

## CRIME AND PUNISHMENT' OF IRREGULAR MIGRATION AT THE CROATIAN BORDERS<sup>1</sup>

### Abstract

The influx of illegal migrants and the associated unlawful transfer of people across Croatian state borders have led to an increase in public order offences over time. As a result, state attorney's offices and courts are overloaded with cases that rise each year, while human and institutional resources remain limited, placing the Croatian prison system under enormous pressure. Therefore, interdisciplinary research (sociology and law) presented in this article moves away from the victim-centered approach that dominates most current academic and policy discussions on irregular migration to Europe and the EU, offering a more data-driven perspective based on legal practice and legislative statistics. The research results and qualitative sociological analysis identify a causal link between the demand from irregular migrants and the supply of illegal smuggling services. The market for such facilitation is co-created by both irregular migrants and smugglers, supporting the hypothesis that irregular, or more precisely illegal, migration contributes to increased crime. Therefore, the absence of a solution highlights the failure of human rights to provide protection to those who truly need it – refugees and asylum seekers – as they are absorbed into the multitude of migrant statuses and situations of irregular mixed migration to Europe and the EU.

**Keywords:** irregular/illegal migration; Croatia; crime; people smuggling.

### I. INTRODUCTION

According to the European Union Agency for Law Enforcement Cooperation (EUROPOL), more than 90% of migrants entering the EU have used smuggling services provided by various criminal groups.<sup>2</sup> Therefore, as part of an integrated approach to European Union (EU) internal security, the European Multidisciplinary Platform Against Criminal Threats (EMPACT) is implementing a wide range of measures related to the control and management of external borders. These measures target criminal networks involved in the smuggling of migrants, particularly those assisting irregular migrants on the main migration routes crossing the EU's external borders. Measures also focus on networks facilitating secondary movements and the regularisation of residence status within the EU, as well as on networks whose methods put people's lives at risk.<sup>3</sup> According to the IMF, criminal networks

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<sup>2</sup> See about facilitation of illegal immigration <https://www.europol.europa.eu/crime-areas/facilitation-of-illegal-immigration> [accessed 24 March 2025].

<sup>3</sup> See about EU Policy Cycle – EMPACT 2022+ and how to fight crime together <https://www.europol.europa.eu/crime-areas-and-trends/eu-policy-cycle-empact> [accessed 24 March 2025].

that facilitate the smuggling of migrants made an estimated annual turnover of EUR 3-6 billion in 2015, and forecasts suggest that profits from such illegal activities would double or triple (EC 2024). The evidence also shows that EU border crossing is often facilitated by non-EU resident smugglers, so the balance of payments for them is relevant, while significant revenues are generated as well in the Member States from transportation and travel services (IMF 2025). One can conclude that, although there are currently no official estimates (IMF 2025) or country case studies available (Jandl 2004; Koser 2010), and it remains difficult to collect data on the number of illegal immigrants (Vespe, Natale and Pappalardo 2017) and the prices of services related to the economic impact of people smuggling, it is clear that this type of illegal activity is closely linked to corruption and bribery, which in turn contribute to the development of the informal economy. Beyond the economic aspects, this demand-driven market for illegal services also produces deviant social behaviours, which contribute significantly to increased crime and insecurity for both EU citizens and irregular migrants. The Croatian case supports this claim. This article therefore attempts to show how irregular migration at the Croatian borders is influenced by people smuggling and illegal border crossings. It discusses practices of irregular migration to the EU through the Western Balkans route since 2013. The article proceeds in four parts:

First, it outlines the scope of the research, including the methodology, main research questions, and the legal conceptual framework employed. It provides a brief introduction to the selected data sources, followed by an explanation of how the most recent theoretical approaches and research findings from critical migration studies are used in qualitative sociological analysis. Second, it provides insight into the effects of the smuggling network on the Western Balkans route to Europe/EU based on the most recent available research by international and Croatian scholars. Third, it elaborates on research findings from analysed data on illegal migration and criminal proceedings in Croatia. It argues that, according to the Croatian case, a market for smuggling services is jointly created by irregular migrants and people smugglers. Fourth, it interprets the research findings and presents concluding remarks that critically examine the research findings in light of the evolving scholarship on irregular migration to the EU/Europe.

## **II. SCOPE OF RESEARCH**

Since 2002, the common definition of facilitation of illegal immigration under the Council Directive 2002/90/EC has included offences relating to the intentional assistance of a non-EU national or entry into or transit through an EU country in breach of the law (Council Directive 2002). This also includes intentionally assisting a non-EU citizen to reside in an EU country in order to make a financial gain, as well as inciting, participating in or attempting to commit the above-mentioned acts. While human trafficking is an activity against a person without mutual consent as the migrant is forced to move so it does not qualify as an illegal economic activity; migrant smuggling is an activity that the parties involved enter into by mutual consent and it is a transaction in which irregular migrants are not forced to move, thus being a transaction between residents and non-residents (IMF 2025). So far, there are two types of agreements made by smugglers. The first is called a pay-as-you-go arrangement, where no final destination is specified, and the speed and direction depends on the migrant's ability to pay at each step. The second is referred to as the full package, which is less common and involves migrants paying the fees in their country of origin to a smuggler who arranges the migrant's transportation to the destination country. The evidence shows that the pay-as-you-go arrangement with a smuggler is now the predominant form of migration, and Frontex data

suggest that EU border crossing is facilitated in many cases by both non-EU resident smugglers and EU residents (IMF 2025). So, how sustainable are state systems when faced with the challenges of increasing crime and security threats associated with facilitated illegal migration to the EU?

