COUNTRY FACTSHEET* – Smuggling of migrants

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LEGAL AND JUDICIAL INFORMATION ON MIGRANT SMUGGLING

MONTENEGRO

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GENERAL INFORMATION ON MIGRATION

MAIN FIGURES AND TRENDS

Together with asylum, migration is another field to which the European Union (EU) pays special attention. For this reason, but also in order to preserve its own public order, each EU candidate country must ensure compliance of its normative framework with the acquis in this area, and its full implementation. The area of migration includes a wide range of sub-areas, such as: regular migration, prevention of irregular migration, readmission, treatment of foreigners, etc. Asylum is one of the key areas to which the European Union pays a high degree of attention. As a candidate for EU membership, Montenegro has been facing an increased number of asylum seekers for years.

Combating irregular migration is a significant challenge for the successful implementation of migration policy. Therefore, it is one of the priorities in the future activities of the competent authorities, which require more intensive cooperation and exchange of information, both at the national, regional and international level. It is important to underline that for the time being, irregular migration in Montenegro, is still of a transit nature, and that it involves mainly economic migrants.

Having established a strategic framework and normative and institutional infrastructure, Montenegro has relatively quickly charted the future course of action regarding the comprehensive management of migration flows, the achievement and implementation of an effective migration policy that should be based on the principles of respect for human rights and freedoms, legality and efficiency, as well as the responsibility of the State for legal immigration and the issues of naturalization and integration of migrants. Overall, Montenegro's legal system is highly aligned with the EU acquis, in the areas of negotiating chapters 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security). Until its full membership, Montenegro plans to undertake normative activities with the aim of full alignment with the EU acquis in those aspects where it is currently not aligned, with special emphasis on amendments to the Law on Foreigners and further detailing of instructions for the application of the Law on International and Temporary Protection of Foreigners.

In addition to the Ministry of Interior and the Police Directorate, as key bodies dealing with migration issues in Montenegro, an important role in the organization and working practices of the State administration belongs to the Ministry of Foreign Affairs, Ministry of Finance and Social Welfare, Ministry of Economic Development, Ministry of Education, Science, Culture and Sports, Ministry of Health, Public Revenue Administration, Customs Administration,

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Employment Office of Montenegro and local self-governments, which perform tasks related to meeting the needs of direct and common interest to Montenegrin citizens.

MIGRATORY ROUTES

The migration wave from the Middle East, Central Asia and North Africa to Europe began in 2011, intensified in 2014, and reached unprecedented proportions in 2015. During this period, 9,000 asylum applications were submitted in Montenegro, most of which by citizens of Syria, Eritrea, Somalia and Afghanistan. The closure of the transit corridor was the first important measure to regain control of the migration crisis. Despite a significant reduction in the flow from the outset, the closure of the corridor did not provide full control. Accumulated migration pressure in Greece and Turkey has naturally led migrants to seek alternative routes towards Western Europe. During this period on the Western Balkan route, Montenegro was not affected by irregular migration to a greater extent, seeing that such figures were amounting to hundreds of thousands of migrants in the countries of the region. Nevertheless, the increased movement of migrants has also been registered in Montenegro. In most cases, these are subsequent movements of irregular migrants from war-affected and economically vulnerable countries, who come from Greece to the Republic of Albania, and then illegally enter Montenegro. The upward trend in the movement of migrants has been recorded again since August 2017, so the focus of border police was placed on combating and controlling this phenomenon.

Conditioned by global flows, the increased movement of migrants through Montenegro continued during 2018 and 2019. Migrants coming from the direction of Albania enter Montenegro illegally, most often in the area around the Božaj Border Control Post (BCP) and the wider area of the land border near Tuzi, less often around the JBCP Sukobin–Murićani near Ulcinj. Migrants most often enter Montenegro illegally on foot, in smaller groups, after which they continue to move to the first major settlement, often following the railway route or local roads. Exiting Montenegro, these persons most often move towards Bosnia and Herzegovina, where they use the area of the land border around BCP Ilino Brdo, Vraćenovići and Krstac near Niksic, as well as the area of Metaljka near Pljevlja, after which they continue further movement towards the European Union countries.

