



LEGAL AND JUDICIAL INFORMATION ON MIGRANT SMUGGLING

ROMANIA

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GENERAL INFORMATION ON MIGRATION



MAIN FIGURES AND TRENDS

1. Prosecution – general data

In the course of 2022 at the level of the prosecutor's offices within the Public Ministry 1,488 files concerning trafficking in migrants were registered, 705 being finalized, of which 135 with court referrals (indictments and plea agreements).

2. Prosecution carried out by the Directorate for the Investigation of Organized Crime and Terrorism (hereinafter DIOCT)

Compared to the period 2019-2021, during 2022-2023, the cases newly registered at the DIOCT which refer to offences of trafficking in migrants and initiation of a criminal organisation have significantly increased (they doubled).

Thus, during 2019-2021, the newly registered cases with this object within the Directorate were increasing: from 65 new criminal cases registered in 2019, to 79 new cases in 2020 and respectively to 97 new criminal cases in 2021.

In 2022 there is a significant increase in criminal cases (152 newly registered cases), and the trend being maintained in 2023 (186 new cases as of the end of September 2023).

During the years 2022-2023, DIOCT finalised and submitted to the courts 413 indictments. These indictments involved offenders of various citizenships, 216 of whom were also subject to pre-trial arrest measures and were accused of participating in a criminal organisation specialised in trafficking migrants. In these cases, the prosecutors have issued 35 indictments and signed 38 plea agreements.

Compared to 2019-2021 (when 136 offenders have been indicted through 22 indictments and 19 plea agreements), there is a sustained and constant, growing effort by the judicial authorities to prosecute such criminal cases, bringing to criminal responsibility the persons involved and dismantling the criminal organisations that act along in the field of trafficking in migrants within the territory of Romania.



3. Co-operation via Eurojust

In 2022, the Romanian National Desk worked on a total of 40 newly registered cases concerning trafficking in human beings (incoming and outgoing). Regarding the states Romania interacted with (as a requesting state) from the perspective of trafficking in human beings, in first place is Germany (7), followed by Great Britain (5), the rest of the states (Belgium, Ireland, France, Italy, Hungary, Austria) having two cases each. Regarding the states, Romania interacted with (as a requested state), Belgium, Spain and Great Britain are in first place with three cases each, followed by the Czech Republic and France with two cases each.

In all cases concerning trafficking in human beings registered at the Romanian National Desk in 2022, Romania is the country of origin (the place of recruitment of the victims) and the exploitation is carried out in foreign jurisdictions, sometimes in several states, the criminal groups, in some situations, tending to change the place of exploitation at a certain time period or simultaneously exploiting victims in two or more states.

➔ MIGRATORY ROUTES

Migration routes have dynamically evolved. These routes were significantly influenced by different factors, both in the countries of origin and in the countries of transit and destination. Trafficking in migrants refers to the European countries as destination countries, but also Europe as a transit area towards North America.

Key factors for illegal migration in the Balkans: humanitarian crises and insecurity in Afghanistan, disastrous floods and poverty in Pakistan, degraded humanitarian aid in Syria, security instability in Iraq and the Gaza Strip, armed conflict in Ukraine, the coup d'état in Niger and political instability in other African states.

Romania is a transit country and is part of the so-called Eastern Mediterranean route, with migrants who originate mainly from Asia.

Romania is part of the Balkan route with the following particularities:

- migrants illegally enter the area by foot from the Serbian border, using the means provided by the facilitators. The statistics mainly highlighted migrants of Iraqi, Syrian, Turkish, Afghan and Pakistani nationality.
- migrants illegally entering the green zone/border point with Ukraine. The statistics mainly highlighted migrants coming from India, Pakistan and Bangladesh.
- migrants illegally crossing the border with Bulgaria in the green zone at border checkpoints. The statistics mainly highlighted migrants of Iraqi, Syrian and Turkish nationality.

Few cases of migrants arriving in Romania at the Black Sea have been reported (several isolated cases in 2017 and 4 cases in 2022).