This article will answer this question based on qualitative interdisciplinary research (sociology and law) conducted in 2024. A critical content analysis (Halmi 2005) of Croatian and EU statistics, policy papers and laws related to illegal migration are used together with data from the Croatian Ministry of Justice, Public Administration and Digital Information and state prisons. Desk research as a methodology (Gilbert 2008; Bryman 2012) enabled selected documents and texts to be analysed in more detail. The compiled results were critically interpreted within the sociology of migration (Cvikić 2024). However, a detailed critical analysis of the evolving scholarship and language of irregular migration in migration studies is beyond the scope of this article. Instead, the article provides critical interpretations of migration research findings from selected studies conducted since the 2015/2016 EU/European migration crisis. The aim of this article is to demonstrate how irregular migration is influenced by people smuggling and illegal border crossings, which affect justice and law enforcement at Croatia's external EU borders. Furthermore, the article employs a conceptual framework for contemporary migration to the EU and Europe, defined in legal terms to achieve greater precision and clarity. This approach is set against the backdrop of an ongoing debate among migration studies scholars regarding the definition of key concepts of human mobility and their use not only in research but also in policy making (Düvell 2006; De Genova and Tazzioli 2016; Spencer and Triandafyllidou 2020; Cvikić 2024; Al-Khudairy 2024).

According to the legal basis of today's migration flows, legal migrations are defined as regular and in accordance with state regulations, while illegal migrations are irregular and violate national regulations (Božić and Nikač 2019: 306). Illegal type of migrations represents relocation and movement of people that violate the laws of the countries of origin, transit and destination (Božić and Nikač 2019: 306). In such cases, illegality under the laws of the countries of origin, transit and destination is the most important fact, which is nowadays disputed by academics and questioned by politicians (Jansen, Celikates and de Bloois 2015; De Genova and Tazzioli 2016; Rother 2022). For the countries of departure, crossing the national border without a valid travel document is a direct violation of the administrative and legal provisions of the countries of departure. For transit and final destination countries, however, illegal acts refer to the non-compliance with 'the conditions for entry, stay or work in these countries' (Božić and Nikač 2019: 306). Moreover, illegal acts of migration today are carried out in three different ways: unorganised, semi-organised and organised (Božić and Nikač 2019: 306). Unorganized migrations are self-initiated migrations by individuals or small groups; semi-organized are characterized by a lower degree of organization by criminal groups, and organized migrations are the result of organized criminal groups with the support of corrupt officials (Filipovski 2002: 40). Even though the application of the various European legal frameworks regulating irregular migration in the EU/European migration crisis has triggered numerous discussions and disputes in case law, which have led to inconsistencies in the interpretation and application of the legislation (Čepo 2019: 202), this article nevertheless assumes that migration legislation and case law provide stable and precise definitions of the illegal acts of irregular migration. The background of the qualitative sociological analysis conducted is therefore the conceptual framework of Croatian legislation dealing with illegal migration: the Croatian Criminal Code, the Aliens Act, the Act on International and Temporary Protection and the Act on State Border Controls. This represents a move away from a victim-cantered approach that dominates the majority of current academic and policy discussions<sup>4</sup> on irregular migration to

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<sup>4</sup> In 2010, the European Commissioner for Home Affairs, Cecilia Malmström, stated that "illegal migrants do not exist" in her vocabulary and that sometimes people are forced to use irregular routes to the EU, but "no human being is illegal". See:

EU/Europe (Faulkner 2024) and offers a more data-driven approach based on legal practice and legislative statistics (Kuzmin 2021). It is important to note, however, that recognizing the vulnerability of migrants and prioritizing their individual needs and self-selection (Aksoy and Poutvaara 2021) while promoting access to justice does not preclude addressing the issues related to migrants' responsibility for their own life choices that influence the outcomes of their migration aspirations to EU/Europe. The rights and welfare of all migrants, and in this case irregular migrants in Croatia, are not contested but questioned in light of the illegal practices of migration to EU/Europe via the Western Balkans route. The interdisciplinary study of illegal migration in this article therefore treats migrants as responsible and reasonable adults and their illegal actions according to Croatian legislation and jurisprudence. For both practical and informative reasons, a brief overview of the legislation and jurisprudence is provided to enable a better understanding of how Croatian authorities manage contemporary irregular migration to the EU and Europe.

### **III. A BRIEF OVERVIEW OF ILLEGAL MIGRATION LEGISLATION AND JURISPRUDENCE IN CROATIA**

Article 45, which defines what constitutes illegal entry of a third-country national into the Republic of Croatia (RoC), and Article 53, which establishes the ban on assisting a third-country national in illegal entry, transit and stay in the RoC, are the most important articles of the Aliens Act. Namely, the Article 79 states that a 'temporary stay on humanitarian grounds' shall be granted to a third-country national in number of cases thus ensuring their internationally guaranteed rights while the Article 80 furthermore provides a mandatory procedure for victims – third-country nationals – of human trafficking, thus outlining provision of the assistance and protection programme that Croatian government authorities are obligated to provide for such victims (medical and psychosocial care, safe accommodation, translation and interpretation services, legal assistance and safe return to the country of origin). The rights of third-country nationals who have been granted temporary stay on humanitarian grounds in Croatia, according to the Article 86 are entitled to 'work without a stay and work permit or a work registration certificate, a right to attend courses, vocational training, a right to education and university studies'. Finally, the Article 211 defines a legal framework of the restriction to freedom of movement in Croatia. This article states in Paragraph 1 that 'a third-country national may be arrested and detained for a maximum 48 hours if this is necessary in order to establish' that persons' 'identity or if this is necessary to establish the circumstances of illegal border crossing or illegal stay and there is a risk of absconding of a third-country national'. Also a third-country national's freedom of movement will be restricted 'if the identity or the circumstances of illegal border crossing or illegal stay cannot be established within the time limit referred in paragraph 1 of this Article, and restriction of the freedom of movement of a third-country national by' that persons' accommodation in a reception centre for aliens 'would not be purposeful due to the remoteness of the location, the third-country national may be detained for a maximum of another 24 hours if it is reasonably expected that the identity or the circumstances of illegal border crossing or illegal stay can be established within the said time limit'. Furthermore, the Article 214 states that a third-country national 'may be accommodated in the centre for up to six months if there is a risk of avoidance of the obligation to leave the EEA or the Republic of Croatia' which then accounts for the circumstances that indicate the existence of that risk, such as: when 'a third-country national does not possess an identity document or a travel document', as well as if that person 'has not registered' his/her stay. It also applies to the circumstances

