



## LEGAL AND JUDICIAL INFORMATION ON MIGRANT SMUGGLING

### NORTH MACEDONIA

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#### GENERAL INFORMATION ON MIGRATION



#### MAIN FIGURES AND TRENDS

Analytical findings say that from January to July 2023, over seven thousand attempts of illegal crossings were prevented, or 44% less, compared to the same period in 2022. Although it is not a desired destination country for migrants, North Macedonia is still part of the route that leads them to their final destination. The biggest increase was observed during the summer months (June and July), when on average around 1,600 attempts were prevented, and the weather conditions, which are favorable and attractive for migrants, have an influence on the increase in attempts, who on several occasions illegally cross the border. It is characteristic that almost all attempts at illegal crossings are at the green border.

Blocked attempts to illegal crossings	January-July 2023	January-July 2022	decrease/increase
Greece	6.339	11.390	-44,4%
Albania	40	75	-46,6%
Serbia	712	1.290	-44,8%
Kosovo	8	34	-76,5%
Bulgaria	1	4	-75%
<b>In total</b>	<b>7.100</b>	<b>12.793</b>	<b>-44,5%</b>

Tabular display of prevented illegal crossing attempts

The border with Greece continues to be used as an entry point into the country, with more than 6 000 attempts or 90% of the total number of illegal crossings were prevented. At this border, a 44% reduction in attempts has been recorded, and after crossing our territory, migrants are accommodated in improvised camps near the border with Greece or near local and regional roads in the Gevgelija region, from where they are picked up by smugglers.

In terms of country of origin, attempts by people of Syrian origin dominate - 2,253. Then, there are attempts by persons from Morocco - 1,898, and their number has increased by three times compared to last year, from Pakistan - 544, Afghanistan - 495 and persons without citizenship

# COUNTRY FACTSHEET – Smuggling of migrants



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- 281 attempts. During the past seven months, there has been a significant increase in the number of attempts by Congolese migrants-523 (79)<sup>1</sup>, from Palestine-264 (100), Algeria-151 (34) and Sierra Leone-110 (13), indicating a change in the origins of migrants.

The abuse of the visa-free regime introduced for people from Türkiye, Tunisia, India, Cuba, Burundi, China, Russia and Egypt is not characteristic for our country this year, as statistical indicators indicate a reduced number of attempts by persons from these countries.

Illegal crossings also affect the emergence of criminal activities related to migrant smuggling. The intensified police activities resulted in the detection of 47 cases, during which the smuggling of 362 migrants was prevented, mostly from Syria-242, from Congo-41 and from Pakistan-35, and a 17-members international organised crime group that operated for a long time was suppressed, and which, with constant communication (telephone and internet) on the basis of a previous agreement with organisers from the OKG from the Republic of Serbia, the Republic of Bulgaria, the Republic of Hungary and North Macedonia, planned, arranged and organised the smuggling of migrants from the Republic of Greece to the Republic of Hungary and from the Republic of Bulgaria to the Republic of Serbia, with the final destination in the European Union (EU) countries.

	January-July 2023	January-July 2022	decrease/ increase
<b>Cases discovered</b>	47	59	-20,3%
<b>Number of crimes</b>	39	43	-9,3%
<b>Number of perpetrators</b>	43	64	-32,8%
<b>Number of migrants</b>	362	918	-60,6%
<b>OKG</b>	1	0	-

Tabular representation of migrant smuggling

From the observations made, detected cases of migrant smuggling show a decreasing trend by 20%, as well as the number of smuggled migrants, and criminal prosecution measures have been taken against 43 people, five of whom are foreign nationals (three from Serbia and one from Türkiye and from Afghanistan), who have been reported for having committed 39 crimes of "migrant smuggling" (of which three crimes are "co-commitment" and two crimes are "assistance" in relation to "migrant smuggling").