On the way out of Romania, the majority of detections or illegal border crossings are made at the border with Hungary, as the migrants' first step into the Schengen area. The preferred destination countries are Germany, Italy and Great Britain.



INSTITUTIONAL ORGANISATION

The institutional actors involved in the activity of prevention, detection and criminal prosecution from the perspective of migration traffic are:

- The Romanian Border Police (the central unit) with all its subordinate structures (territorial units) which is part of the Ministry of Internal Affairs, a specialised police institution of the Romanian state that exercises its powers regarding the supervision and controlling the state border crossing, prevention and combating illegal migration and specific acts of cross-border crime that fall under their purview, compliance with the legal regime of the state border, passports and foreigners.
- The Directorate for Combating Organized Crime (central unit) with all its subordinate structures (territorial units) is a specialised police unit, within the General Inspectorate of the Romanian Police (GIRP), with general territorial competence, at the national level and which carries out the activity of combating organised crime, including migrant trafficking, committed in the framework of an organised criminal group.
- The Public Ministry (The Prosecutor's Office next to the High Court of Cassation and Justice) has assignments on combating and bringing to criminal responsibility from the perspective of offences regarding the state border (fraudulent crossing of the state border, facilitating the illegal stay in Romania, evasion of removal measures from Romanian territory, migrant trafficking) through all ordinary national prosecutor's offices (prosecution offices attached to first instance courts, prosecutor's offices attached to district courts), within the limits of territorial jurisdiction, while there is also a shared competence between these ordinary prosecution units (only in relation to prosecutor's offices attached to district courts and with reference to the offence of trafficking in migrants) with a specialised prosecution unit (Directorate for the Investigation of Organized Crime and Terrorism – DIOCT which is a specialised prosecution unit with competence in performing the criminal investigations in criminal cases of trafficking in migrants committed within a criminal organisation).

A significant share of newly opened criminal cases is based on *ex officio* actions performed by specialised police bodies. The increasing trend of this type of criminal cases registered at the DIOCT level is due to a constant, joint and sustained effort of the judicial authorities involved, together with specialised police bodies and other structures with specific attributions, in order to identify, investigate and dismantle criminal organisations that act in the field of trafficking in migrants within the territory of Romania.

It is found that the criminal investigations carried out by the specialised prosecutors of DIOCT together with the specialised police units were aimed at dismantling some of the criminal organisations specialised in committing offences of trafficking in migrants. The average number of offenders who have been indicted (8 people/indictment during 2022-2023) also highlights, on the one hand, the complexity of the criminal investigations, but also the efforts of the judicial authorities to identify and bring to criminal responsibility the offenders who act within criminal organisations.



The complex nature of the criminal cases prosecuted by DIOCT is also highlighted by the cross-border component of these criminal investigations, meaning that in the prosecuting of such criminal cases, the instruments of international co-operation (European Investigation Orders) were used and especially founding the joint investigation teams, through EUROJUST and with the support of EUROPOL.

Relating to the DIOCTs case law analysis on the offences of trafficking in migrants committed within a criminal organisation and considering Romania as a transit country in the migration route, it has been determined from the criminal investigations carried out that the persons acting from the territory of Romania are part of cells of some criminal organisations. These cells belong to the lower echelons of some cross-border criminal groups, whose leaders act from the territory of other states, usually the destination and origin states.



LEGISLATIVE FRAMEWORK

The trafficking in migrants is criminalised in the Art. 263 of the Romanian Criminal Code.

This offence involves recruitment, instructing, guiding, transporting, transferring or harbouring individuals for the purposes of fraudulently crossing Romania's state border. The criminal penalty provided by law is imprisonment from 2 to 7 years.

When the offence of trafficking in migrants is committed under one of the following aggravating circumstances:

- in order to obtain, directly or indirectly, a material gain;
- using means that endanger the life, integrity or health of the migrant;
- by subjecting the migrant to inhuman or degrading treatment,

the penalty provided by law is imprisonment from 3 to 10 years a ban on the exercise of certain rights.

The attempt shall be also punishable.