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[https://www.unhcr.org/cy/wp-content/uploads/sites/41/2018/09/TerminologyLeaflet\\_EN\\_PICUM.pdf](https://www.unhcr.org/cy/wp-content/uploads/sites/41/2018/09/TerminologyLeaflet_EN_PICUM.pdf) [accessed on 11 March 2025].

when ‘a third-country national has stated that’ he/she ‘will not comply with the measures introduced in order to ensure’ his/her return or that he/she will prevent them from being taken, as well as if such persons ‘have been convicted of a criminal offence by a final ruling in another EEA Member State’. The same applies to persons that ‘have been convicted of a criminal offence by a final ruling in the Republic of Croatia’. Furthermore, it applies to persons who ‘not comply with or has not complied with the decision on return’, or ‘not complying with or has not complied with the obligation to go to another Member State’, as well as if ‘a third-country national has entered the EEA or the Republic of Croatia illegally’ and his/her ‘previous behaviour’ indicates that he/she ‘might avoid complying with the obligation to leave the EEA or the Republic of Croatia’. The risk of avoidance of the obligation to leave the EEA or the RoC is established when ‘a third-country national has refused to provide personal or other data and documents or has provided false data’, as well as when such person ‘has used counterfeit or someone else’s document’, ‘has thrown away or destroyed the identity document’ or ‘has refused to have’ his/her ‘fingerprints taken’. It is also established when ‘a third-country national has prevented, by use of force or deceit’ his/her ‘escort for the purpose of forcible removal to the country into which’ he/she ‘is being forcibly removed’ and due to ‘unauthorized secondary movement’.

Next to the provisions of the Alian Act, the Criminal Code of Croatia provides a legal basis for the criminal offences under Article 326 Unlawful Entry, Movement or Residence in the Republic of Croatia, Another Member State of the European Union or a Signatory to the Schengen Agreement which falls under the Title XXX Criminal offences against public order (Masar and Štrucelj 2024). This law was adapted during the accession period and brought into line with EU law. Since 1 July 2013, it has been harmonized with EU Directive 2002/90/EC (of 28 November 2002, OJ EC L 328/7) with regard to the specific definition of unlawful activity – the facilitation of unauthorized entry, transit and residence of persons who are not nationals of a MS. Therefore, the Article 326 stipulates in Paragraph 1 that whoever enables or assists for personal gain one or more persons – noncitizens of Croatia - to illegally enter, move or reside in the Republic of Croatia will be imprisoned up to three years. So, the criminal offence according to Article 326 occurs when the perpetrator must have known or knows that a person (or group of people) he/she is assisting (for personal gain) is not a Croatian citizen and illegally enters, leaves, moves or resides in the Republic of Croatia or another MS of the EU or signatory of the Schengen Agreement. This is a criminal offence committed with the intention (*dulus*), and is therefore, punishable by law with a prison sentence from six months up to five years. ‘The aggravated’ type of such criminal offense occurs ‘if during the commission of the crime life or body of a person who illegally enters, moves or resides in the Republic of Croatia or another MS of the EU or signatory of the Schengen Agreement was endangered’, or ‘the person was subjected to inhuman or degrading treatment, or if an official person has committed a criminal offense in the performance of official duty, in which cases the perpetrator shall be punished by imprisonment of one to eight years’ (Božić and Nikač 2019: 308). However, ‘there is no criminal offense if a person without any assistance is illegally entering, leaving, moving or staying in the Republic of Croatia or another EU MS or Signatory of the Schengen Agreement, so it is a misdemeanour for which the person shall be held accountable’ (Božić and Nikač 2019: 308). Furthermore, if the criminal offense according to this article, Paragraph 1 ‘is committed within a criminal association’ the person is sentenced from one up to ten years, ‘while for the aggravated form from paragraph 2’ a person is sentenced from three up to twelve years of imprisonment (Božić and Nikač 2019: 308). Aforementioned, criminal offences are prosecuted in the Republic of Croatia by courts whose jurisdiction is defined in two laws: the Judiciary Act and the Act on the Demarcation and the Judicial System. According to this normative framework municipal courts have jurisdiction as competent authorities in matters of execution in cases related to unlawful entry, movement or residence in the Republic of Croatia,

another MS of the EU or a signatory to the Schengen Agreement. However, the county state attorney's office and county court investigating judge have jurisdiction and oversee preliminary investigation procedure. The data analysed in the later section will show the working of the Croatian court and judicial system according to the legal provisions on the prosecution of illegal migration since the EU/European migration crisis of 2015/2016.