## ➔ MIGRATORY ROUTES

A current threat that in recent years greatly affected the security situation inside the country, in the region - in the neighboring countries, but also more broadly, is the illegal movement of people from third countries (mostly from countries of the Middle East, Asia and Africa). Key

<sup>1</sup> The data in parentheses refer to the same period of last year.

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points of entry for migrants and their further movement are the southern borders. Türkiye is the main point from which the movement of migrants begins. The availability of flights to Istanbul, the Republic of Türkiye, and good flight connections with other countries in the world, as well as the offer of cheap tickets, greatly facilitate the travel of migrants to other countries of the world.

On the land border between the Republic of Greece and the Republic of Türkiye, the number of new arrivals of migrants is very low, compared to previous years. For the most part, these are migrants who have been in the territory of Greece for a long time and on several occasions, they try to leave, but they return and wait for a certain period to pass in order to leave again for the desired destination.

Several migrant smuggling routes are active, but the highway A1-Skopje-Gevgelija and vice versa, is most often used. In the southern part of the country, the most active is the Gevgelija region - the road direction Gevgelija-Skopje (the regional roads: village Prdejci-village Smokvica, village Negorci and village Prdejci, then at Demir Kapija, the connection to the old road Demir Kapija-Gradsko, or they use the regional road Demir Kapija - Negotino, Negotino interchange, etc.). Places where migrants are left are in the northern part of the country, on the highway Kumanovo-border crossing Tabanovce, mostly at a place called Tabla 1000, a place called Silosi, near the village of Kosturnik, etc.

Smugglers use certain people as an advance guard ("cleaners") to the agreed destination, some of the members have the task of observing the area where they operate, follow the placement of police patrols and inform each other about it. The transport of migrants takes place for the most part with passenger vehicles that are placed at gas stations, parking lots along the road, from where the smugglers have a good control over the routes and the movement of police patrols at any moment. These are powerful, fast vehicles like the following brands: AUDI, Passat, BMW, Golf, Opel and Ford. Most of the time, the registration plates on passenger vehicles are fake or are taken from other vehicles, mostly with Skopje and Strumica car plates, and they also appear with fake Bulgarian, Serbian and Swiss plates. This year, in one case, an attempt was made to smuggle a large group of migrants from Syria in a truck with Serbian license plates at the "Star Dojran" border crossing.



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## INSTITUTIONAL ORGANISATION

In the Ministry of Internal Affairs, the Bureau of Public Security is responsible for detection of crimes of migrant smuggling from Article 418-b.



## LEGISLATIVE FRAMEWORK

For North Macedonia, in order to deal with and prevent the escalation of the current situation with the migration movements of people from the Middle East and Africa, the signing of the Status Agreement with Frontex and the start of operational activities in April 2023 on the border with the Republic of Greece, is of great importance.

Regarding the national legislation, the Criminal Code provides for two incriminations in the Chapter "Crimes against Humanity and International Law" that provide criminal-legal protection against migrant smuggling. First, the Criminal Code establishes the crime "Smuggling of migrants" - Article 418-b. The legal nature of this article provides that a person, who by force or with a serious threat will attack the life or body, by kidnapping, fraud, out of greed, by abusing their official position or by taking advantage of the weakness of another, illegally transports migrants across the state border, as well as the one who creates, procures or possesses false travel documents for such purpose, shall be punished by imprisonment for at least four years. A privileged form of the crime is also provided for whoever recruits, transports, transfers, buys, sells, shelters or accepts migrants, for which a prison sentence from one to five years is prescribed. If the life or health of a migrant is endangered during the performance of the offence referred to in paragraphs 1 and 2, or a migrant is treated particularly in a humiliating or cruel manner, or is prevented from using the rights that belong to them under international law, it is also stipulated that the perpetrator shall be punished by imprisonment for at least five years. A qualified form is also foreseen in the event that the crime from paragraphs 1 and 2 is committed by a minor, whereby it is stipulated that the perpetrator will be punished with imprisonment for at least eight years. Also, if the crime from paragraphs (1), (2), (3) and (4) of this article is committed by an official in the performance of their duties, they will be punished by imprisonment for at least five years.