A significant increase in the movement of migrants from the direction of Albania was recorded during 2019. In fact, in 2019, a total 7,978 migrants were registered (2018 - 4,753). Most registered persons came from the following territories: Morocco – 2,694, Syria – 1,637, Algeria – 1,315, Iraq – 528, and Pakistan – 397. Owing to the activities of the border police, a total of 6,249 persons (2018 - 4,217) were prevented from entering Montenegro illegally.

As for the current situation, there were 1,153 migrants registered in the first two months of 2020 (583 – January, 570 – February), which is at the level of last year's monthly average. Frequent combat operations in northern Syria and further escalation of the conflict in the area have raised the risk of a renewed refugee crisis to a higher level. Turkish authorities announced the possibility of opening the border with Greece, which resulted in a concentration of a large number of migrants in the border areas. Such a situation acts as a chain reaction, with migrants going further to Greece and Albania and onwards. That continues to increase the risk of re-activating the Western Balkan route, one of whose legs goes through Montenegro.

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INSTITUTIONAL ORGANISATION

In the last few years, the Ministry of Interior of Montenegro has undertaken significant activities in order to establish a strategic and normative framework, as well as an institutional structure that will adequately respond to the challenges posed by the increased influx of refugees and migrants. To explain, Montenegro has adopted two key laws: the **Law on International and Temporary Protection of Foreigners** and **the Law on Foreigners**, through which European standards have been applied to the greatest extent, as reflected in the quality and efficiency of exercising the rights of foreigners, managing regular migration flows and combating irregular migration through coordinated and clearly prescribed procedures.

The **Ministry of Interior**, among other duties, performs administrative tasks related to:

- preparation of regulations in the field of civil status, personal and other documents of citizens, migration, international and temporary protection of foreigners and readmission;
- keeping the Central Population Register; citizenship;
- travel documents;
- migration, immigration;
- granting international and temporary protection to foreigners, naturalization, identity cards, permanent residence of Montenegrin citizens and keeping the register of permanent residence;
- work and temporary and permanent residence of foreigners in Montenegro and the related keeping of the prescribed records;
- unique citizen number;
- name and surname;
- register of births/deaths/marriages;
- records of vehicles and drivers;
- acquisition of weapons and parts for weapons;
- reception and placement of foreigners seeking international protection at the Reception Centre or other accommodation facilities;
- placement of foreigners granted asylum or subsidiary protection and assistance with integration into society;
- coordination in the exercise of legally prescribed rights of foreigners granted asylum or subsidiary protection;
- providing support for inclusion in social, economic and cultural life;
- implementation of national, regional and international instruments for resolving refugee issues;
- assistance in exercising the rights of Montenegrin nationals upon their return to Montenegro in accordance with obligations established by the readmission agreement.

In addition to the Ministry of Interior and the Police Directorate, as key bodies dealing with migration issues in Montenegro, an important role in the organization and working practices of the State administration belongs to the Ministry of Foreign Affairs, Ministry of Finance and Social Welfare, Ministry of Economic Development, Ministry of Education, Science, Culture and Sports, Ministry of Health, Public Revenue Administration, Customs Administration, Employment Office of Montenegro and local self-governments.

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LEGISLATIVE FRAMEWORK

The **Constitution** is the highest order legal act, basic and fundamental law in Montenegro, whose **Article 44** stipulates that a foreigner who reasonably fears persecution because of his/her race, language, religion or belonging to a nation or group or because of political beliefs may seek asylum in Montenegro, that s/he cannot be expelled from Montenegro where, due to race, religion, language or national affiliation, s/he is threatened with the death penalty, torture, inhuman humiliation, persecution or serious violation of the rights guaranteed by the Constitution and that s/he may be expelled from Montenegro only on the basis of a decision of the competent authority and in a legally prescribed procedure. In addition to the Constitution, and ratified international treaties, the most important laws in this area are the **Law on Foreigners** and the **Law on International and Temporary Protection of Foreigners**.

