

MIGRANT SMUGGLING IN BOSNIA AND HERZEGOVINA: THE OTHER SIDE OF THE REFUGEE CRISIS

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Abstract: The smuggling of migrants is not a new phenomenon but in recent years it has attracted increasing international attention. In the last few years, migrant smuggling has become one of the most lucrative types of organized crime in the Balkans. This research article focuses on the issue of migrant smuggling as a contemporary transnational organized crime which is getting structurally stronger and more established. According to Frontex, the Western Balkans continues to be the most active migratory route into the European Union. From the beginning of the 2022 the number of irregular border crossings detected rose by 152% compared to 2021. The paper will present and analyse the official data of the judicial authorities. Also, a brief overview of the security implications of migrant smuggling to national security from 2015 until today will be given.

Keywords: migrant smuggling, Western Balkans route, refugee crisis, migrants, national security

Introduction

Throughout history, people have migrated from one place to another in search of a better life. The reasons for ongoing migrations are diverse, but they often boil down to fleeing from war conflicts, poverty, political persecution, or natural disasters. Migrants often risk their lives in pursuit of a better and safer future, with their most common destination being European Union countries. They hope for better living conditions, employment opportunities, and access to education. However, unlike refugees who are protected by international law, specifically the 1951 Refugee Convention, migrants fall under the jurisdiction of national governments and their laws. In recent years, Europe has faced its biggest migration challenge since World War II, and due to its specific geopolitical position, Bosnia and Herzegovina has come under significant pressure from the influx of migrants.

Migrant smuggling represents an illegal activity taking place worldwide. This topic is highly complex and has serious consequences for both migrants and the states affected by this phenomenon. Migrant smuggling refers to the illegal transportation of individuals across state borders, often facilitated by organized criminal networks. Migrants who decide to take this step are usually victims of hardships in their countries of origin, such as wars, poverty,

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political instability, or human rights violations. Smugglers exploit this vulnerability, promising them a safe border crossing and better living conditions. There are numerous reasons for migrant smuggling. Migrants often feel they have no other option but to rely on smugglers in order to provide a better future for themselves and their families. Many countries have strict immigration policies and procedures that make legal entry and stay for migrants difficult. This creates an opportunity for human smugglers to exploit the situation and profit from the suffering and desperation of migrants.

Human smugglers typically employ various methods to transport migrants across borders. This includes smuggling by land, rivers, or sea, using fake identities and documents, hiding migrants in vehicles, or smuggling them through secret routes and illegal crossings. These methods are often dangerous and can lead to the loss of human lives. Many migrants are at risk of abuse, violence, exploitation, and human trafficking during their journey.

Migrant smuggling has serious consequences for both migrants and the societies they arrive in. Migrants are often exposed to extreme travel conditions, such as lack of food and water, exposure to harsh weather, and a lack of basic hygiene facilities. Many migrants experience physical and emotional violence during their journey, which can have lasting effects on their physical and mental health. Destination countries also face numerous challenges. The illegal influx of migrants can strain infrastructure, social services, and the security agencies of a country. An increased number of migrants can lead to an elevated risk of drug smuggling, human trafficking, and terrorism. Additionally, managing the asylum process and integrating migrants into society is a challenge. Therefore, the following sections will provide a detailed presentation of the situation in Bosnia and Herzegovina. This presentation will encompass a thorough analysis of the judgments of the Court of Bosnia and Herzegovina, which is responsible for prosecuting smugglers, as well as the implications that migrant smuggling has on the societal context.

The smuggling of migrants as a security concern

At the outset, it is crucial to address several significant phenomena that require further clarification and elaboration to establish them scientifically and contribute to a clearer understanding. The incorrect terminology of labelling an irregular migrant as an illegal migrant creates a negative perception of all migrants and can incite reactions that jeopardize their safety. Therefore, it is important to begin by examining this term. According to the recommendations by the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR) titled "Reporting on Migration and Refugees, Recommendations for Journalists," an irregular migrant should be defined as "a person who lacks legal status in the transit country or the host country due to unauthorized entry, violation of entry conditions, or visa expiration". This definition encompasses individuals who have legally entered the transit or destination country but have exceeded their authorized stay or engaged in irregular employment (also referred to as irregular migrants or migrants in an irregular situation). The term "irregular" is preferable, as "illegal" or "unlawful" carries a criminal connotation (United Nations, 2018). Additionally, the International Labour Organization (ILO) and the European Union (EU) also employ the term "irregular migration".