In addition to this incrimination, the Criminal Code provides for the criminal offense of "Organising a group and encouraging the commission of crimes "human trafficking, trafficking in minors and smuggling of migrants"" - Article 418-v.

In this article, it is prescribed that whoever organises a group, gang or other association to commit criminal offence from articles 418-a, 418-b, 418-g and 418-d will be punished with imprisonment for at least eight years. Paragraph 2 of this article stipulates that whoever becomes a member of a group, gang or other association from paragraph 1 or otherwise helps a group, a gang or an association, will be punished with imprisonment for at least one year. A member of the group from paragraph 1 who discloses the group before it commits a crime will be released from punishment. Invoking, inciting or supporting the commission of crimes from articles 418-a, 418-b, 418-g and 418-d is also sanctioned, for which a prison sentence of one to ten years is prescribed.



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## JUDICIAL FRAMEWORK

Regarding procedural legislation, Article 53 of the Law on Criminal Procedure regulates the rights of the victim. Thus, the victim of a crime has the following rights:

- 1) to participate in the criminal proceedings, as a victim, by joining criminal prosecution or for the realisation of the property-law claim for damage;
- 2) to a special care and attention by the bodies and entities that participate in the criminal procedure and
- 3) a right to an effective psychological and other professional help and support by authorities, institutions and organisations that help victims of crimes.

The police, the Public Prosecutor and the court, shall act with special care towards the victims of crimes, giving them directions from paragraph (1) of this Article and Articles 54 and 55 of this law and shall take care of their interests when making decisions on criminal prosecution against the accused and when taking actions in the criminal procedure, in which the victim must personally be present and for which an official note or minutes is drawn up.

In accordance with the special regulations, the victim of a crime for which it is prescribed a prison sentence of at least four years is entitled to:

- 1) an adviser, paid from the budget funds, before giving a statement, i.e. statement or submission of a property claim, if there are severe psychophysical conditions and damages, or more serious consequences from the crime and
- 2) a compensation for material and non-material damage from the state fund, under conditions and in a manner prescribed by a special law, if the compensation for damage cannot be provided by the convicted person.

The special rights of victims of crimes against gender freedom and gender morality, humanity and international law are established in Article 55 of the Law on Criminal Procedure. Thus, the victim of crimes against gender freedom and gender morality, humanity and international law, in addition to the above rights, has the following rights:

- 1) before the examination, to talk to a free counselor or a proxy, if they participate in the procedure as a victim;
- 2) to be examined by a person of the same sex in the police and in the Public Prosecutor's Office;
- 3) not to answer to questions related to the personal life of the victim, and which are not related to the crime;
- 4) to require examination by using visual and audio means in a manner determined by this law and
- 5) to request the exclusion of the public from the main hearing.

The court, the Public Prosecutor's Office and the police are obliged to instruct the victim about their rights, at the latest before their first examination, for which they compile an official note or minutes.

In terms of the judicial framework, in the public prosecutor's system in the Republic of North Macedonia, the Basic Public Prosecutor's Office for Prosecution of Organised Crime and Corruption (BPPOPOC) has been established, which is competent for crimes against humanity and international law.

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Pursuant to the Law on Courts, a specialised court department is established in the Basic Criminal Court Skopje, competent for the trial of offences in the field of organised crime and corruption for the entire territory of the Republic of North Macedonia. The specialised court department is also competent to judge the crimes of migrant smuggling from Article 418-b, from which the competence of the BPPOPOC for prosecution and handling in the first instance for this crime is derived.