The Romanian Criminal Code also criminalises:

- the fraudulent crossing of the border which encompasses entering or leaving the country by fraudulently crossing Romania's state border and which it is punished by imprisonment between 6 months and 3 years or by a fine (art. 262);
- facilitating illegal stay in Romania which means that any individual who facilitates, by any means, the illegal stay on the Romanian territory of an individual who is a victim of offenses of trafficking in human beings, juveniles or migrants, who is not a Romanian citizen nor resides in Romania shall be punished by imprisonment between 1 and 5 years and a ban on the exercise of certain rights. If the mean used is in itself an offense, the rules for multiple offenses shall apply (Art. 264);
- evading expulsion from Romanian territory which means evading the fulfilment of the obligations ordered by the relevant authorities to the alien against whom measures



were taken for the expulsion from Romanian territory or against whom a prohibition of the right to stay was ordered; the offence shall be punishable by no less than 3 months and no more than 2 years of imprisonment or by a fine (art. 265).



JUDICIAL FRAMEWORK

The Directorate for Investigating Organized Crime and Terrorism (DIOCT) is a specialised prosecutor's office that has the material competence to prosecute those criminal cases which have as their object offences of trafficking in migrants committed in the framework of a criminal organisation.

At the same time, it should be noted that prosecuting the criminal cases of trafficking in migrants is in the general competence assigned to the prosecutor's offices attached to the district courts.

Related to these general aspects circumscribed to the general and special competence thus assigned, it is worth noting that the DICOT has a special competence to prosecute criminal cases (limited to criminal organisations specialised in committing offences of trafficking in migrants) and a shared competence with ordinary prosecutor's offices (which prosecute the offences of trafficking in migrants committed outside a criminal organisation).

Since 2021, a division dedicated to fighting trafficking in human beings was set up within DIOCT.

According to the Romanian Criminal Procedure Code, offences of trafficking in human beings fall within the competence of district courts. The appeals are ruled on by the Courts of Appeal.



INTERNATIONAL COOPERATION

International co-operation takes place on the basis of the relevant Council of Europe, UN and EU instruments, as well as bilateral treaties. Romania is also able to co-operate in the absence of a treaty, on the basis of international courtesy, with the assurance of reciprocity (granted by the Minister of Justice).

Romania has concluded bilateral treaties with Algeria, Australia, Canada, New Zealand, Brazil, China, Cuba, Egypt, Jordan, Kazakhstan, Republic of Moldova, Morocco, Mongolia, Syria, the United States of America and Tunisia.

At national level, Law No. 302/2004, with subsequent amendments, regulates international judicial co-operation in criminal matters.



According to Article 10 of the aforementioned law, the competence to fulfil the specific duties of the Romanian central authority in the field of judicial co-operation in criminal matters belongs to and shall be exercised by:

- a) the Ministry of Justice, by the specialised directorate, if the requests concern extradition, the European arrest warrant, transfer of sentenced persons, the freezing order, the confiscation order, recognition and enforcement of judgments and of criminal judicial documents, international letters rogatory, any other form of international judicial assistance which relate to the trial activity or the stage of enforcement of criminal judgments, as well as, regardless of the trial stage, when, as the case may be, this Law provides otherwise or the request is made under the international courtesy or the Ministry of Justice is appointed as a single central authority designated according to the international treaties to which Romania is a party;
- b) the Public Ministry, through its specialised structures, when the international letters rogatory or the other forms of international judicial assistance concern criminal investigation and prosecution;
- c) the Ministry of Internal Affairs, through the specialised structure, if it relates to criminal records.

Co-operation can also take place directly, whenever the applicable treaty allows (especially in the application of EU instruments).

Furthermore, in order to facilitate execution of requests and exchange information in an efficient and timely manner, judicial authorities also benefit from the assistance of contact points (especially to the European Judicial Network, but from other networks as well) and the support of the Romanian desk at Eurojust.



RELEVANT CASES

The year 2023 was characterized by the dynamism of the cases pending prosecution, the co-operation through EUROPOL in all existing cases (from the level of DIOCT – the central structure), also maintaining this approach in the territorial units that have dealt with case law regarding trafficking in migrants. The results took shape in the participation in operational meetings at the EUROPOL headquarters and coordination meetings at the EURO JUST headquarters, carried out both online and in person, the approach to detections being carried out both in the country and abroad in an integrated way.