The **Law on Foreigners** (Official Gazette of Montenegro, Nos. 12/2018 and 03/19), governs the conditions for entry, exit, movement, stay and work of foreigners in Montenegro. In the last ten years, the acquis in the field of migration has been intensively developing. The area of migration, especially issues of immigration and work of foreigners, was left mainly to be governed by national legislation. Today, European Union legislation regulates a number of migration issues, from family reunification, rights of foreigners with permanent residence and their status, residence of researchers, students, pupils, volunteers to the immigration of highly qualified workforce, issuance of a single residence and work permit, work of seasonal workers, as well as the punishment of employers who employ foreigners residing illegally in the territory of the Member States.

The **Law on International and Temporary Protection of Foreigners** (Official Gazette of Montenegro, Nos. 2/2017 and 03/19), transposed European standards in the field of asylum. This Law received a green light from the European Commission and represents a significant step in the European integration of Montenegro. This Law introduces international humanitarian law standards and human rights protection standards in the development and implementation of reception policy and the need to create a safe and dignified environment for foreigners seeking international protection; recognizes the need to establish and apply fair and expeditious international protection procedures, in order to identify in a timely manner those in need of international protection and those for whom this is not the case. The Law on International and Temporary Protection of Foreigners defines the following legal concepts from the European legislation:

- acts of persecution;
- perpetrators of persecution;
- reasons for exclusion;
- safe country of origin;
- safe third country;
- safe European third country;
- border procedure.

In addition, this Law clearly defines special procedural guarantees that provide appropriate support to foreigners seeking international protection, given their special circumstances, including, inter alia, age, gender, sexual orientation, gender identity, serious illness, mental health or the consequences of torture, rape or other severe forms of psychological, physical or gender-based violence. In order to exercise the rights and obligations under this Law, the basic principle of the Dublin Regulation was introduced, which determines the State responsible for

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deciding on the application for international protection, as well as the taking and exchange of fingerprints in accordance with the Eurodac Regulation.

JUDICIAL FRAMEWORK

Under the negotiating framework for EU accession negotiations, Montenegro regularly reports to the European Commission (EC) on the progress of implementation of the commitments made within the chapters "Justice, Freedom and Security" and "Judiciary and Fundamental Rights", after which the EC draws up an overview paper of Montenegro's progress. The Working Document (Montenegro 2020 Report) was published in October 2020. In general, this working document on migration and asylum states that Montenegro is moderately prepared in the area of justice, freedom and security and that next year, Montenegro should in particular further strengthen capacities to address mixed migration flows and refugee integration; further increase human and material resources dedicated to border management and the migrant registration system. In addition, the section of the same document on the area of migration and asylum, states that Montenegro continues to demonstrate its resilience and commitment in the light of increased migration flows leading through its State territory. The Status Agreement with the European Union was ratified, which provides for the deployment of European Border and Coast Guard teams with executive powers along the border of Montenegro with the EU.

A total of 10 plea agreements were concluded in cases involving the criminal offences of unauthorized crossing of the State border and smuggling of persons referred to in **Article 405 of the Criminal Code** (CC) of Montenegro and creation of a criminal organization referred to in **Article 401a of the Criminal Code** of Montenegro. Of these, 7 agreements were upheld by courts. On their basis, judgments were rendered sentencing the accused persons to imprisonment and fines as an accessory punishment in the amount of €6,500. The costs of the criminal proceedings amounted to €800, while 3 plea agreements are awaiting a court decision.

