



LEGAL AND JUDICIAL INFORMATION ON MIGRANT SMUGGLING

GERMANY

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GENERAL INFORMATION ON MIGRATION



MAIN FIGURES AND TRENDS

Irregular migration to the EU and Germany remains at a high level. The trend from the previous year has continued in 2023.

Measured by the number of asylum applications, the number of refugees accepted from Ukraine, and the number of secondary movements to Germany, the per capita burden in Germany is among the highest in the EU and currently ranks fourth in the EU.



MIGRATORY ROUTES

Based on EURODAC hits, Germany, France and Belgium remain the top three destination countries (as in 2022), while Croatia, Greece and Italy will be the top three exit countries in 2023 (compared to Greece, Germany and Austria in 2022). Austria, while still an important transit country, has been replaced by Croatia as the most important transit and exit country for secondary movements. Croatia, in particular, has seen an almost seven-fold increase in "outbound" EURODAC hits so far in 2023 (with migrants mainly moving on to Germany, Slovenia, France and Italy).



INSTITUTIONAL ORGANISATION

The jurisdiction at ministerial level for migrant smuggling lies within the area of responsibility of the Federal Ministry of the Interior and Community.

Within the scope of its border protection duties, the Federal Police is one of the most important authority in the fight against migrant smuggling. By acting as information and communications centre of the German police, the Federal Criminal Police Office provides support to the police forces of the federation and of the states in connection with the prevention and prosecution of crimes. Given the federal structure of Germany, the Federal Police forces cooperate with the State Police forces within the field of combatting migrant smuggling.

The police authorities always act on behalf of the responsible public prosecutor's office when it comes to criminal prosecution and therefore also when combating smuggling.



LEGISLATIVE FRAMEWORK

The offence of smuggling is punishable under Section 96 of the Residence Act ("Smuggling foreigners into the federal territory") and Section 97 of the Residence Act ("Smuggling foreigners into the federal territory resulting in death; smuggling for gain and as organised gang").

Cases under Section 96 of the Residence Act are punishable by prison sentences of between three months and ten years, in less serious cases up to five years, or fines. Offences under Section 97 of the Residence Act are punishable by imprisonment of between one and 15 years, and in less serious cases by imprisonment of between one and ten years (smuggling in with fatal consequences) or six months to ten years (smuggling in on a commercial or gang basis).

In view of the increase in the number, professionalism, brutality and willingness to use violence of smugglers, the sentencing and expansion of the offence of smuggling is currently being discussed.

Furthermore, the expansion of the possibility of telecommunication surveillance in the area of smuggling crime is being discussed.

In addition to criminal law consequences against smugglers, the aim is also to deal consistently with smugglers in terms of residence law by using all possibilities to withdraw residence permits, associated benefits, such as possible family reunification and expulsion of smugglers.



JUDICIAL FRAMEWORK

According to the public prosecutor's office in Traunstein the following has to be emphasised:

- Under German law, the public prosecutor's office is the "master of the investigative process" (cf. section 161 (1) German Code of Criminal Procedure).

COUNTRY FACTSHEET*– Smuggling of migrants



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- Organized Crime procedures in the field of migrant smuggling are only possible and feasible if the public prosecutor's office is involved in the investigations from the very beginning.
- In particular, the prosecutor's office must recognise the necessity for decisions encroaching on fundamental rights and quickly obtain these decisions from the investigating judge.
- With regard to international cooperation, the excellent benefit of personal contacts between the prosecutors in charge of the case and their colleagues in other countries must be emphasised.



INTERNATIONAL COOPERATION

Germany deploys liaison officers and document and visa adviser in numerous countries, takes part in Joint Investigation Teams (JIT), Operational Task Forces (OTF), Joint and Common Action Days and uses actively the possibilities of various funding instruments (European Commission).

Since 2013, the German Federal Police has been Germany's international representative within the European Multidisciplinary Platform against Crime Threats (EMPACT) - priority Smuggling.

Since 2022, the German Federal Police is driver in this priority and is responsible for for the coordination of operational and strategic measures.



RELEVANT CASES

- ❖ The Traunstein prosecutor's office case, named EV Doro, is directed against a group of perpetrators who, working together, smuggled persons from Romania into Germany on the backs of lorries. In cooperation with the Romanian authorities, the organisation was broken up with more than 20 arrests. In the meantime, two of the suspects have been sentenced to prison terms of several years. One suspect is wanted on a European arrest warrant. In these proceedings, a Joint Investigation Team (JIT) was established with Romania (<https://www.eurojust.europa.eu/news/eurojust-assists-romania-and-germany-dismantling-migrant-smuggling-network>).
- ❖ The subject of the EV Stahlbrücke was a smuggling organiser who had extensive contacts for his smuggling operations both via the Balkan route and from Belarus. The main accused, who only acted via mobile phone and internet, could be identified and convicted. The verdict of the Traunstein Regional Court of 11.08.2022 of 8 years total imprisonment is legally binding. There was also a JIT with Romania in this case.
- ❖ From March 2019 to March 2021, the Traunstein public prosecutor's office conducted investigations against an internationally operating smuggling organisation which brings persons without the corresponding residence permit for the Schengen area and for

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Germany from Türkiye via Serbia, Bulgaria, Romania, Hungary and Austria to Germany against payment. In the course of the investigations, several persons were identified who were involved in the organisation of smuggling in different roles. Among others, one of the accused maintained close contact to a wide network of smugglers along the so-called "Balkan route", who were then responsible for the individual smuggling stages and were paid accordingly for their part of the journey. In this case, an international money attachment order and European arrest warrants were used.

- ❖ The operation ZANK was initiated in Germany in 2018 after Police forces had detected migrants from Iran, Iraq and Syria entering Germany in lorries via Czechia and Hungary. The investigation dismantled a large network smuggling people from their countries of origin via Timișoara, Romania to Germany. During the final leg of the journey to western Europe, the migrants were forced to travel in lorries. Criminals used container to transport irregular migrants across borders. Loaded into cargo vehicles, migrants can suffer from lack of oxygen and dehydration, and risk their lives before reaching their final destination. In April 2021, serious prison sentences were imposed on Iraqi and British nationals, who were significantly involved in the organisation, investigated within OP ZANK. Both were sentenced to prison terms of nine years six months and nine years for five cases of smuggling foreign nationals into the country on a commercial and gang like basis.