. Also within our Criminal Intelligence, Analytics and Risk Analysis Department, we are conducting the forensic evidence, making risk analyses, collecting and analysing the data, with the goal of seeing potential and future threats and phenomena and supporting our investigations related to the smuggling of persons.

**As valuable partners**, we found out all representative police agencies, national and international, Prosecutors Office, Courts, Foreign Affairs Service, EUROPOL, embassies, etc., with whom we can exchange data, make operational plans, have operational meeting and joint actions with the purpose of combating the smuggling of persons/migrants more successfully.

**The Service for Affairs with Foreigners** was established by the Law on the Service for Affairs with Foreigners ("Official Gazette of Bosnia and Herzegovina", No. 54/05 and 36/08), as an administrative organization within the Ministry of Security of Bosnia and Herzegovina, with operational independence in order to perform administrative and inspection tasks prescribed by the aforementioned law as well as the Law on Foreigners ("Official Gazette of BiH", number 88/15).

The main responsibilities of the Service are: inspection, supervision, and control of the movement and stay of foreigners; conducting administrative procedures in order to resolve requests for residence permits for foreigners, imposing ex officio measures on irregular migrants; placing foreigners illegally staying in Bosnia and Herzegovina under supervision (accommodation in the Immigration Center); and the removal of foreign citizens who have been issued a final removal decision.



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The Service for Affairs with Foreigners currently has 237 civil servants and employees, who are organizationally distributed in the Service's Directorate into three Sectors (Sector for Operational Support, Sector for Reception, Accommodation and Readmission, Sector for Administration), 16 field centres and one immigration Centre.

Field centres of the Service for Affairs with Foreigners geographically cover the entire territory of Bosnia and Herzegovina and are located in the following locations: Trebinje, Zenica, Bijeljina, Brčko, East Sarajevo, Doboj, Travnik, Goražde, Bihać, Orašje, Livno, Ljubški, Banja Luka, Tuzla and Mostar.

The immigration centre of the Service, with a capacity of 120 places, is located in East Sarajevo and is owned by the Service. It is very important to emphasise that the Centre was built and put into operation in accordance with European standards in this area, and that the reception and stay of foreigners in the Immigration Centre take place in accordance with the prescribed rules on the functioning of the Centre, with full respect for the dignity and protection of the human rights of its users.

The mission of the Service for Affairs with Foreigners, in accordance with its legal competences, is the efficient management of migration through the implementation of effective and efficient control of the movement and residence of foreign citizens, the prevention and detection of all forms of irregular migration, and the processing and removal of irregular migrants from Bosnia and Herzegovina, which contributes to the protection of the security system of Bosnia and Herzegovina in which citizens will feel safe.

The Service for Affairs with Foreigners is not a police agency and does not have the ability to conduct investigations.

However, it is important to note that the Law on the Service for Affairs with Foreigners established a platform for the cooperation of this agency with the police and the prosecutor's office in the fight against organised crime. Article 31 of the Law on the Service for Affairs with Foreigners prescribes the obligation of the Service for Affairs with Foreigners to submit the same to the police and the prosecutor's office, i.e. to the competent authorities, upon learning of the existence of any criminal offence, and therefore of the criminal offence of organised crime.



## LEGISLATIVE FRAMEWORK

### Criminal Code of Bosnia and Herzegovina

#### **Article 189. Smuggling of Persons**

*(1) Whoever, out of personal or someone else's gain, illegally transports or enables transportation across the state border of one or more migrants or other persons, or whoever with the same purpose, makes, obtains or possesses false travel or personal documents, shall be punished by imprisonment for a term between one and ten years.*



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*(2) Whoever recruits, transports, harbours, protects or otherwise enables smuggled persons to stay in Bosnia and Herzegovina, shall be punished by a prison sentence between six months and five years.*

*(3) If the offences under paragraphs (1) and (2) have been perpetrated by members of a structured group, or an organised crime group, by abuse of official duty, or in a manner that poses a threat to life, health or safety of the smuggled persons, or if those persons were exploited or treated in another inhuman or degrading manner, the perpetrator shall be punished by imprisonment for a term between three and fifteen years.*

*(4) The punishment under paragraph (3) of this Article shall be imposed also on the perpetrator of the criminal offences referred to in paragraphs (1) and (2) of this Article whose victims were under 18 years of age.*

*(5) In the event that the offences under paragraphs (1) and (2) resulted in a death of one or more smuggled persons, the perpetrator shall be punished by imprisonment for a term of not less than five years.*

*(6) The objects or means of transportation used for the purpose of perpetration of the offence shall be confiscated.*

### **Article 189a. Organising a group or an association for the purpose of perpetration of the criminal offences of Trafficking in Persons and Smuggling of Migrants**

*(1) Whoever organises a group or an association for the purpose of perpetration of the criminal offences in violation of Articles 186 (Trafficking in Persons) and 189 (Smuggling of Persons) of this Law, shall be punished by a prison sentence of not less than three years.*

*(2) Whoever becomes a member of the group or the association referred to in paragraph (1) of this Article, or otherwise assists the group or association, shall be punished by imprisonment of not less than one year.*

*(3) The provisions set forth in Article 250 (Organised Crime) of this Law shall apply to the organiser or ringleader of the structured group or the association who perpetrated the offences under paragraph (1) of this Article and the members thereof*

In conducting the above mentioned articles, police officers are also obliged to apply certain procedures from the Criminal Procedure Code of Bosnia and Herzegovina.

