



## LEGAL AND JUDICIAL INFORMATION ON MIGRANT SMUGGLING

### SLOVENIA

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#### GENERAL INFORMATION ON MIGRATION



#### MAIN FIGURES AND TRENDS

Between 01.01.2023 and 05.11.2023, 49 269 illegal entries of migrants were detected at the internal Schengen border with Croatia. The number is 113.7% higher than in 2022, which stood at 23 054. In 2023, most of the migrants illegally crossing this border were citizens of Afghanistan (32.7%), Morocco (15.4%) and Pakistan (9.9%).

In 2023, the number of illegal entries was increasing until August when it reached its maximum. In October, the number decreased below 6,000 per month; nevertheless, this number is still above the monthly average in the current year.

In the period from 01.01.2023 to 5.11.2023, a total of 51,354 illegal entries were detected at all Schengen internal borders, the majority (96%) at the border with Croatia.

Slovenia is mainly affected by illegal migration through the Western Balkans migratory route. Illegal migration is heavily influenced by globalisation and the rapid development of communication technologies, especially social networks. Illegal migrants are familiar with the most convenient ways for crossing of the national borders, the asylum and other relevant procedures and their rights in this regard. This knowledge often leads to abuse of procedures for international protection, as most applicants for international protection leave the asylum centres during the procedure and move towards EU final destination countries.

Furthermore, the Slovenian police recognised that international organised criminal groups/syndicates are heavily involved in the smuggling of migrants. Such criminal groups have proven to be very flexible in adjusting to changing migration routes and trends. They can rapidly adapt their business models and ways through which they respond to activities conducted by the law enforcement authorities.

Slovenia is predominantly a transit country for the international criminal organisations for the smuggling of migrants. Criminal organisations are thus not often associated with Slovenian citizens or persons residing in Slovenia. Until 30.10.2023, the police processed 299 criminal cases related to illegal border crossings (172 in the same period last year) in which 335



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smugglers (327 foreigners and 8 Slovenian citizens) were arrested.<sup>1</sup> Out of those, 308 smugglers were detained.

In most cases, criminal investigations are concluded with the successful processing of individual offenders that carry out specific tasks in migrant-smuggling activities. These procedures are insufficient in terms of disrupting such activities of organised criminal groups.

Compared to the pre-covid period, the number of offences dealt with by public prosecution services is rising. In 2020, the public prosecutor's offices received criminal complaint for 445 offences under Article 308 of Criminal Code (*Prohibited crossing of the border or territory of the country*) and handled together with criminal complaints from the previous years 511 criminal complaints altogether; until 1.10.2023, they have received 347 criminal complaints and handled 407 criminal complaints altogether (this number is comparable to the total number of criminal complaints handled in 2022).

In the vast majority of cases, public prosecutors decide to prosecute the suspects, and the courts regularly convict the accused persons: in 2020, there were 292 convictions and only 6 court decisions led to the closure of proceedings without punishment; in 2023 (until 1.10.2023), there were 276 convictions and 16 court decisions that did not lead to punishment. In most cases, the accused persons were sentenced to imprisonment and fined as an additional penalty, and in a very high percentage of cases an additional penalty of expelling a foreigner from the country was imposed (in 197 cases in 2020 and 208 cases until 1.10.2023). Confiscation of objects used for crime is also a commonly imposed measure. On the contrary, suspended sentence is handed down only exceptionally (in 10 cases in 2020 and in 40 cases until 1.10.2023).

On 21.10.2023, Slovenia temporarily reintroduced control at internal borders with Croatia and Hungary. Border crossings were divided in two categories:

1. international crossings that will operate continuously (24/7);
2. other designated crossings that can only be used by EU citizens and persons with the right to free movement in the EU.

The temporary reintroduction of border controls at both borders was introduced for the following reasons:

1. escalation of the conflict between Israel and Palestinians which increased the possibility of terrorist attacks in the territory of Slovenia and/or other member States of the EU and the Schengen area;
2. the rise of extremism and radicalisation in the EU member States which could have a direct negative impact on Slovenia's security;

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<sup>1</sup> Citizenship of arrested smugglers: Romania 62, Croatia 32, Serbia 29, Ukraine 29, Bosnia and Herzegovina 15, Moldova 12, Kosovo 10, Türkiye 10, Georgia, Germany 9, Russia 9, Albania 8, Slovenia 8, Belarus 7, Lithuania 7, Macedonia 7, Macedonia 7, Morocco 6, Belgium 5, Iraq 5, Italy 5, China 5, Pakistan 5, Poland 5, Syria 4, Afghanistan 3, Bulgaria 3, Czech Republic 2, Egypt 2, Cuba 2, Latvia 2, Germany 2, Uzbekistan 2, Azerbaijan 1, Bulgaria 1, Montenegro 1, France 1, Iran 1, Jordan 1, Kazakhstan 1, Kyrgyzstan 1, Lebanon 1, Nepal 1, Netherlands 1, Slovakia 1, Spain 1 and Sweden 1.