Beyond the classification of migrations into legal, which are beneficial and desirable for society as a whole, and irregular migrations, there are further distinctions based on

suppressed “pull factors” (such as adverse economic conditions, high crime rates, exploitation of natural resources, etc.) and attractive “push factors” (such as a higher economic standard). These factors indicate the motivations driving migrants to change their place of residence, with the most common motives being the pursuit of a better quality of life and economic stability (economic migration), escape from religious, ethnic, racial, and political persecution (political migration), fleeing from wars and violence (refugees), seeking refuge from weather-related and natural disasters, epidemics, etc., escaping criminal responsibility (terrorists, war criminals, drug dealers, etc.), and engaging in facilitated involvement in criminal activities. The freedom of movement, the right to choose a place of residence, seeking asylum, leaving one’s country of birth, and returning to it are guaranteed by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention on the Protection of Human Rights and Fundamental Freedoms. Moreover, the rights of refugees are safeguarded by numerous international treaties, including the 1951 Convention on the Status of Refugees, the 1967 Protocol relating to the Status of Refugees, and United Nations General Assembly Resolution 2198 (XXI). Nevertheless, these documents also impose restrictions on the exercise of these rights, which may be implemented in the interests of national security, prevention of criminal activities, preservation of public health, protection of the rights and freedoms of others, and other considerations, all in accordance with the laws of the respective countries.

The recent large influx of migrants, attributed to events in the Middle East, particularly the “Arab Spring,” strained relations between Pakistan and India, and dire economic conditions prevailing in many countries, including those bordering on poverty, and intensified the issue. Capitalizing on these developments, migrants have been moving irregularly from east to west, often toward the countries of the European Union, circumventing regular legal procedures. Syrians, Afghans, Pakistanis, Iraqis, Iranians, followed by Indians, Algerians, Bangladeshis, Moroccans, and others, constitute the majority of irregular migrants. This movement outside the bounds of established legal norms has transformed the phenomenon from one guaranteed by the freedom of movement into a significant security challenge and risk, occasionally posing security threats to all countries, including those situated on the migration route, such as Bosnia and Herzegovina.

Over the past few decades, migrant smuggling has emerged as an increasingly salient issue discussed by the general public, policymakers, practitioners, and the academic community. In both media and public (political) discourse, smugglers are frequently depicted as ruthless profiteers who exploit vulnerable and disadvantaged migrants, thereby subjecting their lives to grave risks in the process.

The UN protocol against the Smuggling of Migrants is the world’s primary legal instrument to combat migrant smuggling. The Protocol defines migrant smuggling as „the facilitation, for financial or other material gain, of irregular entry into a country where the migrant is not a national or resident. The criminals behind this highly profitable business seize the opportunity created by the need or desire of people to escape not just poverty and lack of employment opportunities but also natural disaster, conflict or persecution “.¹³

¹³ The Protocol was adopted by the United Nations in November 2000 as part of the United Nations Convention against Transnational Organized Crime. It is the first global international instrument to contain an agreed definition of smuggling of migrants. It addresses the growing problem of organized criminal groups who smuggle migrants primarily for money. The Protocol aims at reducing the smug-

If the underlying causes of migration remain unaddressed, and legal pathways for movement are inaccessible to vulnerable individuals who perceive no alternative but to leave their homes. They will subject themselves to significant risks driven by desperation. Research findings and field evidence from security agencies worldwide indicate that expanding legal channels enhances the safety, orderliness, and regularity of migration (Clemens and Gough, 2018). Conversely, the contraction of legal avenues forces individuals, determined to migrate at any cost, into the shadows. Consequently, irregular migration often leads to repeated violations of the human rights of vulnerable individuals while empowering actors engaged in human trafficking and other illicit activities, posing threats to both migrant safety and national security. Migrant smuggling ranks among the most lucrative illegal enterprises globally. According to a report by the United Nations Office on Drugs and Crime from 2017, "Based on two of the principal smuggling routes—East, North, and West Africa to Europe, and South to North America—it is estimated that the smuggling of migrants generates around \$6.75 billion annually for criminals operating in these regions alone."

