COUNTRY FACTSHEET* – Smuggling of migrants



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LEGAL AND JUDICIAL INFORMATION ON MIGRANT SMUGGLING

SLOVAK REPUBLIC

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GENERAL INFORMATION ON MIGRATION

MAIN FIGURES AND TRENDS

Situation on migrant smuggling field in Slovak Republic - Impact of the War in Ukraine
In comparison to previous years, we register significant decrease of the cases on the Slovakia - Ukraine border as a result of continuous war conflict in Ukraine. During the year 2022, only 4 cases were recorded on this border in comparison to 10 cases during the year 2021, and this trend continued in the first half of the year 2023.

National Unit on Fight Against Illegal Migration identified several actual risks on Slovak – Ukrainian border :

- risks of Human trafficking : as a result of continuous war conflict in Ukraine and related refugee crisis of the citizens of Ukraine crossing the Slovakia – Ukrainian border The National Unit on Fight Against Illegal Migration checked up 35 cases suspect of human trafficking, however, none of the suspicions was proved. An Information Bulletin on Human Trafficking was created in 6 languages (Slovak, Ukrainina, English, Romish, Russian and Hungarian), which draws attention to risks related to human trafficking. These bulletins were distributed to all border checkpoints with Ukraine, high – capacity centers as well as to train and bus stations.
- escape of men from UA accros green border : during the year 2022 we recorded increased number of escapes of the state citizens of Ukraine across the green border in order to avoid mobilization called out in Ukraine. Totally 446 Ukrainian men were detained on the green border.
- risk of movement persons/members of criminal groups across the exterior border of the EU: according to confidential information Jihad leaders asked their members, who previously fought in Iraq or Syria to join the fights in Ukraine.
- risk of smuggling of weapons : mass, uncontrolled spread of shooting guns, munition and explosives in Ukraine also among the civil citizens.
- legalization of the residence of Ukraine state citizens who committed criminal activity prior to outbreak of the war conflict in Ukraine or resided on the territory of Slovakia illegally or were illegally employed.

MIGRATORY ROUTES

Scope of the smuggling criminal activity on the **Slovakia – Hungary** border and **Slovakia – Austria border** (west Balkan route) in 2022.



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Extreme increase of cases on the Balkan route
In 2022, the National Unit on Fight Against Illegal Migration registered 189 cases of migrant smuggling in comparison to 21 cases in 2021.
Ways of illegal crossing the Slovakia – Hungary border:
* delivery trucks, motor vehicles, trucks
* by feet using the bridges over Danube in the cities near the borders (Štúrovo, Komárno)
* by feet through the green border (flat country)
* train interstate transport HUN – SVK

Digital smuggling
Migrants use mobile navigation and communication applications which enable them to make transfers without any direct presence of the smugglers, only through on-line instructions from the smugglers, it means „digital smuggling". They recruit potential migrants through the social networks, they recruit drivers this way in the respective country to perform partial activities, they organize single routes in the respective countries based on the navigation applications and they coordinate specific activities though communication applications (e.g. Telegram). It is necessary to have mobile devices to perform such activities and available mobile network.

Unconscious smuggling
Smugglers misuse the drivers of the lorries parking on the designated area, where they (when unattended) break the protective seals and they load the migrants into the lorries. In such cases the drivers do not have to be even aware of the existence of such shipment. These activities are usually performed outside the territory of Slovakia.

Sham marriages
In 2022, no significant change was monitored. In 2022, 4 cases of entering into sham marriages were investigated and 6 persons were accused (in comparison to 10 persons in 2021) for the crime of smuggling according to article 356 of the Criminal Code.

Ilegal employment
We recorded a slight decrease in the number of cases of such criminal activity which was not influenced by the pandemia of COVID-19. In 2022, we registered 7 cases in comparison to 7 cases in 2021.

Routes after illegal crossing the state borders into the territory of the Slovak Republic:
- so called „western Balkan route" option A
- so called „western Balkan route" option B
- so called „northern route"
- so called „southern route"





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According to testimonies of the migrants, their route to European continent leads usually from Türkiye to Greece (approximately 53%). It confirms the conclusion that the worse situation for Syrian refugees in Türkiye is a push factor for illegal migration to European Union. During the summer months, we recorded increase in number of detained Syrian citizens, including whole families with small children. They include Syrian citizens leaving Türkiye where they had temporary residence or illegal status.

