

Security for Human Beings and Borders

Combating Smuggling of Migrants
in the Western Balkan



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Analysis in the field of migrant smuggling in Montenegro

Podgorica, April 2022



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Contents

1. INTRODUCTION	3
2. METHODOLOGY	4
3. LEGAL FRAMEWORK	5
National legislation	6
Major threats to state border control	11
4. INSTITUTIONAL FRAMEWORK	12
5. ANALYSIS OF COURT JUDGMENTS	16
Conclusions:	16
6. CONCLUSION WITH RECOMMENDATIONS	20

1. Introduction



Although Montenegro's capacity to manage mixed migration flows and the integration of refugees is improving, sustained efforts are required in order for the country to cope with migratory pressure, by further increasing its reception capacity and raising standards in the reception centers. This will also include further developing its international cooperation on readmission, supporting the successful reintegration of returnees.

EU Progress report EU on Montenegro for 2020

Nowadays, migration is considered to be one of the most important issues, given the world's population increasing displacements, much more than in any period of human history. Migrations are considered to be the most comprehensive variable of population movement both in terms of content and methodologically (in terms of monitoring). The increase in the number of migrants, coupled with adjoining problems, have placed migration, as a constant process of population movement, at the center of political interest in a large number of countries. Almost all countries face the problem of international migration, either as countries of origin, transit or as countries of final destination of migrants.

Migration, in addition to asylum, has a special focus of the European Union. In order to preserve its own public order, each candidate country for membership in the European Union must ensure the harmonization of its normative framework with the *acquis communautaire* in this area and its full implementation. The field of migration implies a wide range of sub-areas, such as: legal migration, prevention of illegal migration, readmission, treatment of foreigners, etc.

It is estimated that approximately 1.5 million asylum seekers and migrants have passed through the Balkans since 2015, mostly from the Middle East and North Africa. The movement of migrants includes various types of migration, ie, illegal entry and stay of foreign citizens and stateless persons in the Western Balkans, international protection in the Western Balkans, return of Western Balkan citizens under readmission agreements, human trafficking and smuggling of migrants.

Migration flows result in various challenges as human trafficking and smuggling. During transit through the Western Balkans countries, migrants primarily pass irregularly. Therefore, resorting to smuggling becomes, in a way, a pattern of functioning. The increase in the number of migrants in transit through the Western Balkans has also resulted in an increase in the number of criminal organizations dealing with the smuggling of migrants.

At the global level, according to the EU Serious and Organized Crime Threat Assessment EU SOCTA for 2021, the market for migrant smuggling services has been maintained, despite the consolidation of migration flows to the EU. Facilitation of entry into the EU fluctuates in conformity with the change of entry routes, whereby facilitation of secondary movement and legalization of residence is less visible, yet equally profitable for criminal networks. Irregular migrants are exposed to high fees for services which increasingly undermine their physical and mental integrity while traveling.

In Montenegro, out of 3,149 migrants registered in 2020, 643 were arrested at the border zone. About 3,858 migrants were prevented from crossing the state border illegally and entering Montenegro. 99 forged documents were seized. In the first three months of 2021, 417 migrants were prevented from crossing the border illegally and five forged documents were discovered.

In 2020, the Special State Prosecutor's Office concluded 10 plea agreements for illegal crossing of state border and smuggling of people, based on Article 405 of the Criminal Code of Montenegro and the creation of a criminal organization under Article 401a of the Criminal Code of Montenegro, of which 7 plea agreements were adopted by the court, based on which a verdict was rendered sentencing the defendants to imprisonment and ancillary fine in amount of € 6,500.00, while 3 plea agreements await a court decision. Also, due to this criminal offense, 2 charges were filed and 2 orders were issued to conduct an investigation.

This is a problem of global proportions and individual results cannot be achieved without joint action and networking at the global level.

2. Methodology

The methodology applied is unique for all countries in the region covered by this project. The methodology is harmonized with national legislation and tailored for each country individually. The analysis was conducted in two phases. First phase included an analysis of all relevant and available information; in the second phase network representatives gathered around national platforms for preventing migrant smuggling and migrants will be involved in collecting information through monitoring visits and interviews with relevant stakeholders. The National Platform is supported by project coordinators in each Western Balkan country. A special plan and methodology will be developed for the second phase.