These substantial profits have contributed to the growing organization, sophistication, and trans nationalization of migrant smuggling networks (United Nations Office on Drugs and Crime, 2018). Strengthened illicit smuggling networks expose migrants to a range of human rights abuses, including violence, abuse, rape, theft, kidnapping, extortion, and human trafficking. Moreover, the bolstering of such networks has broader implications for national security, as these groups are involved in the trafficking of drugs and weapons. Multiple studies and scholars have effectively demonstrated direct links between drug trafficking and smuggling networks. The Mexican drug organizations imposing fees on smugglers to facilitate border crossings serves as a well-documented example of this convergence (Sanchez, 2018). Testimonies from numerous migrants who were coerced into carrying backpacks filled with drugs across the border have also been documented. According to the director of the Mexican Security Initiative at the University of Texas at Austin, "these migrants have been pushed out of the smuggling market due to heightened border security, redirecting them toward drug trafficking operations as cheap, disposable labour."

Another critical aspect with significant security implications stemming from migrant smuggling is human trafficking. Ideally, the relationship between the smuggler and the irregular migrant should conclude upon the migrant's arrival at the desired destination. However, in certain instances, when the migrant is unable to pay the smuggler, they are compelled to maintain a continued relationship in order to settle the debt incurred for the smuggling service, leading to subsequent forms of human trafficking (debt bondage, coercion, forced labour, forced commission of criminal acts, forced prostitution). Each of these methods of human trafficking represents a distinct security threat and can be categorized as a separate criminal offense. Migration is often intertwined with human trafficking due to the vulnerability of migrants, placing them at an elevated risk of exploitation (Aronowitz, 2009). Examining the situation in Bosnia and Herzegovina, the prolonged detention of migrants on its territory due to restrictive measures implemented by the Republic of Croatia against their

gling of migrants, protecting the rights of smuggled migrants, and preventing the abuse associated with this crime. Countries that ratify this treaty must ensure that migrant smuggling is criminalized in accordance with the Protocol's legal requirements. To see more visit: https://www.unodc.org/res/human-trafficking/2021the-protocol-som_html/SOM.pdf, accessed 10.05.2023.

entry into that country inadvertently favours migrant smugglers. Thus, a detailed analysis of the situation in Bosnia and Herzegovina will be presented in the subsequent chapter.

A Concise Overview of the Irregular Migration Situation in Bosnia and Herzegovina

Migration in Europe is not a recent phenomenon but has been a longstanding occurrence. European countries have been the preferred destination for migrants from impoverished nations, primarily in the Middle East and North Africa, who aspire to secure better lives and employment opportunities in developed Western countries, particularly within the European Union. Consequently, the European Union has gradually developed a common policy to regulate the entry of undocumented migrants.

The migrant crisis reached significant proportions during the summer and autumn of 2015, marking one of the largest humanitarian crises in recent times. Increasing numbers of refugees embarked on perilous journeys to Europe, often reaching European soil by sea through Italy or crossing the Turkish border, with Izmir as a key transit point. Subsequently, they would opt for the sea route to the Greek islands. Upon arrival, the Greek authorities would transport them by ferry to Macedonia, and their onward movement would be directed along the so-called "Balkan route." The majority of refugees originated from countries such as Syria, Afghanistan, Iraq, Pakistan, Algeria, Morocco, India, Bangladesh, and Iran (during the period when Serbia and Iran had a visa-free agreement). Alongside refugees, economic migrants also joined the route, taking advantage of the refugee crisis to gain access to European territory and seek a better life in European countries.

At the onset of the massive influx of population, the European Union, particularly Germany, advocated for an "open-door policy" toward migrants. This policy found strong support, primarily from Germany. Prior to the escalation of the migrant crisis, European Union member states generally aligned with the German government's stance and were willing to provide temporary protection and asylum to migrants. However, with the intensification of the crisis and the unprecedented influx of people at the European Union borders, the entire Dublin Regulation, which encompassed asylum regulations followed by all member states, was called into question, leading to the temporary suspension of the Schengen area. Insufficient cooperation and a lack of willingness among member states to assume responsibility and share the burden of receiving migrants on their own territories resulted in decisive actions by individual governments that placed other member states in unfavourable positions. Consequently, Hungary and Slovenia erecting wire fences sparked heated reactions and divergent opinions. Hungary justified its actions by citing an overload in migrant capacity, stating an inability to continue accepting refugees, while Slovenia justified its fence as a precautionary measure to safeguard national security and prevent becoming a buffer zone between the European Union and other European countries from which refugees were arriving. These decisions by Hungary and Slovenia altered the migration routes, resulting in the emergence of new pathways, with Bosnia and Herzegovina increasingly becoming a buffer zone on its border with Croatia since 2016. Since early 2018, Bosnia and Herzegovina have experienced a significant surge in the number of migrants and refugees entering the country. As a result, competent institutions faced challenges in terms of human and financial resources.