INSTITUTIONAL ORGANISATION

The National Unit on Fight Against Illegal Migration is a specialized unit of Presidium of Police of the Slovak Republic with the scope of operation within the whole Slovak Republic. Its operation is aimed at prevention, avoidance, detection, elucidating, documentation and examination of criminal activity in the field of illegal migration, human trafficking and other types of cross-border criminal activity. Its organisational structure is divided into three sections – West, Middle and East. The seat of the headquarters is in Bratislava, the capital of Slovakia.

Organisational structure of the National Unit on Fight Against Illegal Migration:



The National Unit on Fight Against Illegal Migration has been operating in the Slovak Republic for already 20 years. It is very important and a significant integral part of the police force in Slovakia aimed at fighting against smuggling and human trafficking.
During 20 years of operation of The National Unit on Fight Against Illegal Migration, 3 138 offenders were accused, 2804 of them were smugglers. There were 2 514 offenders who smuggled illegal migrants across the state border (eventually though the territory of Slovakia) and 192 offenders who entered into shame marriage for this purpose.
The police officers elucidated 32 offenders who enabled foreign citizens to stay inside territory of the Slovak Republic. In addition, 66 offenders illegally employed foreign state citizens in Slovakia. The investigators accused 334 offenders of the crime of human trafficking. 408 victims were identified, out of those there were 84 children aged between 3 and 17.



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The Public Prosecution Service of the Slovak Republic is an independent State authority headed by the Prosecutor-General. Within its powers, the Public Prosecution Service protects the lawful rights and interests of individuals, legal entities and the State.
The status and role of the Public Prosecution Service and of the Prosecutor-General are governed by the Constitution of the Slovak Republic (Article 149) and by Public Prosecution Service Act No 153/2001, which also governs the powers of the Prosecutor-General and other prosecutors. The Act also governs the organisation and management of the Public Prosecution Service. The status, rights and responsibilities of prosecutors are set out in Prosecutors and Trainee Prosecutors Act No 154/2001.

Role and jurisdiction of the prosecutor in a Slovak criminal process :
A prosecutor has the authority to supervise compliance with the law during pre-trial stage.
In carrying out their supervisory duties, prosecutors have the power to:
- issue binding instructions to members of the police;
- request files, documents, materials and reports;
- participate in any police actions during preliminary proceeding, carry out individual investigative activities or conduct the entire investigation or summary investigation;
- refer the matter back to the police with instructions to supplement the investigation and determine a time limit for this;
- cancel unlawful or unjustified decisions by the police and replace these with his/her own decisions.

Only a prosecutor has the power to:
- bring charges to the criminal court;
- conclude an agreement with the accused person on their guilt and punishment and submit a motion to the court for this to be approved;
- suspend a criminal prosecution;
- discontinue or provisionally discontinue a criminal prosecution;
- approve conciliation or a pre-trial settlement and discontinue criminal prosecution;
- issue an order to seize an accused person's property and determine which possessions should not be seized;
- secure the claim of an injured person;
- issue an order to exhume a dead body;
- request consent for the criminal prosecution or taking into custody of a person in a case requiring the consent of the National Council of the Slovak Republic on the basis of a request from a competent foreign authority.

LEGISLATIVE FRAMEWORK

Criminal Code of the Slovak Republic

Chapter II of the Specific part of the Criminal Code – Crimes against freedom

Article 179. Human Trafficking
Any person who, by using fraudulent practices, a trick, restriction of personal freedom, violence, threatened violence, or other forms of coercion, by accepting or offering monetary payment or other benefits in order to get approval of a person on whom another person depends, or by misusing his powers, or abusing of defencelessness or other vulnerable

position, entices, transports, hands over or takes over another person, even upon his consent, for the purposes of his prostitution or another form of sexual exploitation, including pornography, forced labour or domestic slavery, slavery or practices similar to slavery, forced marriage, taking of organs or other forms of exploitation, shall be liable to a term of imprisonment of four to ten years.

Chapter VII of the Specific part of the Criminal Code – Crimes against the State

Article 355. Smuggling of Migrants

(Section 1) Any person who organises illegal crossing of the state border of the Slovak Republic, or a transfer through its territory, for a person who is neither a citizen of the Slovak Republic nor a person with permanent residence in the territory of the Slovak Republic, or who enables such activity or aids it, shall be liable to a term of imprisonment of one year to five years.

(Section 2) Any person who, with the intention of obtaining financial or other material benefit for himself or another either directly or indirectly, for a person who is neither a citizen of the Slovak Republic nor a person with permanent residence in the territory of the Slovak Republic,

a) organises illegal crossing of the state border of the Slovak Republic, or a transfer through its territory, or who enables such activity or aids it, or

b) for the purpose referred to in subparagraph a), manufactures, procures, provides or has in his possession a forged passport or a forged identity card, shall be liable to a term of imprisonment of three to eight years.