#### **IV. ILLEGAL BORDER CROSSINGS AND SMUGGLING DYNAMICS ON THE WESTERN BALKANS ROUTE TO EUROPE/EU**

Research paper *Mixed Migration in the Western Balkans: Shifting policies, smuggling dynamics and risks* explains in its conclusion that smuggling operations on the Western Balkans route have become 'more covert, forcing refugees and migrants onto more dangerous routes to avoid detection' (2024: 22). The paper states that the Western Balkans route remains vibrant and active, with 'smuggling networks continuing to adapt' (MMC and PRAB 2024: 22). Adaptations include changes in geographic location and modus operandi because borders are heavily policed, as well as changes in the use of technology to evade detection, since 'refugees and migrants' are increasingly reliant on smugglers to facilitate their journey (MMC and PRAB 2024: 22). The increasing reliance on smugglers has led to more 'exploitation and abuse' of migrants, which was uncommon for the Western Balkans route in the past (MMC and PRAB 2024: 22). The paper also states that violent pushbacks by state officials and the increased use of detention are a direct consequence of tougher 'border management by Western Balkans countries', while 'protection actors' (non-government organizations) are unable to meet the 'protection needs' of irregular migrants (MMC and PRAB 2024: 22). The security-driven approach and deterrence as the preferred policy of the EU's external border management, according to the paper, overpowers the need for improved access to asylum and protection for irregular migrants. The authors of this research paper assume that the implementation of the EU Pact on Migration and Asylum will inevitably increase the vulnerability of refugees and migrants. They also assume that stricter measures will only reduce smuggling activities in the short term and based on the previous experiences of Hungary, Bulgaria and Greece, suspect that 'a market for smuggling services' will remain (MMC and PRAB 2024: 22). However, the research paper fails to recognise in the conclusion the clear causal relationship between the demand from irregular migrants and the supply of illegal services by smugglers. Namely, a market for smuggling services will persist and expand as long as there is demand for such facilitation. The vulnerability of irregular migrants will therefore not increase due to stricter implementation of the EU Pact on Migration and Asylum, but due to continued demand for smuggling services. Irregular migrants rationally choose to use the services of smugglers, putting themselves in life-threatening situations that lead not only to their mistreatment and exploitation, but also to detention once they are detected illegally crossing the EU's external borders. Since the use of the services of people smugglers is a consensual transaction, it becomes irrelevant whether the irregular migrant is a refugee, an asylum seeker or an economic migrant. So, where does the responsibility lie – with border protection policy or with the demand-driven smuggling market, which is the first choice for migrants trying to reach their intended destinations in the EU? Answer to this question can be found in research conducted in Croatia (Vrđuka 2025). Access to asylum and international protection in Croatia through reception centres (a total of 93,758 foreign nationals for the period 2014–2023), according to Vrđuka's research, shows that most irregular migrants abuse the system to continue their journey to their intended destinations in the EU (2025: 110–112).<sup>5</sup> The research indicates that

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<sup>5</sup> Vrđuka's findings are additionally confirmed by the Semi-Annual Report of the Independent Monitoring Mechanism on the Conduct of Police Officers of the Ministry of the Interior in the Area of Border Protection, Irregular Migration, and International Protection (November 2022 – June 2023 – December 2023 – July 2024).

migrants who arrive at the Croatian border and apply for asylum usually do not wait for their applications to be granted; most leave the country within a few days (2025: 117). The author notes that after they leave, only a small number of asylum seekers have been ‘registered in Eurodac in other EU countries’, which does not mean that they have not arrived there, but only that they have not applied for asylum (2025: 117). This behaviour is largely driven by migrants’ decisions to use smuggling networks to reach their destinations in the EU. The danger posed by such decisions can also be understood by assessing the smuggling networks in Croatia – a study of their adaptation to the changing circumstances of irregular migration on the Western Balkan route.

The most recent Semi-annual report (2024) by the independent monitoring body on (among others) Croatian illegal border crossing dynamics since the 2015/2016 EU/European migration/refugee crisis provides evidence of increasing variability and significance of the Western Balkans migrant route. Although the crisis and the subsequent agreement between the EU and Türkiye (March 2016) have significantly shaped the course and direction of the Western Balkans land route, the dynamics of illegal border crossings in relation to Croatia have also brought changes in the ethnic composition and number of irregular migrants entering Europe. Since the 2015/2016 migration/refugee crisis in Europe, when the majority of undocumented migrants registered in Croatia claimed to have come from Syria (292,661), Afghanistan (181,651), Iraq (100,821), Iran (13,761) and Pakistan (6,707),<sup>6</sup> the official 2024 Croatian police records now show a significant shift in the ethnic composition of illegal border crossings by migrants. In 2023, the majority of registered migrants caught illegally crossing Croatian borders came from Afghanistan (22,100), Türkiye (13,480), Morocco (6,248) and Pakistan (5,286). The migrant/refugee corridor through Croatia in 2015/2016 created tremendous pressure on border police in the two most eastern counties – Vukovar-Srijem County and Osijek-Baranja County. However, more recently, the commonly used illegal border crossings in various counties, according to the 2024 Croatian police work report,<sup>7</sup> include the following:

- in Vukovar-Srijem County: crossing the land border on foot and avoiding border police patrols by hiding in cargo trucks and trains.
- in Karlovačka County and Sisačko-Moslavačka County: border crossing with the assistance of navigation applications.
- in Brodsko-Posavska County: border crossing by boat on the river Sava.

It is important to note that the majority of illegal migrants are not intercepted at the above-mentioned borders or nearby, but deep inside Croatian territory (119,915 migrants, or 59.9 per cent). Migrants intercepted near the Croatian border amount to 34,844 (17.7 per cent), and at the borders themselves, 11,846 (5.9 per cent). Currently, the greatest pressure to secure Croatian borders and intercept illegal border crossings, according to the 2024 Croatian police work report, is in Karlovačka County and Brodsko-Posavska County, followed by Primorsko-Goranska County, Sisačko-Moslavačka County, Vukovar-Srijem County, and Zagrebačka County. How Croatian authorities are coping with illegal migration at Croatian borders will be presented using two examples: Karlovačka County and Vukovar-Srijem County.