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3. increased possibility for the Western Balkan migratory route to be used by persons who might carry out terrorist attacks on the territory of Slovenia and other EU member States or compromise the security of those states.

The Government of the Republic of Slovenia later extended the temporary reintroduction of border controls with Croatia and Hungary until 19.11.2023. Italy also extended the temporary border controls on border with Slovenia for another 20 days.

The reason for the extension was primarily the threat of terrorist attacks and extremism related to the current security situation in the world, especially in the Middle East.

## ➔ MIGRATORY ROUTES

The vast majority of illegal migration towards Slovenia passes through the Western Balkans. Slovenia remains a transit country on the Balkans route, with illegal migration directed towards Italy, and to a lesser extent also to Austria and other Central European countries.

The illegal entry trends are similar to the ones from the previous two years, except that the numbers are significantly higher. The reasons for the increase in illegal entries are:

1. the mechanism of international protection which has become the main tool in migratory route through the Western Balkans countries;
2. countries along the migration route have not yet found a systemic approach to effectively address the increased number of applications for international protection;
3. the migration policies of Türkiye and, to a certain extent, Serbia and Bosnia and Herzegovina, regarding the possibility of obtaining an entry visa for third countries' nationals remain quite loose;
4. instability in the countries of origin of migrants which is augmenting migratory potential;
5. secondary migration of foreigners that are entering Romania and Cyprus legally and continue their journey towards their destination countries.



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## INSTITUTIONAL ORGANISATION

The fight against the smuggling of migrants is complex and requires cooperation of different actors and implementation of various activities/actions.

At all levels, the **Slovenian police** implements the necessary measures to prevent, detect and investigate illegal migration, including the detection of organised criminal groups engaged in the smuggling of migrants. Illegal migration is one of the priorities of the Slovenian police. Therefore, great emphasis is placed on international cooperation, both with Europol and as well as with neighbouring countries, other EU countries and Western Balkans countries.

The prosecution of crimes related to the smuggling of illegal migrants is the responsibility of the **public prosecutors' offices** which also direct the police in pre-trial proceedings.



## LEGISLATIVE FRAMEWORK

Slovenian law enforcement authorities see effective legal proceedings against the offenders for the offence of prohibited crossing of the border or territory of the country as a general prevention mechanism that impacts the illegal migration.

Criminal offence is defined in Article 308 of the Criminal Code (KZ-1), with the penalties ranging to up to 15 years of imprisonment and a fine.

### Criminal Code

#### *Prohibited crossing of the border or territory of the country*

##### **Article 308.**

- 1. Anyone who violently crosses the national border of the Republic of Slovenia or enters its territory illegally shall be punished by imprisonment of between three months and three years or a fine.*
- 2. Equally shall be punished a foreign national who does not have a residence permit in the Republic of Slovenia if he or she is present on its territory in the manner referred to in the preceding paragraph or resists lawful removal from it.*
- 3. Anyone who is conducting illegal placement of foreigners who do not have a permit to enter or reside in the Republic of Slovenia, is transporting or assisting them in hiding on its territory, or anyone who illegally transfers across the border or territory of the country, transports through it or facilitates illegal stay of one or more such foreigners to obtain property gain for themselves or for someone else, shall be punished by imprisonment of between three and ten years and a fine.*
- 4. The penalty referred to in the preceding paragraph shall also be imposed to an official who enables a foreigner to enter or stay illegally on the territory of the Republic of Slovenia.*
- 5. Anyone acquiring or collecting people for illegal migration, providing them with falsified documents or transport, or otherwise organising illegal migration, or organising migration by deceiving the competent authorities regarding the true purpose of entering the territory of the Republic of Slovenia shall be punished by imprisonment of three to ten years and a fine.*



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**6.** *If the acts referred to in the third, fourth or fifth paragraphs of this Article are conducted to obtain a disproportionate property gain for the offender or someone else or to obtain an unlawful labour force or lead to exposing someone to danger to life or health, or commits such acts as a member of a criminal organisation, he or she shall be punished by imprisonment of between three and fifteen years and a fine.*