The main research objectives analyze a response to migrant smuggling (SoM) in Montenegro within the network of the Western Balkan countries. The methodology, accordingly, includes structural policies, legislation, institutional capacity and case law in each Western Balkan country.

The legal analysis included a general, legislative and institutional framework relevant to the understanding of this complex topic, which is gaining momentum in this area. The goal of the analysis was to understand the extent to which the legal system in Montenegro can respond to all challenges, throughout relevant sectors, from the normative and judicial point of view, ie. the extent to which procedures have been established concerning human trafficking.

By the case law, we wanted to present the penal policy and if there was a certain pattern in which smugglers work, recruit and from which countries they come. We analyzed six (6) judgments from Basic Courts in Montenegro and three judgments of the Higher Courts accessed via the web portal: **sudovi.me**. The verdicts were anonymous; we were limited in the sense that we could not follow the decisions of higher instances in the appeal procedure as they were not available on the mentioned web portal or could not be found by search. Therefore, we analyzed the available judgments, aiming at a more comprehensive picture of case law in Montenegro.

3. Legal framework

The Protocol against the Smuggling of Migrants by Land, Sea and Air defines “Smuggling of migrants” the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident; “Illegal entry” shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State.

The Protocol against the Smuggling of Migrants by Land, Sea and Air supplements the United Nations Convention against Transnational Organized Crime (UNTOC).

In the application of this Protocol, each State Party shall undertake, in accordance with its obligations under international law, all appropriate measures, including legal if necessary, to preserve and protect the rights of persons, agreed under relevant international law, especially the right to life and the right to not be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Each State Party shall take appropriate measures to grant migrants adequate protection against violence that may be applied against them, either by individuals or groups, on grounds of being subjects of investigative actions. Each State Party shall provide appropriate assistance to migrants whose lives or safety are endangered. In use of the provisions of this article, States Parties shall take into account the special needs of women and children.

The purpose of the United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, is to prevent and combat the smuggling of migrants and to promote cooperation between the State Parties.

The main obligations of the State Parties to the Protocol are as follows:

- Incriminating smuggling of migrants’, using of fraudulent travel or identification documents (for the purpose of smuggling) and facilitating smuggled migrants to stay illegally in the country - while recognizing that migration is not a crime in itself.
- Promoting international cooperation to prevent the smuggling of migrants, finding and prosecuting of smugglers.
- Adopting legislative and other measures necessary to facilitate more severe punishment, in cases when the activities of smugglers endanger, or are likely to endanger, the lives or safety of the migrants concerned; or entail inhuman or degrading treatment, including exploitation, of these migrants.
- Promoting mutual exchange, in accordance with respective domestic legal and administrative systems, of relevant information concerning routes, modes of operation and identity of organized criminal gangs involved in migrant smuggling, as well as legislative, practical, scientific and technical experience useful for law enforcement agencies to improve the capacity to prevent, detect, investigate such activities and prosecute perpetrators;
- Strengthening border controls to prevent and detect smuggling of migrants, without prejudice to international obligations regarding the free movement of people.

National legislation

The Criminal Code covers the offenses prescribed by Article 405: **Illegal crossing of the state border** and smuggling of people, which states that:



Whoever crosses or tries to cross the border of Montenegro without the prescribed permit, armed or using violence, will be punished by imprisonment for up to one year.

Whoever engages in the illicit transfer of other persons across the border of Montenegro or who, in order to obtain financial or other benefits, allows others to cross the border illegally or to stay or transit illegally, shall be punished by imprisonment for three months to five years.

If the act referred to in paragraph 2 of this Article is committed by several persons in an organized manner, abuse of official position or in a way that endangers the life or health of persons whose unauthorized border crossing, stay or transit allows or smuggles more people, the perpetrator shall be sentenced to imprisonment from one to ten years.

Funds intended or used for the commission of the act referred to in para. 1 to 3 of this article shall be deducted.