## INTERNATIONAL COOPERATION

### Report on the number of cases in the Department for International Legal Assistance - Ministry of Justice (01.01.2018 to 10.10.2023)

#### 418-b – Smuggling of migrants

Country	Number of requests received during the period	Number of new requests received during the period	Number of satisfied requests	Number of unsatisfied requests	Number of partially satisfied requesters	Number of resolved otherwise	Number of pending requests at the end
Austria	5	2	0	0	0	0	6
Albania	14	10	0	0	0	0	15
Belgium	4	2	0	0	0	0	5
Bosnia and Herzegovina	3	1	0	0	0	0	3
Bulgaria	11	8	0	0	0	0	11
Great Britain and Northern Ireland	1	1	0	0	0	0	1
Ghana	2	2	0	0	0	0	2
Germany	16	10	0	0	0	0	16
Greece	12	7	0	0	0	0	13
Egypt	1	1	0	0	0	0	1
India	2	2	0	0	0	0	2
Italy	3	3	0	0	0	0	3
Kosovo	17	10	0	0	0	0	17
Macedonia	1	1	0	0	0	0	1
Pakistan	12	12	0	0	0	0	12
Romania	2	2	0	0	0	0	2
Serbia	38	23	0	0	0	0	38
Turkey	2	1	0	0	0	0	2
Hungary	5	4	0	0	0	0	5
France	1	0	0	0	0	0	1
Croatia	3	2	0	0	0	0	3
Montenegro	4	3	0	0	0	0	4
Sweden	2	1	0	0	0	0	2
Spain	1	1	0	0	0	0	1
Total for the country	162	109	0	0	0	0	166

# COUNTRY FACTSHEET – Smuggling of migrants



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## 418-c - Organising a group and encouraging the commission of human trafficking and smuggling of migrants

Country	Number of requests received during the period	Number of new requests received during the period	Number of satisfied requests	Number of unsatisfied requests	Number of partially satisfied requesters	Number of resolved otherwise	Number of pending requests at the end
Afghanistan	1	1	0	0	0	0	1
Albania	3	3	0	0	0	0	3
Belgium	4	1	0	0	0	0	5
Germany	6	3	0	0	0	0	6
Greece	2	2	0	0	0	0	2
Italy	4	3	0	0	0	0	4
Kosovo	1	1	0	0	0	0	1
Romania	1	0	0	0	0	0	1
Serbia	6	2	0	0	0	0	6
Hungary	1	1	0	0	0	0	1
France	2	2	0	0	0	0	2
Croatia	1	1	0	0	0	0	1
Sweden	1	1	0	0	0	0	1
Spain	1	1	0	0	0	0	1
Total for the country	34	22	0	0	0	0	35



## RELEVANT CASES

### ❖ Case 1 (Judgment KOK no. 102/20)

The case concerns a perpetrator who, on 06/28/2020, at 00:01, on the Kumanovo-Kriva Palanka road, was driving a cargo motor vehicle with a DAF tractor and a Krone semi-trailer, owned by a legal entity and in which he was transporting migrants, one from Pakistan and one from Bangladesh, whose lives were endangered by him. He was driving the vehicle along the specified road, and at one point he stopped it, opened the door of the semi-trailer, after which the migrants started to get off the vehicle, but he did not wait for all the migrants to get off, but returned to the cabin of the vehicle and started to drive it, while the migrants were still getting off the vehicle and fell on the roadway and suffered injuries from the fall. The migrant from Pakistan suffered a serious injury, expressed in the form of a multifragmentary fracture of the right kneecap, and the migrant from Bangladesh suffered a head injury, expressed in the form of a contusion on the head and a lacerating wound in the nape of the neck. The defendant fled with the vehicle he was driving, and he was stopped by officials of the Ministry of the Interior at the place called Chatal, the village of Stracin.



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Against the defendant, the Basic Public Prosecutor's Office for the Prosecution of Organised Crime and Corruption filed an indictment KO.No.63/20 on 17.08.2020, for the crime of Smuggling Migrants from Article 418-b paragraph 3, in relation to paragraph 2 of the Criminal Code (CC).

The Basic Criminal Court - Skopje, held a main, public and verbal hearing on 21.01.2021, at which after the Public Prosecutor presented the content of the indictment, the defendant stated that he felt guilty of the crime and admitted it.