INTERNATIONAL COOPERATION

The **International Organization for Migration (IOM)** was founded in 1951 and is the world leading intergovernmental United Nations (UN) Organization for migration. From the moment of its inception, IOM was operating as an entity outside the UN system. Having signed the Cooperation Agreement with the UN, the IOM has acquired the status of an UN-related organization. Montenegro cooperates with the International Organization for Migration through the Office of the International Organization for Migration in Montenegro. The IOM Office in Montenegro was established in 2001. Its activities are aimed at involving Montenegro in a number of humanitarian and social support programmes, as well as regional projects in the field of capacity building, development of the institutional and legislative framework in the field of asylum, migration and visa regime, in the context of enhancing regional cooperation in the fight against irregular migration, organized and cross-border crime, thus directly contributing to a greater degree of security in the Western Balkans region and beyond. This cooperation is actualized in the following:

- The IOM Office in Montenegro promotes dialogue through workshops on migration-related topics; develops information and training programmes for employees; improves cross-border cooperation.

- The IOM provides advisory and operational support to the Montenegrin authorities in their efforts to strengthen migration management capacities in the country, including improving border control, strengthening efforts to combat trafficking in human beings through capacity building for migrant identification.
- The IOM supports the Government in establishing the necessary mechanisms to collect and exchange data and information with neighbouring countries for analysis on regional migration flows.

The procedure for full harmonization and signing of the Memorandum of cooperation in the process of voluntary return of foreigners and reintegration in the country of return with provision of assistance between the Ministry of Interior of Montenegro, the Police Directorate of Montenegro and the International Organization for Migration is in progress. The aim of this Memorandum is to establish mechanisms of long-term cooperation and to enable close cooperation and consultation in the process of foreigners returning to their country of origin.

Organized by the International Organization for Migration (IOM), within the IPA II funded regional project "Regional Support to Protection-Sensitive Migration Management in the Western Balkans and Turkey", the office in Podgorica regularly holds meetings of the heads of border police in the region (Montenegro, Bosnia and Hezergovina, Serbia, Kosovo, Albania and North Macedonia). Coordination meetings are organized for the purpose of exchanging statistical and other data related to irregular migration, smuggling, trends related to migratory flows, as well as the procedure for the implementation of signed agreements on the readmission of third-country nationals. This project aims to support sustainable mechanisms and structures in the targeted countries of the region to independently manage migration and protect vulnerable migrants, while at the same time expanding the scope of cooperation and coordination between them. IOM is working with the institutions of the afore-mentioned six Western Balkan (WB6) countries, project beneficiaries, dealing with migration, to develop a service that would offer immediate and reliable access to non-regional interpretation. The legal basis for the establishment of this regional interpretation service is provided through the "Protocol on the use of joint interpretation pool in the area of migration and asylum", signed by the WB6 Ministers of interior/security with the assistance of the "Migration, Asylum, Refugees Regional Initiative" (MARRI). Seen as a way to complement interpretation solutions at the national level, the Protocol allows for the establishment of a pool of non-regional interpreters (MIP – MARRI Interpreters Pool) to be used for customized remote interpretation services in the areas of migration and asylum.

Forced displacement and statelessness are unequivocally issues of concern to the international community. In response to these challenges, the **United Nations Refugee Agency** (UNHCR) was established in 1950 by a decision of the United Nations General Assembly. The intention of the UN General Assembly was to ensure that UNHCR "would enjoy a special status within the UN, possessing the degree of independence and prestige required to perform his functions effectively". For this reason, the mandate of UNHCR is part of public international law, through the obligation of States to cooperate with UNHCR, which is explicitly mentioned in international documents and national legislation in the field of asylum. More broadly, UNHCR also provides surrogate diplomatic and consular protection to refugees and stateless persons. The UNHCR office in Montenegro was opened in 1992. Since 1992, UNHCR has provided strong support to Montenegro in receiving, caring for and seeking durable solutions for refugees from the territory of the former Yugoslavia and persons registered in the asylum system, preventing statelessness, as well as in building a national legislative and administrative framework that would fully respond to Montenegro's international obligations in the field of asylum and statelessness.