The basic form (paragraph 1) is a person who crossed or tried to cross the border of Montenegro without the prescribed permit armed or by using violence (by mistake after the amendments to the Criminal Code from 2010 in paragraphs 1 and 2 remained “Serbia and Montenegro”). Crossing the state border of Montenegro in itself, without the prescribed permit, is a violation. Whether there is a prescribed permit or not depends on the regulations governing the field of travel documents, border crossing and control of passenger traffic across the border. It is irrelevant in terms of criminal offense whether the border crossing was to Montenegro from a foreign country or vice versa. Bearing in mind that an attempt is a criminal offense, the problem is the delimitation of attempts with preparatory actions that are not punishable, where a certain degree of connection between these actions or the existence of intent is required.

The act of committing a more serious form of criminal offense (paragraph 2) consists in dealing with the illicit transfer of other persons across the border, which means multiple transfers of people across the border of Montenegro. This paragraph also includes enabling others to cross the Montenegrin border illegally, enabling them to reside illegally in Montenegro or enabling transit through the territory of Montenegro. Enabling actions may also include the commission of another criminal offense (ex. forgery of a document). In addition to intent (which must also exist in the basic form), this form also requires the intention to obtain a benefit for oneself or others, and this benefit may be of a non-property nature. The other person whom illegal crossing, stay or transit is enabled must not be a citizen of Montenegro.

A qualified form of crime (paragraph 3) exists if the crime was committed by several persons in an organized manner, abuse of official position, or in a way that endangers the life or health of persons whose illegal crossing, stay or transit is allowed, or a large number of people were smuggled. In addition to the fact that there must be at least two persons, there must be a higher degree of organization in relation to the form referred to in paragraph 2, which, as a rule, also implies a certain degree of organization. If it is an abuse of official position, then the official appears as the executor. The way in which the life or health of migrants is endangered is the failure to provide basic conditions (especially in transport) in terms of means of transport, accommodation, etc. If the death or serious bodily injury of migrants occurs as a result of such a manner, it will be a crime of involuntary deprivation of life (Article 148) or involuntary serious bodily injury (Article 151, paragraph 4).

Paragraph 4 provides mandatory application of security measures for confiscation of items ie funds intended or used for the committing of this criminal offense, in accordance with Article 75 of the Criminal Code which stipulates that items used or intended for the committing of a criminal offense may be confiscated or which came to be from the committing of a criminal offense.

Aliens Act

With the entry into force of the new Aliens Act in March 2018, and the adoption of 20 bylaws, an important package of laws, largely in line with the EU acquis, regulates a key aspect of legal and illegal migration.

The Law on Courts stipulates that the Basic Court is competent to try in the first instance in criminal proceedings for criminal offenses for smuggling and illegal crossing of the state border. If it is done in an organized manner, the Special State Prosecutor's Office is competent.

The Law on International Legal Assistance in Criminal Matters regulates the conditions and procedure for providing international legal assistance in criminal matters. International legal assistance includes extradition of defendants and convicts, transferring and taking over of criminal prosecution, execution of foreign court decisions in criminal matters, as well as other forms of international legal assistance prescribed by this Law. This Law regulates the conditions and procedure for providing international legal assistance in criminal matters. International legal assistance includes extradition of defendants and convicts, transfer and taking over of criminal prosecution, execution of foreign court decisions in criminal matters, as well as other forms of international legal assistance prescribed by this Law.

The Law on Confiscation of Property Gains Acquired by Criminal Activity aims to enable more efficient temporary and permanent confiscation of property gain directly or indirectly from criminal activity.

The Law on International and Temporary Protection of Aliens regulates the principles, conditions and procedures for granting international and temporary protection to an alien seeking international protection, the rights and obligations of an alien seeking international protection, an asylum seeker, an alien under subsidiary protection, an alien under temporary protection and procedure for annulment and termination of asylum, subsidiary and temporary protection.

The Law on Border Control controls state borders on land, sea and inland waters, in accordance with risk analysis and threat assessment, on the basis of which the police officer takes appropriate measures and actions and exercises powers to prevent cross-border crime, illegal migration, threats to security of the state border and deterrence of persons from avoiding checks at border crossings.