After the defendant's guilty plea, the court in the evidentiary procedure presented only the evidence related to the decision on the criminal sanction, in accordance with Article 381 paragraph 3 of the Law on Criminal Procedure, with which the court sentenced the defendant to a prison sentence from 3 years and 6 months.

When determining the type and amount of the criminal sanction, the court took into account all the mitigating and aggravating circumstances provided for in Article 39 of the Criminal Code, starting from the factual description of the criminal event and the basic, i.e. determining, criteria for determining the severity of the committed crime such as the criminal responsibility of the perpetrator, as well as the circumstances under which it was committed, first of all, the time, place and manner of committing the crime and its intensity, in terms of the commission of the crime from Article 418-b paragraph 3, in relation to paragraph 2 of the Criminal Code.

In that context, and when measuring the type and amount of the criminal sanction and the individualisation of the criminal sanction, in addition to the above-mentioned circumstances, as aggravating and facilitating circumstances, the court took as aggravating circumstances the frequency of these crimes, the degree of criminal responsibility, the degree of social danger, the fact that the accused fled immediately after committing the crime, the consequences resulting from the commission of the crime, while as extenuating circumstances, the court took into account the fact that he was a young man born in 1993, his family and material situation, his confession and the fact that the accused has expressed sincere remorse for the crime, as well as the fact that he has not been convicted previously and no other proceedings are being conducted against him.

Also, the Court decided in the verdict that the objects used for committing the crime should be confiscated.

## ❖ Case 2 (Judgment KOC no. 45/20)

On February 11, 2020, around 11:00 p.m., the accused was driving a Renault Master motor vehicle, with Serbian license plates, owned by a legal entity from Šimanovci, based in Belgrade (Republic of Serbia). He was driving on the old highway in the direction of the village of Udovo, the village of Smokvica, and the village of Prdejci, in which he transported 22 migrants, 21 of whom were adults and 1 minor, namely: 1 from Pakistan, 2 from India, 2 from Bangladesh and 17 from Pakistan. He was driving



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along the indicated road, turning onto the new "Prijetelsto" highway and one kilometer before the toll booth, Gevgelija-Demir Kapija, he accepted the migrants, after which he continued to drive the vehicle, so when he came to the highway A1 Tunnels, due to the control of vehicles, he was stopped by police officers from the Bogorodica Border Crossing Police Station and the migrants were found in the rear cargo area of the vehicle.

In a previous procedure, the defendant was given a measure of detention, which was then extended.

On March 27, 2020, the Basic Public Prosecutor's Office for Prosecution of Organised Crime and Corruption submitted an indictment KO No. 26/20 with a proposal to extend the detention measure against the defendant from Zemun (Republic of Serbia), for the crime of Migrant Smuggling from Art. 418-b para. 4 in relation to para. 2 of the Criminal Code.

Acting on the submitted indictment, the court scheduled and held a main hearing which began on 02.06.2020 and continued on 08.07.2020, 24.07.2020 and 24.08.2020.

After the main, public and verbal hearing, the court sentenced the defendant to a prison sentence of 9 years, which also included the time spent in custody counted from February 11, 2020 until the start of serving the prison sentence. When determining the type and amount of the criminal sanction, the court took into account all the circumstances from Article 39 of the Criminal Code. As aggravating circumstances, the court took into account the type, character and gravity of the crime, the frequency of the commission of the specific crime as an occurrence, the degree of criminal responsibility of the accused, the injury and the severity of the threat to the protected good, the manner of committing the crime, the fact that the crime was committed out of self-interest, the inhumane behavior towards the migrants in the sense that 22 migrants, including a minor, were being transported in one van, and as extenuating circumstances the court took into consideration the personal, family and financial circumstances of the accused. The accused was born in 1977, divorced, father of one minor child, literate with a completed VI degree of Traffic School, without previous convictions, which is why the court considered that the punishment imposed in this way will achieve the goals of the punishment both in the plan of the special and the plan of general prevention in accordance with art.32 of the Criminal Code.