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<https://www.nmn.hr/UserDocsImages/dokumenti/SEMI-ANNUAL%20REPORT%20-%202024.pdf?vel=1897403> [accessed on 25 March 2025].

<sup>6</sup> Official data was provided by the Ministry of Internal Affairs, Republic of Croatia, Minister’s Cabinet, Public Affairs Office – official document Klasa: 008-01/18-01/22, URBROJ: 511-01-11-18-3, from February 27, 2018, Zagreb.

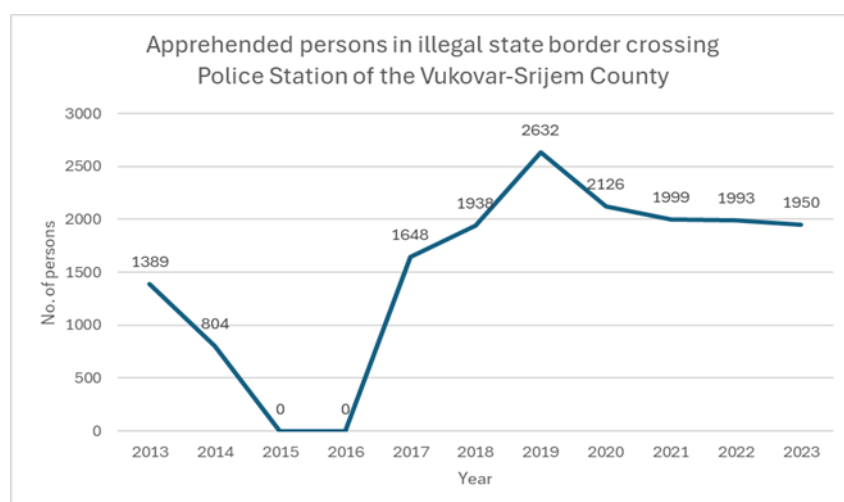
<sup>7</sup> Police report for 2024 is available on the official Croatian Parliament website. <https://www.sabor.hr/hr/sjednice-sabora/izvjesce-o-radu-policije-u-2024-godini-podnositeljica-vlada-republike-hrvatske?t=155761&tid=213787> [accessed on 4 April 2025].

## V. 'CRIME AND PUNISHMENT' OF ILLEGAL MIGRATION AT CROATIAN BORDERS

The Croatian case is a clear example of how the demand-driven smuggling market flourishes despite strict border controls and law enforcement at the EU's external borders. Illegal migration at the Croatian borders is presented here based on the data collected for the frequently used smuggling routes in two counties on the border with Serbia (Vukovar-Srijem County) and Bosnia and Herzegovina (Karlovačka County). Both routes are an integral part of the larger Western Balkans route. These two land routes, one on the eastern border with Serbia and the other on the western border with Bosnia and Herzegovina, are monitored by the Croatian border police and administered by two police stations – one in each of the two counties.

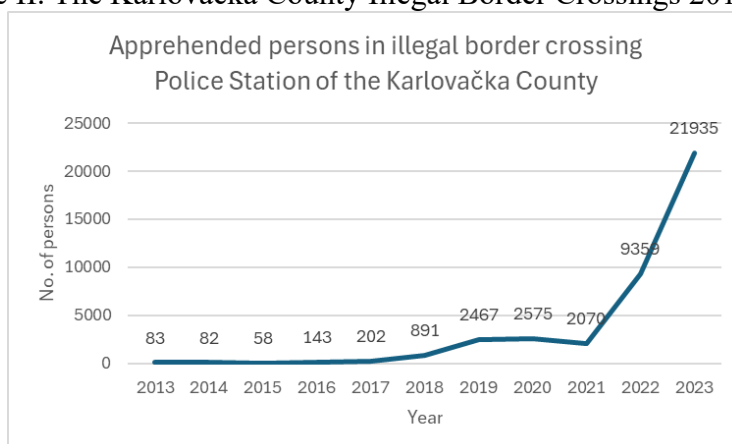
Official government data (2013 – 2023) shows that although the number of people apprehended illegally crossing Croatia's state border with Serbia has been declining since 2019, when it peaked, it has risen sharply in Karlovačka County on the western border with Bosnia and Herzegovina (Figure I and Figure II).

Figure I. The Vukovar-Srijem County Illegal Border Crossings 2013 -2023



Source: The official annual reports of the police stations in Vukovar-Srijem County (2013-2023). <https://vukovarsko-srijemska-policija.gov.hr/statistika-81/81> [accessed on March 26 2025].

Figure II. The Karlovačka County Illegal Border Crossings 2013-2023

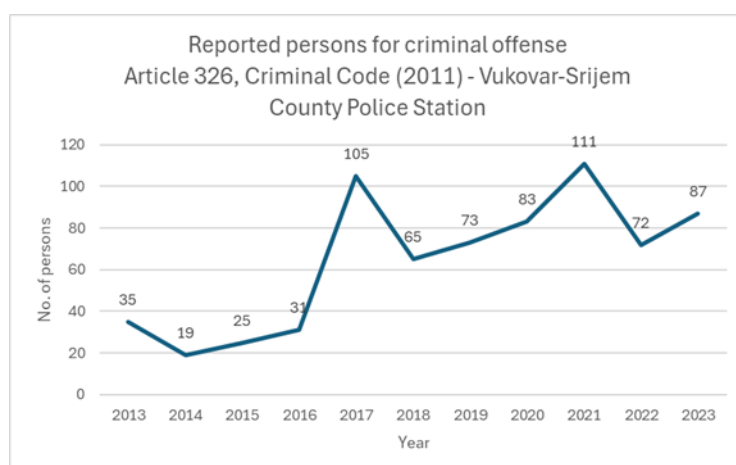


Source: The official annual reports of the police stations in Karlovačka County (2013-2023). <https://vukovarsko-srijemska-policija.gov.hr/statistika-81/81> and <https://karlovacka-policija.gov.hr/statistika/81> [accessed on March 26 2025].