The situation in Bosnia and Herzegovina concerning the increased influx of migrants was complex, given the connection between the humanitarian and security aspects of the newly formed circumstances. A significant challenge was the lack of accommodation facilities for migrants, leading to their settlement in city parks and other public areas, where makeshift tent camps were established. At that time, Bosnia and Herzegovina had an asylum seekers' accommodation centre in Delijaš, Trnovo municipality, operating at full capacity. The Ministry of Human Rights and Refugees of Bosnia and Herzegovina transferred the Salakovac Reception Centre near Mostar to the Ministry of Security for housing migrants. From July to October 2018, four temporary reception centres were established in the Una-Sana Canton: "Bira," "Miral," "Sedra," and "Borići." In October 2018, the "Ušivak" centre was established in Hadžići near Sarajevo. The centre in Blažuj near Sarajevo opened in December 2019, and the tent settlement in Lipa near Bihać began operation in April 2020.

To provide insight into the migration trends and illegal crossings of Bosnia and Herzegovina's state borders, the following overview presents an account of foreign movement and illegal migration between 2017 and the end of November 2020, based on reports from the Service for Affairs with Foreigners in Bosnia and Herzegovina.¹⁴

In 2017, there were only a negligible number of recorded instances of illegal entries into Bosnia and Herzegovina. However, starting from the beginning of 2018, the number of registered illegal migrants in the country has grown exponentially. In 2018, a total of 23,902 illegal migrants were recorded entering Bosnia and Herzegovina, compared to just 473 cases in 2017. This trend continued in 2019, with 29,302 illegal migrants entering the country, and in 2020, 16,183 illegal migrants were registered.

The majority of these individuals enter Bosnia and Herzegovina from Serbia, while a smaller portion arrives from Montenegro. They utilize various locations in the border zone that are not official border crossings. The continuous increase in the number of illegal migrants has placed enormous pressure on the institutions responsible for border control, migration, and asylum. Bosnia and Herzegovina serve as a transit country for these migrants, as they aim to reach the European Union. The regions most burdened by the influx of illegal migrants are Sarajevo Canton (KS) and Una-Sana Canton (USK). As of November 30, 2020, a total of 6,629 illegal migrants were accommodated in centres and camps within the KS, USK, and HNK areas.

It is of paramount importance to identify several key factors that have significantly influenced the evolution of the situation concerning undocumented migrants. Firstly, the authorities' reluctance to adequately address the urgent humanitarian needs and uphold the human rights of individuals falling under the jurisdiction of Bosnia and Herzegovina, as stipulated by the country's constitution, which gives precedence to the European Convention on the Protection of Human Rights and Fundamental Freedoms. Secondly, there exists an unequal approach among the entities in tackling the issue of providing accommodation for migrants and refugees within the territory of Bosnia and Herzegovina, mainly due to the lack of political consensus. In June 2018, Milorad Dodik, the president of the Republika Srpska entity, outright refused to establish reception centres for migrants within its territory, stating, "They can only have transit and rely on our humanitarian organizations for food and beverages, but there will be no stationary centres." Such attitudes were put into practice, resulting

¹⁴ To see more visit: <https://sps.gov.ba/izvjestaji-o-radu/>, accessed 12.05.2023.

in the establishment of reception centres solely within the entities of the Federation of Bosnia and Herzegovina, specifically in two cantons—Sarajevo Canton and Una-Sana Canton—which shouldered the entire burden of the migrant crisis. Although the development and implementation of migration and asylum policies in Bosnia and Herzegovina lie exclusively within the purview of state-level institutions, certain instances were recorded where lower levels of government questioned the decisions of state authorities or pursued their own policies. On May 18, 2018, during the relocation of migrants from the improvised camp in the Great Park near Sarajevo City Hall to the Refugee Centre in Salakovac near Mostar, the police officers of the Herzegovina-Neretva Canton Ministry of Internal Affairs halted the migrant column, preventing them from proceeding further. This incident, labelled as a “*coup d’état*” by the then Minister of Security of Bosnia and Herzegovina, Dragan Mektić, showcased the challenge posed by lower levels of government.