**7.** *The preceding paragraphs shall also apply to crimes committed abroad if, like the Republic of Slovenia, the country in which they were committed has adopted a common international legal obligation to prevent such offences, regardless of where they are committed, and this country defined accordingly the acts as criminal offences in its law. If the offence was committed within the territory of the European Union, nationals of its Member States shall not be regarded as foreigners in application of the second, third, fourth and fifth paragraphs of this Article.*

**8.** *A means of transport used for the transport of one or more persons illegally crossing the border or territory of a country shall be confiscated if the offender owns it. If the means of transport are not owned by the offender, such means of transportation shall be confiscated, in addition to the cases referred to in the second paragraph of Article 73 of this Code,<sup>2</sup> if it is specially adapted, altered or adapted for the transport of such persons or if the owner or the person who handed over the means of transport knew or could have known that it will be used for such purpose.*

Procedural tasks, procedures, powers and obligations are specified in the Criminal Procedure Act (ZKP). Covert investigative measures, in particular obtaining data on bank transactions, covert observation, obtaining traffic data relating to suspect's communication, and surveillance of electronic communications by listening in and recording are of particular importance in criminal investigations of such crimes.



## JUDICIAL FRAMEWORK

The prosecution of crimes related to the smuggling of illegal migrants in Slovenia is the responsibility of the public prosecutors' offices, which also direct the police in pre-trial proceedings.

On 18.12.2019, a Working Group was established at the Public Prosecution Service composed of representatives from each of the district public prosecution offices, to unify the punitive policy for the offence referred to in Article 308 of Criminal Code. The group analysed the penalties imposed and informed all public prosecutors on the outcome.

The analysis of the sentences imposed (with data collected by March 2021, with 54 judgments reviewed) showed that proposals on sentences made by public prosecutors were not fully taken into account by courts; namely, the courts imposed lower sentences, often even below

<sup>2</sup> Confiscation of objects (Article 73)

(1) *Objects used or intended for the offence or resulting from a criminal offence may be confiscated if the offender is in the possession of the offender.*

(2) *The objects referred to in the preceding paragraph may also be confiscated when they are not the offender's possession, if general security or moral reasons so require, but the right of others to claim damages from the offender is not thereby affected.*

(3) *The law may provide for mandatory confiscation of objects even if they are not the offender's possession.*



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the prescribed penalty level, relying on mitigation provisions of the law.<sup>3</sup> Most of the examined judgments resulted from a plea of guilt and only three cases were tried. The analytical comparison of the sentences imposed was somewhat complicated as in some public prosecutor's offices the crime was more often (or even regularly) qualified as committed within a criminal organisation or in a way that causes a danger to human life and health, i.e., under Article 308(6) of the Criminal Code, while in other prosecutor's offices the attempt to qualify the offence in such manner was regularly unsuccessful.

The analysis also showed that the penalties handed down by courts in different parts of the country were comparable. The penalties depended mainly on the number of migrants transferred across the border. For bringing 2 migrants across the border, the maximum prison sentence imposed was 10 months of imprisonment (under Article 308(3) of Criminal Code) and 3 years and 2 months of imprisonment (under paragraph 6); for the highest number of migrants – 48, the lowest sentence was 3 years and 6 months of imprisonment. The maximum sentence based on plea of guilt was 4 years and 6 months of imprisonment for 42 migrants (under paragraph 6). The minimum sentence was 6 months of imprisonment for 5 migrants (under paragraph 3) and 1 year and 6 months for bringing 12 migrants across the border (under paragraph 6). The fines imposed ranges from €300 to €1 000.

Public prosecutors regularly lodge appeals against the sanctions that go below their proposal. As regards the penalties imposed, a legal remedy for the protection of legality of the final decision was lodged in two cases. In one case such remedy was rejected as unfounded by the Supreme Court of the Republic of Slovenia, while on the other one the Court has not yet made its decision.

In further two cases, legal remedies for the protection of legality concerned a decision on confiscation of objects (i.e., of a vehicle used to transport illegal migrants and a mobile telephone of the sentenced person). The Supreme Court of the Republic of Slovenia rejected the first legal remedy, while the second is still pending.



## INTERNATIONAL COOPERATION

Successful international cooperation through the exchange of information and joint investigations is crucial for tackling illegal migration. The Slovenian police cooperate intensively with neighbouring countries and other EU countries at both bilateral and multilateral levels. The criminal police cooperate intensively with Europol, as well as with other EU and third countries. It employs the EMPACT (European Multidisciplinary Platform Against Criminal Threats) platform, within which it participates in operational activities related to the investigation of the activities of organised crime groups along the Balkans route.