State border control includes measures, actions and authorizations that are taken along the state border, between border crossings and at border crossings outside the established working hours.

UN Protocol and EU Directive 2002 / 90EC in relation to the Criminal Code of Montenegro

Article 3 of the UN Protocol on the Smuggling of Migrants stipulates that the smuggling of migrants consists of the following elements:

- securing the illegal entry of another person;
- to another country;
- for the purpose of obtaining financial or material benefits.

Article 3 (b) further defines "illegal entry" as well as crossing (international) borders without respecting the necessary conditions for legal entry into the recipient country.

By amending the Criminal Code from 2017 ("Official Gazette of Montenegro", No. 44/2017), Montenegro harmonized it with the Protocol against Smuggling of Migrants by Land, Sea and Air in terms of content and scope of incrimination. Namely, comparing the provisions of the Protocol, especially Articles 3 and 3b with the Criminal Code of Montenegro, it can be concluded that Article 405 of the Criminal Code, in addition to illegal crossing of the state border, incriminates smuggling of migrants **by illegally crossing other borders or allowing other illegal border crossings or unauthorized stay or transit for financial or other gain**. Pursuant to Article 5 of the Protocol, but also according to EU Directive 2002/90 / EC, another person who is allowed to cross the border, stay or be allowed may not be a citizen of Montenegro, as he cannot be prosecuted for crossing, staying or transiting, except in the context of paragraph 1 of this Article, which refers to the commission of the basic form of this criminal offense.

Harmonization has also been carried out in relation to **the EU Directive 2002/90 / EC** which defines unauthorized entry, transit and residence (Facilitation Directive), which is especially important to Schengen countries for its general character, preparing for entry into the Schengen area thus important to countries seeking EU membership, including Montenegro.

The Directive states the following:

Article 1

- (1) Each Member State shall adopt appropriate sanctions for: (a) any person who intentionally assists a person who is not a national of a Member State to enter or cross the territory of a Member State in breach of the laws of the State concerning the entry or transit of aliens; (b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside in the territory of a Member State in breach of the laws of the State concerning the residence of aliens.
- (2) Each Member State may decide not to impose sanctions in respect of conduct defined in paragraph 1 (a) in the application of its national law and practice in cases where the purpose of such conduct is to provide humanitarian assistance to the person concerned.

Article 2 - Encouragement, participation and attempt

Each Member State shall take the necessary measures to ensure that the sanctions referred to in Article 1 are also applied to any person who: (a) is an instigator, (b) is an accomplice in, or (c) attempts to commit an offense as referred to in Article 1 (1) (a) or (b).

Article 3 - Sanctions

Each Member State shall take the necessary measures to ensure that the infringements referred to in Articles 1 and 2 are subject to effective, proportionate and dissuasive sanctions.

Key differences between trafficking and smuggling of migrants through national legislation

These two crimes are quite similar in practice and are often mixed. In many cases, victims of trafficking may at first be smuggled migrants. Therefore, reliance on anti-smuggling measures may sometimes be necessary to investigate trafficking cases. It is crucial, however, that those investigating smuggling cases be aware of the crime of trafficking in human beings, as the consequences of human trafficking as well as smuggling of migrants can be severe for the victim.

Article 444 of the Criminal Code of Montenegro states the following:



Whoever, by means of the threat or use of force, fraud or deception, of the abuse of power, trust, dependence, a position of vulnerability, withholding, taking away or destroying personal documents, counterfeiting personal documents, procuring or manufacturing of counterfeiting documents or by giving or receiving of payments or benefits to achieve the consent of a person having control over another person, commits any of the following: recruits, transports, transfers, surrenders, sells, buys, negotiates the sale of, harbours or receipts another person for the purpose of exploitation of his labour, forced labour, submission to servitude, slavery or practices similar to slavery, commission of criminal activity, prostitution or other forms of sexual exploitation, beggary, exploitation for pornographic purposes, for conclusion of an unlawful marriage, removal of organs for transplantation, or for exploitation in armed conflicts shall be punished by a prison sentence for a term from one to ten years.