Illegal border crossings have not diminished, and illegal activities are constantly present at the Croatian western and eastern borders of the Western Balkans route. In 2023, the state attorney's offices in Croatia received a total of 1,709 criminal charges for criminal offenses under Article 326 of the Criminal Code of Croatia, which represents an increase of 86 per cent compared to the previous year.<sup>8</sup> In 2022, 184 criminal charges were filed with the state attorney's office which means an increase in criminal offenses under Article 326 of 183.70 per cent in 2023. After a peak recorded in all accounts in 2019, the number of persons reported, charged and convicted of a criminal offence under Article 326 of the Croatian Criminal Code decreased during the COVID-19 pandemic period, only to rise sharply again from 2022 onwards. Namely, 60 per cent of all criminal offenses under Article 326 of the Criminal Code of Croatia in 2023 were reported in Karlovačka County. In 2024, the number of criminal charges for offences under Article 326 of the Criminal Code of Croatia increased to 1,845 (7.95 per cent), which is double the number in 2020.<sup>9</sup> There is a 45 per cent increase in the number of criminal charges for offences under the same article for more serious crimes compared to the previous year.

The courts in Vukovar-Srijem County have also seen a steady increase in criminal cases under Article 326 of the Criminal Code of Croatia (Figure III), and the same trend can be observed in the courts of the Karlovačka County and state attorney's offices.

Figure III. Reported persons for a criminal offense Article 326 in Vukovar-Srijem County Police Station



Source: Police Station of the Vukovar-Srijem County official website. Yearly Reports (2013-2023). <https://vukovarsko-srijemska-policija.gov.hr/statistika-81/81> [accessed on 3 January 2025].

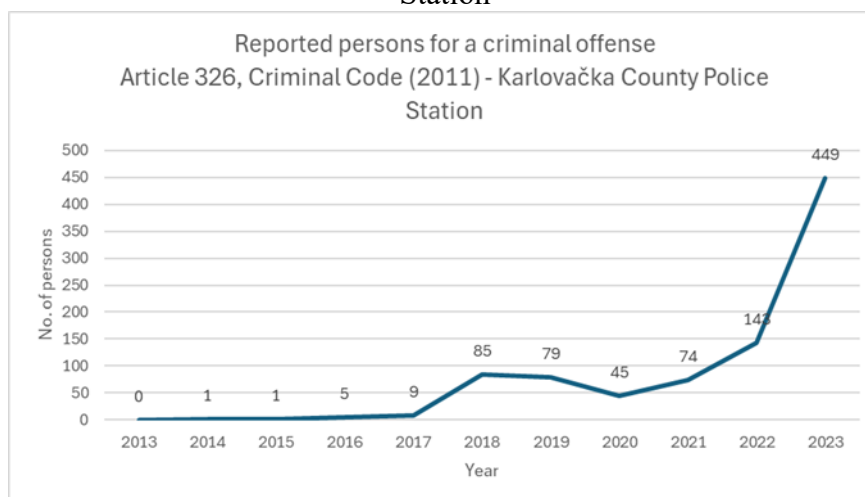
It is important to note that in the period 2016 - 2019, municipal courts in Vukovar-Srijem County issued the highest number of convictions in Croatia for criminal offences under Article 326 of the Croatian Criminal Code. In total, the County Court in Vukovar pronounced 1666 convictions under this article, the Municipal Court in Vukovar 178 and the Municipal Court in Vinkovci 498. The Municipal Court in Karlovačka County issued 177 final judgments for criminal offences under Article 326 of the Criminal Code of Croatia for the period from January

<sup>8</sup> Data source is the Ministry of Justice, Public Administration and Digital Transformations' report of the state attorney's office in Croatia for 2023 published in 2024. <https://dorh.hr/hr/izvjesca-o-radu/izvjesce-o-radu-drzavnih-odvjetnistava-u-2023-godini> [accessed on 17 January 2025].

<sup>9</sup> Data source is the Ministry of Justice, Public Administration and Digital Transformations' report of the state attorney's office in Croatia for 2024 published in 2025. <https://dorh.hr/sites/default/files/dokumenti/2025-04/Izvje%C5%A1%C4%87e%20o%20radu%20dr%C5%BEavni%C5%A1tava%20za%202024.%20godinu.pdf> [accessed on 4 November 2025].

1, 2020, to May 1, 2024, of which 176 were acquittals and 1 was a rejection (Maser and Štrucelj 2024: 396). Similar to Vukovar-Srijem County, the court records of Karlovac Municipality show a sharp increase in the number of indictments filed for criminal offences under Article 326 of the Croatian Criminal Code since 2019 (Figure IV).

Figure IV. Reported persons for a criminal offense Article 326 in Karlovačka County Police Station



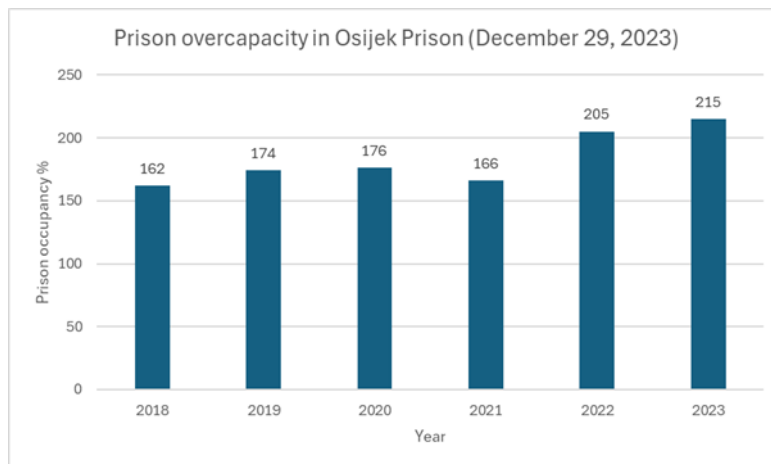
Source: Police Station of the Karlovačka County official website. Yearly Reports (2013-2023). <https://karlovacka-policija.gov.hr/statistika/81> [accessed on 3 January 2025].