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In order to better monitor and understand the current irregular migration situation and trends in EU countries and countries in the region, the Ministry of Interior - Police Directorate of Montenegro pays close attention to cooperation with EU agencies, especially with **FRONTEX**. The "Working Arrangement Establishing Operational Cooperation" was signed. It serves as a basis for exchanging information on irregular migration, drawing up risk analyses, submitting data within the mechanism for monitoring post visa liberalization and participating in joint operations. At first, such information was exchanged on a monthly basis, and from October 2018 on a daily basis. Under the auspices of FRONTEX and Democratic Control of Armed Forces (DCAF), several joint coordinated operations on the green border and border crossings of the Western Balkan countries were implemented in the previous period. The main objective of the operations was the coordinated action of border services in the field of combating irregular migration, trafficking in human beings, drug smuggling, detection of stolen vehicles, falsified documents and other forms of cross-border crime, as well as the exchange of experience and good practice in the performance of police duties.

The Ministry of Interior of Montenegro, with the support of UNICEF, organized a training session on the application of international standards in the field of health and child care in support of efforts to help children and families, migrants and refugees (December 2019). The aim of this training session was ultimately to identify the best interests of the child. In May 2020, a Memorandum of Cooperation was signed between the Ministry of Interior of Montenegro and the NGO Legal Centre. The purpose of the Memorandum is to serve as the basis on which the Ministry of Interior and the NGO Legal Centre will exchange information and cooperate on the implementation of the project "My lawyer – free and professional legal aid for an effective access to rights for migrants", which is supported by the European Commission via the Delegation of the European Union to Montenegro through the support program for civil society organizations EIDHR 2018. The aim of such cooperation is to improve active participation and contribution of civil society organizations in the process of implementation of existing migration management policies in Montenegro.

RELEVANT CASES

- In 2019, 32 persons were reported due to the commission of the criminal offence "unauthorized crossing of the state border and smuggling of persons" referred to in Article 405 of the Criminal Code of Montenegro (with 9 persons reported in 2018, 17 in 2017, and 4 in 2016 respectively). Therefore, with pending reports from the previous period against 8 persons, there were 40 persons reported against whom procedures are pending. State prosecutors filed a bill of indictment against 14 persons, dismissed criminal charges against 5 persons, filed an indictment without investigation against 3 persons, issued an order to conduct investigation against 10 persons, and transferred criminal prosecution against 6 persons, while charges against 2 persons remained pending. In addition to the ongoing investigations from the previous period against 8 persons, State prosecutors conducted investigations against 18 persons. After the investigation, 6 persons were indicted, while investigations against 3 persons were transferred. At the end of the reporting year, there were pending investigations against 9 persons. In addition to the pending indictments from the previous period, courts were working on indictments against 25 persons. A conviction was rendered against 22 persons, a prison sentence was ordered against 15 persons and a suspended sentence against 7 persons, and 1 person was acquitted. At the end of 2019, the

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indictments against 2 persons were pending. Appeals against the court's decision were lodged against 3 persons – against 2 persons due to the sentencing decision, and against 1 person for other reasons. With a pending appeal against 1 person from the previous period, a total of 4 appeals were pending before the court. Deciding on the appeals, the court upheld the appeal against 2 persons, due to the sentencing decision against 1 person, and against 1 person for other reasons, while it rejected the appeal against 1 person for other reasons. At the end of the reporting period, an appeal against 1 person remained pending.

- Under the competence of the Special State Prosecution Service, 10 plea agreements were concluded in 2020 due to criminal offences of “unauthorized crossing of the state border and smuggling of persons” referred to in Article 405 of the CC of Montenegro and “creation of a criminal organization” referred to in Article 401a of the Criminal Code of Montenegro, of which 7 agreements were upheld by the court. On their basis, a judgment was rendered sentencing the accused persons to imprisonment and a fine as an accessory punishment in the amount of €6,500. The costs of the criminal proceedings amounted to €800, while 3 plea agreements are awaiting a court decision.