When migrants began arriving in smaller groups in Bosnia and Herzegovina in 2018, the population displayed compassion towards them, particularly the inhabitants of Bihać and Velika Kladuša. The citizens of Velika Kladuša organized assistance initiatives for migrants from the very beginning of 2018. They welcomed them into their homes, coordinated the distribution of food, clothing, and shoes, and even manufactured these items themselves in their houses and restaurants. Zehida Bihorac-Odobasic, the director of the First Primary School in Velika Kladuša, along with her colleagues and students, has been actively involved in supporting migrants since day one. She stated, “We are here to help. The first primary school has made significant efforts for these people. We initiated the ‘One student - one can for refugees and migrants’ campaign, and continued with other initiatives. The school also organizes workshops with children in refugee camps. We play, draw, write, and sing with them.” While discussing the numerous daily activities they undertake, she added, “Each refugee and migrant has their own story, yet all these stories are strikingly similar. It is difficult for us to come to terms with the situation when they attempt to resume their journey, and when they return from Croatia daily with injuries and broken cell phones.” With an increasing number of migrants arriving in Bosnia and Herzegovina, and due to the absence of adequate reception centres or the overcrowding of existing migrant facilities, migrants began resorting to sleeping in parks and other public spaces, establishing improvised tent settlements. The heightened influx of migrants also brought about certain challenges, including conflicts among the migrant population, the occurrence of criminal acts committed by migrants, and conflicts with the local inhabitants. In the Una-Sana Canton, where the largest concentration of migrants was observed, a rise in violations of public order and peace by migrants, as well as the commission of various criminal offenses, was recorded. The lack of reactions in terms of prosecution further fuelled resentment among the local population, eventually leading to expressions of dissatisfaction through protests in Bihać, Velika Kladuša, and Sarajevo.

Nevertheless, the perception of the local population was also heavily influenced by media coverage of the migrant situation. Research conducted by Kržalić and Kobajica (2021) indicates that the media in Bosnia and Herzegovina, particularly through prominent coverage on selected internet portals, focused on security issues associated with migrants and the migrant crisis. These reports often highlighted illegal and detrimental behaviour of migrants, which posed a threat to individual and social values. Additionally, the media covered topics such as border protection, control and management measures, disease prevention, and the spread of infections during migrations. Politically charged issues, including legal systems,

regulations, interstate and interinstitutional cooperation, and anti-migration rhetoric, were also frequently addressed.

The research emphasizes that a substantial number of negatively oriented announcements were sensationalized and politicized by political officials for their own purposes. This approach could contribute to reinforcing stereotypes, stigmatization, and discrimination against the refugee and migrant population among the Bosnian public. Furthermore, it may foster distrust toward relevant state institutions responsible for managing and controlling migration flows.

According to Ahić (2018), the rise in the number of refugees and migrants has also resulted in an increase in illegal border crossings, with "illegal migration becoming increasingly linked to organized criminal groups that primarily control the smuggling of migrants and human trafficking." To gain a better understanding of the current situation in this area, a detailed analysis of the judgments of the Court of Bosnia and Herzegovina will be presented.

A Judicial Analysis of Court Judgments in Bosnia and Herzegovina: Cases of Smuggling of Migrants

According to the Europol report (2017), organized criminal groups have reaped significant financial profits from mass migrations, generating between 3-6 billion EUR in profits from smuggling migrants in 2015. The complexities of mixed migration flows pose unique challenges for the global justice system, as the distinction between smuggling and human trafficking crimes becomes increasingly blurred. This can result in situations where human trafficking perpetrators are mistakenly charged with smuggling offenses, while the victims of human trafficking are left without the necessary assistance and protection they require.

From a judicial perspective, it is crucial to understand and address mixed migration flows. Differentiating between smuggling and human trafficking poses a challenge for the justice system. Migrant smuggling refers to the illegal transportation of individuals across borders and providing assistance in their crossing. On the other hand, human trafficking involves exploiting people for purposes such as forced labour, sexual exploitation, or other forms of abuse.

In mixed migration flows, smugglers and traffickers often utilize similar routes, methods, and networks, making it difficult to identify, prosecute, and punish human trafficking perpetrators. Moreover, victims of human trafficking may be misidentified as illegal migrants, depriving them of access to necessary support and protection.

In addition to the challenges associated with differentiating crimes, mixed migration flows present further obstacles for the justice sector. The increased number of migrants and refugees may lead to a rise in other crimes, with migrants and refugees both being victims and perpetrators. These crimes can include drug trafficking, theft, violence, sexual assault, and other forms of criminal activity. The judicial system must effectively handle these additional burdens while ensuring a fair trial and protecting the rights of all parties involved.