How has this sharp increase in convictions affected the prison system in Croatia? Now, the prison system in Croatia supports the work of state attorney's office and the courts in cases under Article 326 of the Criminal Code of Croatia. The Croatian prison system consists of 25 organizational units: 6 penitentiaries with hospitals, 14 prisons, 2 correctional institutions and 2 centres (training centre and diagnostic centre).<sup>10</sup> Most of those convicted are citizens of non-EU countries (Masar and Štrucelj 2024). The number of persons deprived of liberty who are in the Croatian prison system and who have been convicted of criminal offences under Article 326 of the Criminal Code of Croatia has risen sharply. Data analysis<sup>11</sup> indicates that the system currently lacks around 1,000 prison places. The system is overcrowded and houses about 5,000 prisoners. 45 per cent of prisoners are in pre-trial detention and 19 per cent of the total prison population are foreign nationals (Figure V). The Croatian prison system therefore often violates Articles 23 and 25 of the Croatian Constitution and Article 3 of the European Convention on Human Rights. Thus, the system itself is strongly influenced by the trends identified in the judiciary.

<sup>10</sup> Detailed information on the Croatian prison system can be found on the official website of the Croatian Ministry of Justice, Public Administration and Digital Transformation. <https://mpudt.gov.hr/zatvorski-sustav/6150?lang=hr> [accessed 17 January 2025].

<sup>11</sup> The analysis was carried out on the basis of the selected data from the official website of the Croatian Ministry of Justice, Public Administration and Digital Transformation. <https://mpudt.gov.hr/zatvorski-sustav/6150?lang=hr> [accessed 17 January 2025].

Figure V. Example of prison overcapacity due to illegal migration – Osijek Prison (2018-2023)



Source: The analysis was carried out on the basis of the selected data from the official website of the Croatian Ministry of Justice, Public Administration and Digital Transformation. <https://mpudt.gov.hr/zatvorski-sustav/6150?lang=hr> [accessed January 17 2025].

Case law on people smuggling and irregular migration in Croatian territory demonstrates that supporting and facilitating illegal border crossings has become a lucrative business and source of livelihood not only for Croatian citizens and citizens of EU MS, but especially for third-country nationals, as indicated by the latest report of the State Attorney General for 2024. Also, in their study on migrant smuggling as a criminal offence under Article 326 of the Croatian Criminal Code in Karlovčka County, Masar and Štrucelj (2024: 396) report new developments – the court records report three criminal proceedings against minors who committed offences under this article. Furthermore, the criminal offences under the same article, based on the case law (Karlovci Municipality Court, Slavonski Brod County Court and Vukovar Municipality Court), shows that the illegal transportation of migrants in the period 2023-2024 is becoming increasingly violent, inhumane and degrading. Such actions are also reckless and inconsiderate towards local communities and citizens as smugglers try to evade police patrols, resulting in traffic accidents with tragic outcomes. The increased number of offences under Article 326 of the Croatian Criminal Code shows how criminal networks are constantly adapting to new circumstances and jurisprudence, advising and guiding perpetrators and migrants when they are caught committing illegal acts at Croatian borders. Police officers tasked with border surveillance duties and those conducting criminal investigations into apprehended offenders also have the difficult task of keeping up with legal and time constraints in order to provide evidence for preliminary criminal proceedings and the municipal courts. The State Attorney General's report for 2024 on criminal investigations and proceedings before municipal and county courts shows how difficult it is to prosecute and charge such crimes in Croatia due to organizational and time constraints. When prosecuting offenders under Article 326 of the Croatian Criminal Code, prosecutors often have to deal with emergency cases. The offenders and illegal migrants are foreign nationals with language barriers that require court interpreters, which are difficult to find in Croatia at short notice. Evidentiary hearings and pre-trial detention often coincide, so the Croatian authorities do not have the staff to keep up with the increasing number of court cases. The problems of public prosecutors and judges as well as police officers and the administration are further compounded by the somewhat lenient penalties, which do not deter offenders from repeatedly committing the same crimes. The Croatian case therefore provides evidence of how people smuggling by international criminal networks seriously endangers not only migrants but also the system that tries to protect them.

## VI. DISCUSSION AND CONCLUDING REMARKS

If the latest Frontex statistics on irregular migration to the EU (February 2025) show a 25 per cent reduction in irregular border crossings, why is it so difficult to resolve the outstanding issues in this context? Why is it still difficult to regulate and control irregular migration to Europe/EU? Should one approach this question with a dilemma – is it the irregularity or the illegality of today's mixed migration to Europe/EU that needs to be solved?