Jobs in the domain of controlling the movement and residence of foreigners are carried out in accordance with the competences prescribed by the Law on the Service for Affairs with Foreigners ("Official Gazette of BiH", number: 54/05 and 36/08), the Law on Foreigners ("Official Gazette of BiH", number: 88/15, 34/21 and 63/23), the Law on Asylum ("Official Gazette of BiH", number: 11/16), the Rulebook on the Entry and Residence of Foreigners ("Official Gazette of BiH", number: 81/08 ) and other legal and bylaw regulations.

## JUDICIAL FRAMEWORK

**In Bosnia and Herzegovina, prosecutors are in charge** of conducting investigations, submitting indictments to the court and representing the indictments during the main hearing before the court. According to CPC (Criminal Procedure Code) there are two phases of the main hearing i.e. the presentation of the prosecution case and the presentation of the defence. Once both the prosecution and defence present their evidence, judges will deliver a verdict.



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during the investigation phase, judges are in charge of issuing orders for search and seizure, and special investigative activities, and they also deliver decisions on motions for custody.

Whenever there is a doubt that a criminal offence is committed, the Border police immediately informs the prosecutor. When the prosecutor is informed about circumstances of the case, and the prosecutor is the one who will decide if there is criminal offence or may be misdemeanour. When the Border police are leading an operation action which will be carried out by processing the suspects, the prosecutor is included from the very beginning, and all other special investigation measures which are necessary to document organised crime related to the smuggling of migrants are authorised by the prosecutor and the court.

**Police officers** (investigation inspectors) of Border police have frequent meetings with prosecutors, regarding all actions that need to be taken, including sharing information, checking information, collecting evidence, analysing forensic evidence, from the early beginning until the realisation of some operational action.

Also, both representatives are members of a Working Group to combat the smuggling of persons and human trafficking.



## INTERNATIONAL COOPERATION

In cases involving cross-border elements, especially in complex cases involving organised international criminal groups, cooperation is a valuable tool. Prosecutor's Office of BiH has appointed a contact point for Eurojust and we have recorded successful instances of the use of JITs (Joint Investigation Team) in our cases. Since 2023, the Ministry of Security has established a permanent joint contact team for Europol. Cooperation with Interpol is also present, as is regional cooperation with neighbouring countries. As a Prosecutor's Office using police agencies, we are communicating and obtaining information from SELEC.

**Border police of Bosnia and Herzegovina, during 2023 was included in several JADs (Joint Analysis Division) :**

- May 2023, Joint Action day Global Chain, with focus on combating against human trafficking and document fraud,
- June 2023, JAD Danube 8, with focus on detecting of criminal offences related to the smuggling of migrants, trafficking in human beings and forged documents,
- September 2023, JAD "Mobile 6" focus on detecting criminal offences related to the smuggling of vehicles, parts of vehicles and other criminal offences related to the vehicles.

**During 2023 the Border police exchange information on a daily basis** with mostly EUROPOL, related to the different criminal offences, suspects, means of transportation etc, but also with INTERPOL, embassies etc. Police officers of Border police are participating in FRONTEX meetings, and also had several meetings under EUROPOL related to the organised crimes across the border.



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We actively participate in fulfilling different reports related to drugs (UNODC, EMCDDA), illegal migrants (OSCE, platforms EPE, JORA), drugs, illegal migration and tobacco products (SELEC), contributing to a wider picture of organised crime.

## Some of the conferences during 2023:

- March 2023, conference related to the network of contact points of Western Balkans, related to combat illegal migration,
- March 2023, regional conference of EU liaison officers for illegal migration of Western Balkan countries,
- Meeting with EUFOR related to the security situation and smuggling of migrants,
- Meetings related to the OA RISK (process of establish common national contact point in front of Bosnia and Herzegovina, related to the illegal migration),
- IOM WBJUST project (common actions against smuggling of migrants and human trafficking of Western Balkans),
- IPA project "SCOPE", related to the combat against illegal migration, Border police and Germany,
- DCAF project (standardization of equipment of Border police).

And many other trainings and activities related to the different topics.



## RELEVANT CASES

We are providing [link to court of BiH case law](#).

### ❖ First case

Also we can point out one case involving an organised group for smuggling case, Ahmed Ifthikar et al. Indictment was filled on 26.08.2021. against 16 accused. The organizer was of Pakistani nationality and operated from within a camp for migrants in the Bihac area. During investigation, special investigative methods were implemented, including tapping of phones, surveillance, the use of drones and cameras. International assistance was asked for and received from Croatian border police. The first accused entered into a plea agreement and was sentenced to 3 years of imprisonment.

Amir Safi et al: Indictment for organising a group or an association for the purpose of perpetuating the criminal offences of Trafficking in Persons and Smuggling of Migrants Article 189a filled on 08.10.2021. The case ended up in a conviction of 8 and 6 months of imprisonment and the illegal asset was seized from the accused. This group organised the smuggling of migrants in cooperation with individuals from Croatia. They operated from Sarajevo and in this case ILA to Croatia was successfully obtained, as well as special investigative methods used during the investigation.



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## ❖ Cases during 2023

**OA “Sava”** : in this operational action, Border police of BiH, more persons deprived of liberty, suspected of criminal offences of “Smuggling of people” and “Smuggling of goods” (cigarettes), from the territory of Serbia to the territory of BiH and further to the Croatia.

**OA “Barbados”**: in this operational action, Border police made regional police cooperation with the Ministry of Internal Affairs of the Republic of Serbia, and exchanged initial information regarding the smuggling of migrants over the SELEC. Further investigation under the supervision of the prosecutor and court, brought us to an organised criminal group that, in several months smuggled more than 200 migrants, mostly from high migration risk countries (Afghanistan, Syria and Bangladesh) from Serbia to Bosnia and further to EU countries, with right now undetermined monetary benefits.

Both actions were realised under the supervision of prosecutors and court, using special investigations measures to detect and document criminal offences.