Comparing these two crimes in our criminal law, we notice at first the element of voluntariness. In the case of trafficking in human beings, it is an act committed by force or threat, while in the case of smuggling, the smuggled persons consent and provide certain amount of money to be smuggled. Pursuant to Article 444, paragraph 9, the consent of the victim to whom the act of trafficking in human beings was committed has no effect on the existence of that criminal offense.

Furthermore, smuggling of migrants is a crime against the state, violating national and international laws on entry, transit or stay of foreigners. Trafficking in human beings is a crime against the person and violates basic human rights. The characteristic of migrant smuggling is enabling the illegal movement or stay of irregular migrants, while the main component for human trafficking is the exploitation of victims. Exploitation includes prostitution or other forms of sexual abuse, forced labor or services, including begging, slavery or practices similar to slavery, coercion to commit criminal activity or removal of organs.

However, smuggling of migrants and trafficking in human beings are sometimes considered to be interrelated crimes, which is particularly evident in practice. Namely, it often happens in practice that a person who is smuggled becomes a victim of human trafficking and his personal documents are confiscated making him a subject to exploitation. Therefore, it is very important that the investigative bodies fully determine the status of each person in the proceedings, inter alia, due to the qualification of the criminal offense.

| Integrated Border Management Strategy (SOM) 2020-2024

The concept of integrated border management is an accepted model for managing the external border of EU member states, as an important element in preserving the internal security of member states, especially in preventing and detecting irregular migration and other forms of cross-border crime.

Since 2014, Montenegro has adopted several action plans for the implementation of the Integrated Border Management Strategy, based on the recommendations and best practices of the European Union. Eight action plans were adopted, whose annual implementation in the period 2014-2019 amounted to an average of about 91.72% of fully implemented measures and 0.68% of partially implemented ones.

The new IBM Strategy and the accompanying Framework AP differ significantly from the previous strategy, given that Montenegro has meanwhile adopted the Schengen Action Plan (SHAP) on 23 February 2017, so as not to overlap measures in these two strategic documents. The SAP was adopted in order to shorten the time between EU accession and Schengen and this is achieved by meeting the Schengen requirements during EU accession. In addition, the new EU Regulation, which entered into force on December 4, 2019, in one part changed the concept of EU IBM, making it necessary to make additional harmonization at the level of the Strategy.

In 2020, 11 operational goals were set and read through measures that were mainly related to supporting the fulfillment of European and Schengen standards, in legislative, administrative and institutional terms in the field of integrated border management, with an emphasis on border control. The strategy also envisages the establishment of a functional system of readmission (return and acceptance) of foreign and domestic citizens in accordance with the concluded agreements, the implementation of training on respect for human rights. Finally, the Strategy seeks to establish a four-tier model of access control, forming the basis of integrated border management, through preparations for the establishment of the Schengen Information System and further development of the SIRENE bureau (Request for additional information on national approach) and Visa Information System.

Montenegrin Government report, from May 2021, indicates that the Action Plan for 2020 for the implementation of the Strategy of Integrated Border Management for the period 2020-2024, envisaging 168 activities, 9 measures, have not been implemented, 14 measures have been partially implemented and 16 measures are in the implementation phase. One of the important factors why the measures were not implemented or were partially implemented was the inadequate setting of deadlines when planning the implementation of measures. Lack of accountability coupled with lack of financial resources caused non-implementation of certain measures.

It is important to notice that the reporting period for 2020 was marked by unexpected events related to the COVID-19 virus pandemic. Due to the spread of the pandemic, a number of activities listed in the Action Plan for the implementation of the Integrated Border Management Strategy for the period 2020-2024 have been slowed down for 2020, especially in the part of organizing trainings, seminars, meetings, etc.