So far, the indecision of politicians to reach a consensus on the harmonization and implementation of immigration policy goes hand in hand with the inability of social scientists (Düvell 2006; Jansen, Celikates and De Bloois 2015; De Genova and Tazzioli 2016; Spencer and Triandafyllidou 2020; Anderson and Blinder 2024) and NGOs (Rother 2022) to understand migrants beyond the victims of difficult living conditions and exploitation. The political course since the third Dublin Regulation, followed by the Marrakesh Political Declaration and Action Plan, both now replaced by the new revised Pact on Migration and Asylum, demonstrates a lack of political decision-making and a democratic deficit of the EU as a supranational institution. Ad hoc and reactive solutions to 'mixed migration' (MMC Europe Quarter 4 2024: 3) are today supported by intensive militarization and governmentalization of the external borders, while the externalized care of stranded irregular migrants is generously funded by the EU and managed by borderline MS and accession countries of the Western Balkans (Ulusoy 2025). It is now clear how the migration policy implemented over the last ten years has securitized the societies at the end of the migration routes to Europe/EU. The need for additional surveillance and control, not only at borders but also along transit routes through the MSs, is constantly perpetuated by the demand for illegal cross-border smuggling and assistance to migrants. It is this demand that feeds the criminal networks supply, which represent security threat to local communities and life risks to migrants trying to reach desired destinations in Europe/EU. If today the lines between regular/irregular and legal/illegal migrants are blurred by the 'epistemic violence and testimonial justice' (Davies, Isakjee and Obradovic-Wochnik 2023: 173) at the edge of European/EU borders, then why are immigration laws, as Thomas Sowell<sup>12</sup> noted long ago, the only laws discussed in terms of how to help people who break them?

Today, alongside liberal Western politicians, critical scholars also struggle with the concept of individual responsibility for one's own actions when it comes to irregular migration to Europe/EU (Al-Khudairy 2024; Cvikić 2024). Political decision-makers, NGOs and academics predominantly advocate a rights-based perspective on the global governance of migration from below (Rother 2022: 1). Mixed migrations are now a reality that is being reappropriated for the aims and interests of those who seek to control the presence of migrants on European/EU territory and those who fight for their rights. In both cases, however, the central feature of irregular migration to Europe/EU is illegality. The unfolding of illegality within the demand-driven economy of irregular migration to Europe/EU is indicative of harmful political compromises and trade-offs on the part of politicians on the one hand and human rights activism generated by the scientific narratives of victimhood, violence and injustice on the other. So far, based on official institutional statistics (national and international), the irregular influx of migrants to Europe/EU has created conditions that have led to more rather than less crime in countries of departure, transit and arrival (Adamson 2020). Whatever the migrants' aspirations and circumstances that led them to embark on a long and dangerous journey to Europe/EU, the conscious decision to use smuggling services makes them responsible for their own actions. Such circumstances are therefore co-created by both the illegal migrants and smugglers. The

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<sup>12</sup> See interview with Thomas Sowell. <https://www.youtube.com/watch?v=k6oiqyTCmR8> [accessed 17 January 2025].

political response in such matters lies in technocratic solutions involving more specialized departments, agencies and law enforcement (Rother 2022). In this regard, critical migration scholars claim that the responsibility lies with them and not with the irregular migrants (Spencer and Triandafyllidou 2020). However, instead of proposing a solution they as scholars have managed to achieve what De Genova and colleagues proposed ten years ago – to deconstruct and destabilize the epistemology and theory of contemporary academic and professional migration discourse (Cvikić 2024). Today, key concepts and categories of contemporary migration to Europe/EU are treated as scientifically based injustices (De Genova and Tazzioli 2016; Spencer and Triandafyllidou 2020) and thus contribute significantly to the epistemic crisis (Roitman 2014; Friedman 2023) surrounding issues of irregular migration. Reduced to epistemologies and incorporated into activists' struggles for human rights, irregular migrants are trapped in the metalanguage of critical migration studies, which today spill over into the institutionalized forms<sup>13</sup> of reappropriated academic discourse and, contrary to expectations, enable a continuous reification of illegality.

Therefore, irregularity conflates policies and downplays illegality of migrants' actions and decisions, thus creating resistance from host countries local populations. Although the Croatian case is limited in scope, it shows how the irregularity of illegal migration to Europe/EU obscures rather than contributes to consensual solutions to this increasingly security-driven problem. Conducted analysis on the illegal arrival and stay of migrants, based on the Croatian case, reveals two important facts. First, people smugglers and irregular migrants are not discouraged by the current legal penalties, police surveillance measures and risks. Secondly, it is obvious that the accumulated knowledge and previous experiences have helped migrants to realize that the most important thing on their journey is to physically reach the European/EU territory and stay there – how they get there, what means they have to use and how much they must pay is secondary. This type of migration leads to more violence and crime, which is not good for the migrants themselves and for the citizens of the transit and host countries where they want to live. The overburdened judicial and police system and overcrowded prisons in Croatia cannot sustain irregular migration managed by the Pact on Migration and Asylum in the long term. The blunt reality of the Croatian case provides the evidence and thus supports the hypothesis that illegal migration contributes to the rise in crime.

In summary, a consensus between policy makers and scholars is needed to treat irregular migrants in terms of illegality and responsibility for one's actions and choices when the assistance they choose is people smuggling, which is synonymous with victimization, misfortune, exploitation and violence. Furthermore, the illegality of mixed migration to Europe/EU will inevitably create new social strata in host societies – underground communities vulnerable to exploitation, violence and abuse – non-citizens confronted with the harsh reality of resistance from the indigenous population to their integration into local host communities. Thus, the problem of irregular migration to Europe/EU is now exacerbated by geostrategic power shifts, newly formed political alliances and ongoing wars (Mészáros and Toca 2023). Therefore, a solution that is nowhere to be found speaks volumes about the failure of human rights to provide protection to those who really need it – refugees and asylum seekers – as they are absorbed in the multitude of migrant statuses and situations of irregular mixed migration to Europe/EU.

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<sup>13</sup> According to Resolution 1509 (2006) of the Parliamentary Assembly of the Council of Europe, the term 'illegal' is preferred when it refers to 'a status or process', while 'irregular' is preferred when it refers to 'a person'.

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