In the Criminal Code of Bosnia and Herzegovina, two criminal offenses related to the smuggling of migrants are outlined: smuggling of persons and organizing a group or association to commit the criminal act of migrant smuggling. Article 189 of the aforementioned law defines the following:

“(1) Whoever, with the intention of obtaining some benefit for himself or another, illegally transfers or facilitates the transfer of one or more migrants or other persons across the state border, or who for this purpose creates, acquires, or possesses false travel or identity documents, shall be punished by imprisonment from one to ten years. (2) Whoever recruits, transports, hides, provides protection, or otherwise facilitates the stay of smuggled persons in Bosnia and Herzegovina shall be punished by a prison sentence of six months to five years. (3) If the offense referred to in paragraphs (1) and (2) of this article was committed as part of an organized group or a group for organized crime, by abuse of official position or in a way that endangers the life, health, or safety of smuggled persons or they were treated in 8 for the purpose of exploitation or in another inhuman or humiliating way, the perpetrator will be punished with imprisonment from three to fifteen years. (4) Whoever commits the offense referred to in paragraphs (1) and (2) of this article against a person who has not reached the age of 18 will be punished with the punishment from paragraph (3) of this article. (5) If the offense referred to in paragraphs (1) and (2) of this article results in the death of one or more smuggled persons, the perpetrator shall be sentenced to imprisonment for at least five years. (6) Objects or means of transport used for the commission of the crime shall be confiscated.”

Furthermore, the organization of a group or association to commit the criminal act of smuggling migrants is defined by Article 189a, which states:

“(1) Whoever organizes a group or other association for the commission of the criminal offense referred to in Article 189 of this Law (human smuggling) shall be punished by a prison sentence of at least three years. (2)

The Court of Bosnia and Herzegovina holds competence in prosecuting the two aforementioned criminal acts.¹⁵ Section III of the Court is responsible for the criminal offense of smuggling migrants, as defined by Article 189 of the Criminal Code of Bosnia and Herzegovina, while Section II deals with the criminal offense of organizing a group or association to commit the crime of migrant smuggling. These two institutions play a pivotal role in the prosecution of smugglers.

The Border Police of Bosnia and Herzegovina plays a critical role in identifying migrants and smugglers, as well as submitting crime reports. Subsequently, the Prosecutor's Office of Bosnia and Herzegovina takes action by initiating criminal proceedings and ultimately filing indictments. In 2018, the OSCE mission in Bosnia and Herzegovina conducted an extensive study titled “Assessment of the situation regarding migrants and refugees in Bosnia and Herzegovina - Overview of the activities of key actors on the ground,” which specifically examined the effectiveness of the Court of Bosnia and Herzegovina in processing cases of people smuggling. The research findings revealed that the Prosecutor's Office of Bosnia and Herzegovina faced challenges in providing information on cases where migrants and refugees were victims of criminal acts. According to the report, “The BiH Prosecutor's Office received 50 criminal reports against 87 persons for criminal offenses related to smuggling in the first half of 2018, in which 17 indictments were filed against 22 persons.” On the other hand, the Court of Bosnia and Herzegovina concluded a relatively small number of smuggling cases during the same period, with 10 smugglers convicted in nine cases. Among the 10 convicted individuals, nine received suspended sentences, while one was sentenced to 10 months of imprisonment (OSCE, 2018). The lenient criminal policy raised concerns for the OSCE Bosnia

¹⁵ To see more, visit: <https://sudbih.gov.ba/Content/Read/organizaciona-struktura>, accessed 15.05.2023.

and Herzegovina regarding the effectiveness of preventive measures to deter perpetrators from engaging in human smuggling, particularly in the event of continued migration flows.

To gain insights into the current situation, a detailed analysis of the Court of Bosnia and Herzegovina's judgments in cases related to the two aforementioned criminal offenses will be conducted. The report titled "Smuggling of migrants - Practice of the Court of Bosnia and Herzegovina, period from 2018 to 2021" will be utilized for this analysis.

Between January 2018 and December 2021, the Court of Bosnia and Herzegovina completed 143 trials concerning the two criminal offenses related to smuggling of migrants. Out of this total, 112 completed cases were from Section III, pertaining to the criminal offense of smuggling migrants, while Section II of the Court concluded 31 cases related to the criminal offense of organizing a group or association for the purpose of smuggling migrants. Of the completed trials, 140 resulted in guilty verdicts, one in acquittal, and two in partial acquittals. The aforementioned processes led to the conviction of 187 individuals, with a total imprisonment sentence of 60 years and 6 months, along with suspended prison sentences amounting to 113 years and 7 months. The overall confiscated property exceeded EUR 100,000.00 (Court of Bosnia and Herzegovina, 2022).

