

LEGAL AND JUDICIAL INFORMATION ON MIGRANT SMUGGLING

POLAND

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GENERAL INFORMATION ON MIGRATION



MAIN FIGURES AND TRENDS

Statistics for the first three quarters of year 2023 show that during this period the Border Guard apprehended or disclosed a total of 5,149 third-country nationals, including 1,450 at the external border and 3,699 at the internal border.

Taking into account the directions of migration, then in the indicated period of time revealed or detained towards the Republic of Poland a total of 3,797 foreigners coming from third countries, of which 1,353 persons at the external border and 2,444 persons at the internal border. Taking into account the nationality of the apprehended persons, the trends are as follows (only nationalities whose number is over 100 are given):

1. Syria - 1,222 people,
2. Ukraine - 441 persons,
3. Georgia - 319 persons,
4. Türkiye - 285 people,
5. Afghanistan - 181 persons,
6. Belarus - 161 people,
7. India - 179 people.

Regarding the Republic of Poland, the most threatened section was the border with Slovakia, where 927 people were disclosed, followed by the second most threatened section in terms of apprehended people which was through air transit, where 729 people were disclosed. In third place was the section of the border with Belarus, with 475 people, and Lithuania, with 474 people.

The above indicates that the main migration pressure is gradually shifting to the so-called "Balkan channel." However, this does not mean that migration in the direction from Belarus is decreasing.

Due to the fact that migration from Belarus runs directly to Poland or through the territories of Latvia or Lithuania, the section of the border with Belarus and Lithuania should be considered together for the reason that it concerns the "Belarusian channel". The total number of detainees/disclosed persons is 949. Based on this, it can be concluded that the biggest challenges at the moment are migration to the Republic of Poland via the "Eastern route" and the "Balkan route".

On the other hand, when it comes to people trying to leave the Republic of Poland, 1,352 foreigners from third countries were disclosed or detained, with 97 people on the external border and 1,255 people on the internal branch. As for the nationalities of foreigners (again, focusing only on the most numerous groups - more than 100), the trends are as follows:

1. Syria - 597 people,
2. Afghanistan - 166 persons,
3. Türkiye - 153 persons.

Regarding departures from Poland, the most threatened areas are the border with Germany - 1,213 people were disclosed/detained and through air transit, where 55 people were disclosed/detained. The above disproportion makes it possible to conclude that migration organised by criminal groups takes place mainly by land. It unequivocally indicates that the main country of migration is Germany, and Poland is generally treated by foreigners coming from an Arabic country mainly as a transit country.

MIGRATORY ROUTES

The illegal border crossing procedure is mainly carried out with the participation of organised criminal groups, which arrange transportation at all stages of the journey, temporary shelter in transit countries, and provide the necessary identity and residence documents. Only a few migrants attempt to reach the destination country individually and on their own. These groups have a diverse nationality structure and operate both on the Polish-Belarusian section of the border and on the Polish-Lithuanian section. In addition, there is a noticeable trend of participation of these groups in criminal activity on the so-called "Balkan channel" running from southern Europe.

Current knowledge possessed by the Operational and Investigative Board of the Border Guard Headquarters allows to distinguish the following main channels for the smuggling of illegal migrants:

- the so-called "eastern route" running through Russia – Belarus – Lithuania – Poland and further to the destination countries or Russia – Belarus – Poland and further to the destination countries;
- the so-called "Balkan route" running through Türkiye – Greece – Macedonia – Serbia – Croatia – Hungary – Austria – Slovakia – Czech Republic – Poland and on to the destination countries;
- air routes, mainly from southern Europe (Greece).

"Eastern Route"

The change in the geopolitical situation in the eastern area (the war in Ukraine and the hybrid actions of the Belarusian authorities, as well as the preventive measures for sealing the borders introduced in response by Poland, Latvia, Lithuania and Estonia) resulted in radical transformations in the organisation and operation of illegal migration through the "eastern channel". First, Ukraine ceased to play the role of a transit country. Secondly, illegal migration on the section of the border with Belarus is organised by the State apparatus, which led to significant qualitative changes in its functioning. Illegal crossing of the State border on the described section of the border by foreigners (including through the devastation of the

permanent barrier) is carried out with the knowledge and consent of the decision-makers, de facto with the active participation of officers of the Republic of Belarus (RB) force departments.

“Balkan Route”

In connection with the noticeable increase in migration on the Serbian-Hungarian border in recent months, Hungarian, Czech and Slovak partners are noting a significant increase in disclosures of the transportation of illegal migrants in groups (from a dozen to a few dozen people) in bus-type vehicles and trucks. In part, these are vehicles from Polish rental companies, the drivers of which are usually citizens of Poland, Ukraine, Georgia and Lithuania. Taking into account the number of apprehensions of illegal migrants on the section of the Polish border with Slovakia, as well as the observed trends, from which it follows that some of the criminal groups involved in organising illegal migration from the Belarusian direction have expanded their offer or redirected their activities to the Balkan route, it is reasonable to conclude that this is another challenge of illegal migration.