The preserved object is the state border and the state territory, not the migrants. Therefore usually, in most criminal cases, the migrants are in the position of the witnesses and they are not the victims/harmed persons, unless specific circumstances occurre and the migrants themselves are the subject of physical violence, threat, some form of slavery, etc.
There is a specific qualification term of „Acting in a More Serious Manner" – it means comitting this crime against several persons (at least 3 or more persons) and leads to liability to a term of imprisonment of seven to ten years. Practically, every offender involved in criminal case of smuggling of migrants with 3 and more migrants, is liable for minimum 7 years of jail, unless specific circumstances of the case or on the side of the offender will not be proved.

Article 356. Smuggling of Migrants

Any person who, with the intention of obtaining financial or other material benefit for himself or another either directly or indirectly, enables or helps a person, who is neither a citizen of the Slovak Republic nor a person with permanent residence in the territory of the Slovak Republic, to stay in the territory of the Slovak Republic or another member state of the European Union (e.g. sham marriages), or get an illegal job in the Slovak Republic or another member state of the European Union, shall be liable to a term of imprisonment of two to eight years.

JUDICIAL FRAMEWORK

Case Law :
The judicial practice of Slovak courts used to vary from case to case when concerning legal qualification of smuggling cases when 3 or more migrants were detained. Thus, the judicial practice was unified by following two judicial decisions of the Slovak Supreme Court:
- Judgment of the Slovak Supreme Court R 18/2019

- Judgment of the Slovak Supreme Court 5Tdo/60/2020
which unified interpretation, that the migrants themselves do not have a position of victims but such acts shall be qualified as acting in a more serious manner according to article 355 section 3 of the Criminal Code with liability to a term of imprisonment of seven to ten years.

Judgement of the European Court of Human Rights - Case of Al Alo v. Slovakia (Strasbourg, 10 February 2022)
The case concerns the applicant's trial and conviction in Slovakia on charges of migrant smuggling.
Applicant lived in Slovakia for 10 years and had been integrated into society, and was also able to communicate in at least 3 languages.
At action day, 2 migrants were interviewed, admitting that they were illegal migrants heading for western Europe and alleging that the applicant had played a role in facilitating that journey. In spite of that, detained applicant was informed about upcoming interviews of these migrants, he decided did not to attend the interviews and decided not to appoint a lawyer.
In such a way an important part of the evidence against him came from the migrants, who were questioned only at the pre-trial stage of the proceedings. These witnesses were then expelled from Slovakia and absent from the applicant's trial, since the courts considered C. and D. to be unreachable for the purposes of the applicant's trial, they were living outside Slovakia, following their expulsion from that country, and that there were no grounds to expect that they would be motivated or allowed to come back to Slovakia to appear at the applicant's trial. Therefore Slovak courts did not even try to summon those migrants from addresses provided by applicant, since courts considered them as administrative or fictitious.
Thus evidence given by C. and D. at the pre-trial stage had been pivotal to establishing the applicant's guilt and he was sentenced for 4 years in prison,
The applicant did not succeeded with his appeal before Regional Court, Supreme Court of the Slovak Republic and Constitutional Court of the Slovak Republic.

Finally the European Court of Human Rights concluded that it was already apparent to the authorities at the pre-trial stage of the proceedings, that Slovakia was only a transit station for C. and D. on their way to western Europe, it must have been clear to the authorities that there was a real possibility that C. and D. would later be unavailable for the purposes of the trial. Secondly, apart from questions of language as such, it is uncontested that the applicant told the authorities during his initial questioning that he had difficulties in understanding legal matters.
Therefore the European Court of Human Rights concluded that the applicant was deprived of the possibility to examine or have examined witnesses whose evidence carried significant weight in his conviction. Accordingly, the proceedings against him as a whole were not fair. There has thus been a violation of Article 6 § 1 and 3 (d) of the Convention.

INTERNATIONAL COOPERATION

JITs (Joint Investigation Teams) are considered by pracitioners in Slovakia as an extremely effective tool and the only tool for prosecuting this type of cross-border criminal activity, which has a real impact on the effectiveness of judicial cooperation in criminal matters. In the past, the Slovak Republic had successfully participated in several JITs in the field of human trafficking (especially with the UK). In relation to the smuggling of migrants - we currently have one active investigation team, which was established on 07.09.2022 together with the judicial

authorities of the Czech Republic and Hungary (Operation "NARA"), with an expected period of validity, tentatively until 07.09.2024.
The Slovak Republic is also able to conclude JITs with third countries based on well developed legal basis.