In addition, the Slovenian police cooperate with numerous partner countries outside the EU and international organisations. Especially, cooperation with the countries of the Western

<sup>3</sup> *Mitigation of penalties (Article 50)*

*The court may impose a sentence below the limit prescribed by law or apply a milder type of penalty:*

*- if the law stipulates that the offender may be punished less severely;*

*- if the court establishes specific mitigating circumstances that justify the imposition of a lower penalty.*



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Balkans region, including Serbia, Bosnia and Herzegovina, Montenegro, North Macedonia and Albania, is very important.

International police cooperation of the Slovenian police with foreign security authorities of Western Balkans countries is carried out through the National Central Bureaus of INTERPOL, the Europol National Units and police liaison officers, as well as through the activities of various platforms.

Within the framework of international cooperation, the Slovenian police also participate in joint tightened controls and joint action days (JADs). They cooperate with other members in various operational task forces (OTFs) and joint investigation teams (JITs).

As part of their investigations, public prosecution services also make use of existing tools of cooperation, such as the European Investigation Order, participate in coordination meetings at Eurojust and use the existing mechanisms for transfer of proceedings.



## RELEVANT CASES

- ❖ In February 2023, the Slovenian police ended a several months long investigation which was conducted in cooperation with the security authorities of Austria, Hungary and Italy under the coordination of Europol. It was an investigation against members of an international criminal organisation dealing with the illegal transport of migrants from Croatia through Slovenia to Italy and from Serbia through Hungary to Austria.

By collecting information and carrying out covert investigative measures, it was established that the head of a criminal organisation in Slovenia was a 52-year-old citizen of Slovenia who operated closely with a 41-year-old and a 46-year-old Slovenian citizens in organising and committing criminal offences. The leader of the criminal group and his accomplices were looking for drivers to transport migrants from the area along the State border between Serbia and Hungary to the immediate vicinity of the State border with Austria.

The head of the criminal organisation cooperated with organisers from the territory of Greece and Serbia and organised the transport of a large number of migrants in vans. At the same time, they even carried 37 migrants, exposing them to danger to their life and health. After illegally crossing the State border, migrants who had previously illegally crossed the State border from Serbia to Hungary on foot, with the help of guides, were picked up into vehicles and taken around Hungary to the immediate vicinity of the State border with Austria, where they were disposed of, to again illegally cross the State border into Austria on foot. There, they surrendered to police officers and applied for international protection and were housed in accommodation facilities, from where the criminal organisation continued their illegal transport towards their destination countries employing other members of the criminal organisation.

The criminal organisation also advertised its activity on online networks (e.g., TikTok) in order to get as many migrants as possible to pay the group for illegal transport from Serbia to Austria. For this purpose, they published recordings of successfully

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completed transports as evidence, which drivers recorded when the migrants were dropped off at the State border with Austria.

In house searches, several pieces of weapons, different types of ammunition, large quantities of illicit drugs, money and electronic devices were also seized.

During the criminal investigation, at least 212 migrants were transported by at least 16 successfully carried out transports. Migrants had to pay around €5 000 per person for the journey from Serbia to Austria and between €15 000 and €20 000 for the entire journey from their home country to the destination country. The criminal organisation thus obtained at least €101 500 for transport from Serbia to Austria and at least €3 180 000 of illicit proceeds for the conduct.

- ❖ A criminal group consisted of four suspects in Slovenia, the actions of which were directed by unknown accomplices who used Swedish dial-in numbers for communication and arranged, in addition to transportation, the placement of migrants in “safe” houses in Croatia and payments via the WU (Western Union) system from Türkiye. During a transport, one of the suspects caused a traffic accident in which 10 migrants were physically injured, one was heavily injured, and one died. The case was transferred to Swedish prosecution authorities.
- ❖ A criminal group engaged in smuggling of migrants through Croatia and Slovenia to Italy, as well as committed other crimes, including arms trafficking. The offenders were third-country nationals residing in Italy. The guides who were sent daily to Slovenia first led migrants from Croatia to Slovenia on foot and then the migrants were picked up by the drivers and transported to Italy. Based on the European Investigation Order, Slovenian prosecutors provided the collected evidence to the competent authorities in Italy, and parallelly conducted covert observation of suspects. In agreement, the Italian authorities also took over prosecution for acts committed in Slovenia.