“Air routes”

Air routes, despite increased controls by border services, continue to be used in illegal migration. Foreigners attempting to enter the territory of the Republic of Poland in this way use forged, counterfeit or documents stating the identity of another person (both Polish and other countries) and thus try to hide their identity or falsify their travel history. The directions generating the greatest threat in this case is the “Greek direction”.



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INSTITUTIONAL ORGANISATION

In Poland, the main law enforcement agency responsible for preventing and combating illegal migration is the Border Guard. The detailed scope of tasks carried out by the Border Guard is defined in Article 1 of the Border Guard Act of October 12, 1990, which states that the Border Guard is a uniformed and armed formation designed to protect the State border, control border traffic and prevent and counteract illegal migration.

The main tasks of the Border Guard in the context of smuggling of persons include:

1. protecting the State border on land and sea;
2. organising and carrying out border traffic control;
3. preventing and counteracting illegal migration;
4. issuing permits for crossing the State border, including visas;
5. recognising, preventing and detecting crimes and offenses and prosecuting their perpetrators, within the jurisdiction of the Border Guard.

At the same time, it should be mentioned that the relevant competence to identify crimes in the field of illegal migration are also held by the Police.

Pre-trial criminal proceedings for illegal migration offences are supervised by the Public Prosecutor's Office.

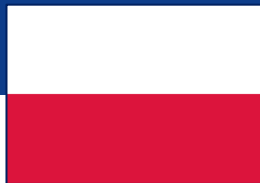


LEGISLATIVE FRAMEWORK

Illegal border crossing is criminalised as a misdemeanor or a criminal offence. This issue is regulated by the provisions of the Code of Petty Offences as well as the Criminal Code.

According to Article 49a of the Law of May 20, 1971, the Code of Petty Offences - "Whoever crosses the border of the Republic of Poland in violation of the law, shall be punished by a fine". Illegal border crossing will be crossing the border in an unauthorised place, as well as in an authorised place, but in violation of the regulations governing its crossing, as normalised in Article 14(1) of the Law of October 12, 1990 on the Protection of the State Border (among other things: possession of a valid travel document or a document authorising the crossing of the border, possession of a valid visa if required, justification of the purpose and conditions of the planned stay, possession of sufficient means of subsistence). At this point, it is worth noting that Border Guard officers are authorised to impose a fine by way of a fine for an offense under Article 49a of the Code of Petty Offences, which in turn follows from Article 95§4 of the Law of August 24, 2001. The permissible amount of such a fine by way of a penalty ticket is up to PLN 500 (Article 96§1 of Petty Offences).

However, referring to the provisions of the Criminal Law, in light of Article 264§2 of the Law of June 6, 1997, the Criminal Code criminalises crossing the border of the Republic of Poland in violation of the regulations, i.e. in violation of the aforementioned duties and with the use of violence, threats, deception or in cooperation with other persons, for which there is a penalty of imprisonment of up to 3 years. Article 264§3 refers to organising other persons to cross the



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border of the Republic of Poland in violation of the regulations, for which there is a penalty of imprisonment from 6 months to 8 years.

It is also worth recalling the content of Article 264a of the Criminal Code, which criminalises the criminal act of enabling or facilitating another person (for pecuniary or personal gain) to stay in the territory of the Republic of Poland, in violation of applicable laws.

In turn, issues related to the conditions for the legality of the stay of foreigners in Poland are regulated in the Law of December 12, 2013 on foreigners, in the Law of 14.07.2006 on the entry into, residence in and departure from the territory of the Republic of Poland of citizens of European Union member states and members of their families, and in the Law of 12.03.2022 on assistance to citizens of Ukraine in connection with the armed conflict on the territory of the latter.

Criminal Code of June 6, 1997

Article 264.

1. *(repealed).*
2. *Whoever crosses the border of the Republic of Poland against the provisions of law by using force, threat, deceit or in complicity with other persons, is subject to the penalty of deprivation of liberty for up to 3 years*
3. *Whoever, against the provisions of law, organises crossing of the border of the Republic of Poland for other persons, is subject to the penalty of deprivation of liberty for between 6 months and 8 years.*

Article 264a.

1. *Whoever, against the provisions of law and with the purpose of gaining a material or personal benefit, makes another person's stay in the territory of the Republic of Poland possible or facilitates it, is subject to the penalty of deprivation of liberty for between 3 months and 5 years.*
2. *In exceptional situations, the court may apply extraordinary mitigation of the penalty, or even waive its imposition, if the perpetrator has not gained any material benefits.*

Code of Petty Offences of May 20, 1971

Article 49a.