Widely appreciated by practitioners is the existence and operation of EUROJUST with its extraordinary added value in relation to the prosecution of criminal offences in question, both among EU member States, but also in the context of a wide portfolio of contact points of third countries that are actually available through this channel.

In the context of interfering with revenues from this activity, we consider the involvement of the ARO (Asset Recovery Offices) bodies associated in the CARIN (Camden Asset Recovery Inter-agency Network) to be effective. In case of associated suspicion of money laundering - we actively use the capacities of FIUs (FIUnet and Egmont Group). The challenge is the effective interception of cash, here it is necessary to achieve the progress in the investigation of the smuggling group as soon as possible, the use of special operative techniques and the consistent preparation of the procedurally admissible seizure of cash.

RELEVANT CASES

- **Center for the youth and families, Medzilaborce, Eastern Slovakia** (supervised by District Prosecutor´s office Humenné)

One of the powers and duties of the prosecutor is overseeing the compliance with the law of the places and conditions of detention of persons who have been deprived of their liberty or whose liberty has been restricted by decision of a court or any other authorized state body;
If a migrant younger than 18 years old is detained in Slovakia, a judicial decision on his/her accommodating in the Center for the youth and families is issued since it is dedicated expressly for migrants under the age of 18.
Issue of determining the actual age of young migrants - new modus operandi :
We recognized a new modus operandi of committing a crime of smuggling based on situation when the detained migrants declare their date of birth purposely uncorrectly as a date when they have to be considered as children (persons under the age of 18). In such cases they have to be placed into the Center for the youth and the families in Medzilaborce, where they have no restrictions or control and they can freely contact with their smugglers, agree on the details of their consequent transport and are then without restrictions transported to the target destination. It is evident than these foreign citizens leave the Centre only with the assistance of other people, since we record organized departures in the late evening hours with groups fitted into a personal motor vehicle. They do not use means of public transport.

23.1.2021 - 4 migrants from Afghanistan, offender was a student from Belarus living in Poland (sentenced to imprisonment for 7 years), forfeiture of the motor vehicle Citroen.

2.5.2021 - 4 migrants from Afghanistan and **6.5.2021** - 3 migrants from Afghanistan, Czech woman migrant smuggler performing as a taxi driver, sentenced to imprisonment for 4 years and 8 months, forfeiture profit of 18 000 CZK.



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12.5.2021 - 3 migrants from Afghanistan, 2 Czech migrant smugglers (father and daughter), sentenced to imprisonment both for 7 years, forfeiture of the motor vehicle BMW with the value of 6 000 €.

8.3.2021 - 3 migrants from Syria, 2 Egyptian migrant smugglers with their permanent residence in Slovakia, placed for 7 months of pre-trial detention, during the domiciliary examination amount of 17 000 € was detained as well as the motor vehicle Hyunday iX 35 with the value of 15 000 €, mobile phones and notebooks. In this criminal case, it was consistently proved that both offenders were performing as members of the international migrant smuggling group on the West Balkan route Türkiye – Romania - Hungary – Slovakia – Germany/Austria.
This case was forwarded to the Section West of The National Unit on Fight Against Illegal Migration and was conducted commonly with their similar criminal case. At this point the acts could be legally qualified as performed by an organized criminal group.

- **Realisation of the case "THE SPIDER"** (supervised by Regional Prosecutor´s office Kosice)

Policemen of the National Unit on Fight Against Illegal Migration investigated an organised group of smugglers who performed illegal activity in the eastern part of Slovakia for for a long time period. Their activity was focused on transport of illegal migrants from Slovakia through the territory of the Czech Republic, eventually through the territory of Poland to the country destination – Germany.
Once the foreign state citizens came to the territory of Slovakia, the drivers should have transported them to prepared shelters and subsequently another member of the organised group should have accommodated them and guarded them.
Later they were transported to Germany. The crew was accompanied by a second motor vehicle which secured a safe transport. Results at the action day :

- 6 similar cases were documented and investigated;
- 27 illegal migrants were transported, the total profit of the organised group is subject to investigation, however, it is probable that the amount varies from 400 to 1 000 USD per migrant;
- 5 persons were detained and accused on the territory of Slovakia, based on the collaboration with Polish authorities, and 3 persons were detained in Poland;
- 7 domiciliary examinations were perfomed;
- 2 examinations of other spaces were performed during the following items were detained – wireless transmitters, trail cameras, signal jammers, cigarettes without fiscal stamps, dry mass of unknown origin, truck and patrol cars.