At the central level, DIOCT together with the Directorate for Combating Organized Crime (DCCO specialised police unit within the GIRP) have completed in 2023 three large-scale actions, with a special media impact, whose case notes are presented chronologically as follows:



1. Operation Aladdin

On 30 May 2022, criminal investigation officers from the DCCO – Office of Combating Trafficking in Migrants reported *ex officio* that several persons of Romanian and Turkish nationality, under coordination from outside the country by some Turkish and Syrian citizens, constituted a cross-border criminal organisation that is centred on committing offences of trafficking in migrants of Turkish and Iraqi origin, on the route Turkey - Bulgaria/Serbia - Romania - Germany. The criminal file was instrumented under the coordination of DIOCT - Central Structure. In the case, a joint JIT YOLCU/ALADDIN investigation team was created with the authorities from Germany and Serbia, and several criminal cells operating from Turkey, Serbia, Romania and Germany were identified.

Within the Operation YOLCU, the German authorities identified and seized 68 documents, with 13 suspected persons and 549 trafficked migrants. In parallel, within Operation ALADDIN, the Romanian authorities have identified and detained 25 material documents, with 14 suspected persons and 313 trafficked migrants. For each transport, migrants were charged amounts between 4.000 and 10.000 euros, depending on the trafficking segment (for example, from Romania to Germany, amounts between 4,000 and 5,000 euros were charged).

On 7 June 2023, 11 home searches and 4 bench warrants were executed in Romania for questioning as a suspect at the DIOCT headquarters. During the home searches, the mobile devices used by the members of the criminal organisation were seized, three cars with a total market value of 100,000 euros, the sum of 5,500 euros, and 10,000 lei were seized. Following hearings, 4 people were detained for 24 hours, and later the Bucharest District Court ordered their pre-trial arrest for 30 days, for committing the offences of forming an organised criminal organisation and trafficking in migrants, facts included in the provisions of Art. 367 para. 1 and 3 of the Romanian Criminal Code, Art. 263 para. 1 and 2 of the Romanian Criminal Code, with application of Art. 38 para. 1 of the Romanian Criminal Code.

At the same time, in Germany, 4 house searches were carried out, which led to the detection and arrest of the main suspect who was operating from this country. Following the action to dismantle the criminal organisation, on 11 August 2023, another defendant in the case was heard. He was found in Bulgaria and returned to the Romanian authorities on the basis of a European Arrest Warrant, the Bucharest District Court ordering his pre-trial arrest for 30 days.

The initial conclusions drawn from the first stage of investigations indicated suspects still at large in Romania, Poland, and Turkey, actively involved in trafficking migrants. Electronic surveillance warrants were resumed, and specific criminal investigation activities were conducted. Following the criminal investigation activities, as well as the monitoring of the electronic surveillance warrants, on 28 August 2023, a new action was carried out to dismantle a criminal cell in respect of which sufficient evidence had been gathered, by carrying out 6 home searches (two of which were safe-house locations) and the criminal prosecution of 5 suspects.

Following hearings, three persons were detained for 24 hours, and later the Bucharest District Court ordered their pre-trial arrest for 30 days, for having committed offences of forming a



criminal organisation and trafficking in migrants, facts included in the provisions of Art. 367 para. 1 and 3 of the Romanian Criminal Code, Art. 263 para. 1 and 2 of the Romanian Criminal Code, with application of Art. 38 para. 1 of the Romanian Criminal Code. During the home searches, 1.000 euros and seven cars were seized with a total value of 35,000 euros, which were frozen.

In order to prosecute the cell formed by Turkish citizens acting from the territory of Turkey, the case prosecutor initiated an international rogatory commission, targeting four suspects who were residents in the Istanbul area. At the same time, three other persons who need to be brought to criminal responsibility are currently located in Poland and Germany and are the subject of a case disjoining ordered by the case prosecutor.