1. *Whoever illegally crosses the border of the Republic of Poland shall be punished by a fine.*

JUDICIAL FRAMEWORK

Polish criminal procedure does not provide separate provisions for combating illegal migration. Depending on the individual case, a person suspected of an act under Article 264 of the Criminal Code or Article 264a of the Criminal Code could be detained by court decision. The prosecutor supervises the criminal proceedings and may apply to the court for the application of a preventive measure in the form of temporary detention for a period of 3 months, citing, for example, the fear of imprisonment or the threat of harsh punishment of the suspect (the preventive measure may be applied until the execution of the sentence begins). Subsequently,

the prosecutor draws up an indictment and brings it to court. The court, after hearing the case, decides on the guilt or innocence of the accused of the act in question.



INTERNATIONAL COOPERATION

In the process of combating illegal migration, the Border Guard conducts extensive cooperation at the international level. First of all, it is carried out through Europol, where criminal information on ongoing cases is exchanged.

In addition, cooperation is carried out through the Interpol channel and bilaterally with Liaison Officers accredited in Poland.



RELEVANT CASES

❖ Detention of a truck carrying illegal migrants in construction caches

In the framework of cooperation between Border Guard units, in connection with a reasonable suspicion of transporting illegal migrants, Border Guard officers monitored the passage of a truck on Polish territory. A stop was made of the vehicle driven by citizens of Belarus at a convenient and safe point. During the inspection of the cargo space of the semi-trailer, a construction cache (double wall) was revealed, which contained 21 foreigners (men).

Accordingly, the driver of the vehicle was arrested for assisting transported persons in crossing the State border in violation of the law, i.e. for an act under Article 264§ 2 of the Criminal Code. Subsequently, by court order, temporary detention was applied to the driver for a period of 3 months. In addition, proceedings for commitment to return were initiated against the transported men. Checks conducted on the smuggled foreigners showed that they did not have documents authorising them to enter and stay in Poland. Accordingly, pre-trial proceedings were initiated in the case, and in addition, several men were detained for attempting to cross the State border illegally without the required documents, in cooperation with other persons. In connection with the illegal stay in the Republic of Poland, the foreigners were detained and proceedings for commitment to return were initiated against all of them. Pending a decision on the need to leave the country, some of the men were subjected to alternative measures, passport documents were detained and placed under the supervision of the Border Guard, while the remaining foreigners, by court order, were placed in one of the guarded centers for foreigners.

❖ Detention of 6 foreigners involved in organising illegal migration

As part of the investigation supervised by the Prosecutor's Office and the case conducted by Border Guard officers, 6 citizens involved in organising illegal migration were arrested. The operations were conducted jointly with Border Guard and Europol officers. In the course of the operations, a number of cell phones, sim cards, ATM cards, bank documents, car sales contracts, notepads with notes, cash deposit



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instructions, receipts for sending money transfers and a data carrier were secured in the form of a memory card.

The prosecutor presented the aforementioned detained foreigners with charges of organising illegal migration and participating in an in an organised criminal group, i.e. an offense under Article 258§1 of the Criminal Code and 264§3 of the Criminal Code. In addition, the court issued a decision against several detainees on the application of a preventive measure in the form of temporary detention for a period of 3 months, and against 1 of the detainees a preventive measure in the form of police supervision. During the course of operations, there were an additional 7 foreigners staying at the address where the aforementioned were detained. As a result of further activities, it was established that 2 foreigners had fled 3 days earlier from one of the Guarded Centers for Foreigners.

❖ Pursuit of bus carrying illegal migrants ends with detention of 9 foreigners

During the course of a legality check, Border Guard officers proceeded to attempt to stop a vehicle with foreign license plates. At the sight of the control, the driver of the vehicle slowed down and then accelerated rapidly, hitting the officer with his mirror. The Border Guard officers undertook a pursuit of the bus. Nine foreigners were revealed in the cargo section of the vehicle. In connection with the above, the driver was arrested for a crime under Article 264§3 of the Criminal Code, i.e. organising other persons to cross the border of the Republic of Poland against the law. In addition, the above-mentioned passengers of the bus were detained for the offense of Article 264§2 of the Criminal Code and in connection with the issuance of a decision on the obligation to return (Article 302, paragraph 1, items 1 and 10 of the Law on Foreigners).

Subsequently, the case was investigated for an act under Article 264§2 of the Criminal Code. In the proceedings, charges were filed for the above-mentioned act and 9 foreigners were questioned as suspects.

The prosecutor opened an investigation against the driver suspected of acts under Article 264§3 of the Criminal Code. As a result of further procedural activities, the Court applied a preventive measure in the form of temporary arrest for a period of 3 months from the date of arrest.