The 2018 report by the OSCE mission highlighted the need for the Court of Bosnia and Herzegovina to reassess its penal policy regarding crimes related to migration, such as smuggling and human trafficking. It recommended that the court consider imposing sentences that align with the severity of the crime, the guilt of the perpetrator, and the impact on the victims. Consequently, a comprehensive study of the penal policy over the past four years, starting from 2018, becomes particularly intriguing. In relation to Department III, which handles the criminal offense of migrant smuggling, a total of 15 prison sentences of 6 months or less were issued, followed by 4 sentences ranging from 6 to 12 months. Additionally, 18 one-year prison sentences were imposed, with the highest sentence being 3 years. Therefore, a total of 37 offenders received unconditional prison sentences, averaging 10 months in duration. The most common prison sentence was 12 months, imposed on thirteen perpetrators. On the other hand, 127 offenders received suspended sentences ranging from 6 months to 2 years in prison. Based on the sample, it can be inferred that less than 30% of the imposed sanctions included a prison sentence. These findings suggest that there has been limited change in penal policy over the past decade, at least concerning this aspect (Court of Bosnia and Herzegovina, 2022).

Regarding the criminal offense of organizing a group or association to commit the crime of migrant smuggling, which falls under the jurisdiction of Department II of the Court of Bosnia and Herzegovina, out of a total of 40 offenders, 20 received suspended sentences, averaging 15 months in duration. The highest suspended sentence imposed was two years. On the other hand, 28 offenders were sentenced to imprisonment, averaging 28 months, with the maximum prison sentence for this crime being 10 years (Court of Bosnia and Herzegovina, 2022).

The Ministry of Security of BiH, specifically the Department for Combating Human Trafficking, gathered and recorded data from prosecutors' offices, law enforcement agencies, social work centres, and non-governmental organizations to compile information on the state of human trafficking in BiH. According to their findings, the number of foreign citizens victimized by human trafficking was as follows: 2 victims in 2017, 8 victims in 2018, 6 victims in 2019, and 7 victims in 2020 (Ministry of Security of Bosnia and Herzegovina, 2021). However,

these figures only pertain to reported cases. Given that victims of human trafficking are often manipulated and threatened, leading them to fear reporting their abusers, it is believed that the actual number of victims is much higher. In addition to human trafficking, the organized smuggling of multiple migrants in groups poses a significant security threat in the context of irregular migration. Taking the Mediterranean route as an example, which is considered the most dangerous yet quickest route to reach Italy, the first six months of 2021 witnessed 1,142 migrant drownings, more than twice the number in 2020, which was 513.¹⁶ Unfortunately, incidents involving accidents on rivers in Bosnia and Herzegovina have also been recorded, as exemplified by the tragic case of a five-year-old boy from a migrant family who drowned in the Una river during their illegal attempt to cross from Bosnia and Herzegovina to Croatia.¹⁷

Conclusion

Bosnia and Herzegovina grapples with unique challenges concerning migrant smuggling. Serving as a crucial transit route for migrants aspiring to reach Western Europe, the country has experienced a significant influx of migrants. Consequently, this surge has placed immense pressure on the authorities in Bosnia and Herzegovina, who face the arduous task of providing humanitarian aid, safeguarding the human rights of migrants, and combating the issue of people smuggling.

Addressing the problem of migrant smuggling requires the active involvement of the international community and relevant organizations. Prominent entities such as the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR) assume vital roles by offering support in terms of humanitarian assistance, training, capacity building, and combating human trafficking.

Effectively tackling migrant smuggling necessitates a comprehensive approach. This approach encompasses enhancing cooperation between nations, enhancing legislation, and implementing stricter penalties for individuals involved in people smuggling. Additionally, it is crucial to prioritize the protection of migrants' rights, provision of humanitarian aid, and support for their integration into society.

In summary, migrant smuggling represents a multifaceted problem with profound consequences for both migrants and societies. To combat this issue and ensure the safety and protection of migrants' rights, a comprehensive solution is imperative. This solution involves strengthening cooperation among states, garnering support from organizations, and improving legislation dedicated to combating migrant smuggling. Furthermore, it is crucial to heed the recommendations put forth by the OSCE Mission to Bosnia and Herzegovina in 2018, particularly those pertaining to penal policy. The existing leniency in penalties fails to serve the purpose of prevention and deterrence, making it vital to implement more stringent measures.

¹⁶ To see more visit: <https://www.euronews.rs/svet/fokus/8759/vise-nego-udvostrucen-broj-nesreca-za-sest-meseci-u-vodama-mediterana-utopilo-se-1146-migranata/vest>, accessed 15.05.2023.godine

¹⁷ To see more visit: <https://balkans.aljazeera.net/news/balkan/2021/7/30/bih-petogodisnji-djecak-iz-porodice-ilegalnih-migranata-utopio-se-u-uni>, accessed 15.05.2023. godine

Bibliography

- Aronowitz, A. (2009). *Human trafficking, human mystery: the global trade in human beings*. Praeger Publishers.
- BiH: Five-year-old boy from a migrant family drowned in the Una River. (2021, July 30). Retrieved from Aljazeera Balkans: <https://balkans.aljazeera.net/news/balkan/2021/7/30/bih-petogodisnji-djecak-iz-porodice-ilegalnih-migranata-utopio-se-u-uni>
- Europol. (2017). *Facilitation of Illegal Immigration*. Europol. Retrieved from Europol: <https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/facilitation-of-illegal-immigration>
- Kržalić, A. K. (2021). Migrants in the public discourse of media in Bosnia and Herzegovina. *Police and Security*, 233-244.
- Michael Clemens and Kate Gough, C. R. (2018). *Can Regular Migration Channels Reduce Irregular Migration? Lessons for Europe from the United States*. Centre for Global Development. Retrieved from <https://www.cgdev.org/sites/default/files/can-regular-migration-ch>
- Ministry of Security of Bosnia and Herzegovina. (2021, March). *Report on the state of human trafficking and the implementation of the strategy to counter human trafficking in BiH for the year 2020*. Retrieved from Ministry of Security of Bosnia and Herzegovina: http://msb.gov.ba/anti_trafficking/dokumenti/godisnji_izvjestaj/Archive.aspx
- OSCE. (2018, September 18). *Assessment: Migrant and Refugee Situation in Bosnia and Herzegovina - Overview of the intervention of key actors in the field*. Retrieved from OSCE: <https://www.osce.org/bs/mission-to-bosnia-and-herzegovina/397322>
- OSCE BiH. (2018, September). *Assessment of the situation regarding migrants and refugees in Bosnia and Herzegovina; Overview of the intervention of key actors in the field*. Retrieved from OSCE Mission to Bosnia and Herzegovina: <https://www.osce.org/bs/mission-to-bosnia-and-herzegovina/397322>
- Sanchez, E. Z. (2018). Rumours, Encounters, Collaborations, and Survival: The Migrant Smuggling-Drug Trafficking Nexus in the U.S. Southwest. *The ANNALS of the American Academy of Political and Social Science*, 135-156.
- Service for Foreigners Affairs of Bosnia and Herzegovina. (2007-2022). *Work reports*. Retrieved from Service for Foreigners Affairs: <https://sps.gov.ba/izvjestaji-o-radu/>
- Court of Bosnia and Herzegovina. (2022, April). *Migrant smuggling: Practice of the Court of Bosnia and Herzegovina, period from 2018 to 2021*. Retrieved

- from Court of Bosnia and Herzegovina: https://sudbih.gov.ba/data/Dokumenti/Bro%C5%A1ura_Suda_BiH/Brosura_krijumcarenje__SUD_BiH.pdf
- Tanjug. (2021, July 14). More than doubled number of accidents: 1,146 migrants drowned in the Mediterranean waters in six months. Retrieved from Euro news Serbia: <https://www.euronews.rs/svet/fokus/8759/vise-nego-udvostrucen-broj-nesreca-za-sest-meseci-u-vodama-mediterana-utopilo-se-1146-migranata/vest>
 - United Nations. (2000). Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crimes. Retrieved from UNODC: https://www.unodc.org/res/human-trafficking/2021the-protocol-som_html/SOM.pdf
 - United Nations. (2018). Reporting on Migration and Refugees. Retrieved from UN Bosnia and Herzegovina: https://bosniaherzegovina.un.org/sites/default/files/2019-10/Reporting%20on%20Migration%20and%20Refugees_BHS.pdf
 - United Nations Office on Drugs and Crime. (2017). The Concept of “Financial or Other Material Benefit” in the Smuggling of Migrants Protocol. UN. Retrieved from https://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue-Papers/UNODC_Issue_Paper_The_Profit_Element_in_the_Smuggling_of_Migrants_Protocol.pdf
 - United Nations Office on Drugs and Crime. (2018). Global Study on Smuggling of Migrants. United Nations. Retrieved from https://www.unodc.org/documents/data-and-analysis/glosom/GLOSOM_2018_web_small.pdf.