In addition, it proved necessary to further develop integrated border management in accordance with the European border control system and ensure border security by improving cooperation at all levels, strengthening administrative, infrastructural and technical capacities. Permanent harmonization of national legislation with the *acquis communautaire* in the areas of border control, aliens, international and temporary protection of aliens, improving the capacity of asylum seekers, increasing the capacity of the Border Police in border control, improving cross-border police cooperation, combating cross-border crime, resolving bilateral issues with neighboring countries, further development of IT systems to improve border checks, development of Visa Information System and harmonization

with EU VIS, improvement of border infrastructure, professional training and specialist training of border services, implementation of agreements on mutual assistance in customs, veterinary and phytosanitary issues and improving the coordination and synchronization of the activities of border authorities.

The Schengen Action Plan

The Government of Montenegro, at its session on February 23, 2017, adopted the Schengen Action Plan (SHAP), at the proposal of the Ministry of Interior. As the Schengen Action Plan was not prepared in accordance with the Government Decree regulating procedure for drafting, harmonizing and monitoring the implementation of strategic documents, it was necessary in the Action Plan for the implementation of the Schengen Action Plan for 2021 to define strategic goals and specific operational goals for implementation of the Schengen Action Plan with measurable impact indicators monitoring progress in this area.

The Schengen Action Plan consists of the following components:

- Alignment of the legal framework with the Schengen acquis in the areas of border control, visas, international police and judicial cooperation, cross-border police and judicial cooperation, SIREN bureau, risk analysis, Schengen Information System, FRONTEX, security and protection of personal data;
- Migration and asylum;
- Equipment in the areas of border control, visas, SIREN and customs control at the border;
- Infrastructure at border crossings for accommodation of the Border Police and for SIRENS and SIS;
- Information and communication systems in the areas of border control, visas, SIREN, SIS, migration and asylum and data exchange;
- Training, in the areas of border control, visas, migration and asylum, international police cooperation and SIS-SIREN;
- Staff in the areas of border control, visas, migration and asylum and SIS- SIREN

From the Government report of 13 February 2020 in 2019, out of 129 measures, 82 (63.56%) measures were implemented, 41 (31.78%) measures were partially implemented, while 6 measures were not implemented (4.65%) The data indicate total percentage of 95.34% in implementation of measures from the Schengen Action Plan, the implementation of which was planned for 2019, while in 2018 it amounted to 90.48%. During 2019, for the harmonization of the legal framework with the Schengen acquis, the implementation of 56 measures was planned, of which 6 measures were not integrated, 34 measures were implemented (68%), 14 were partially implemented (28%) and 2 measures were not implemented (4%). During 2018, for the harmonization of the legal framework with the Schengen acquis, the implementation of 46 measures was planned, of which 39 were implemented (84.78%), 5 were partially implemented (10.87%) and 2 measures were not implemented (4.35%). In relation to migration and asylum, 5 measures were envisaged, of which all 5 (100%) have been implemented. In 2018, 8 measures were planned, of which all 8 were implemented (100%).

Operational objectives of the implementation of the Schengen Action Plan:

- **Operational objective 1.** Alignment of the legal framework with the Schengen acquis in the field of border control, international police and judicial cooperation, SIRENA 11/166 bureau, risk analysis, Schengen Information System, FRONTEX and security and protection of personal data.
- **Operational objective 2.** Prevention of illegal migration, readmission of persons residing illegally in Montenegro, the procedure for determining international protection and strengthening the reception capacities of foreigners seeking international protection.
- **Operational objective 3.** Investment in equipment, in particular in the field of border checks and surveillance of the state border, customs control, visas and SIRENS.
- **Operational objective 4.** Investment in infrastructure at border crossings, to accommodate officers of the Border Police Sector, SIRENES and SIS.
- **Operational objective 5.** Upgrade the Information and Communication Systems and the Schengen Information System in the field of border control, visas, SIRENES, migration and international protection in data exchange.

- **Operational objective 6.** Strengthen trainings in the areas of border control, visas, migration and international protection, international police cooperation and SIS - SIRENE.
- **Operational objective 7.** Strengthening administrative capacity - staff in the areas of border control, visas, migration, international protection and SIS - SIRENE.

Major threats to state border control

State border control is a key element of border control and a very important segment of the scope of work of the Border Police. Having in mind the configuration of the terrain (mountain ranges, rivers, roads that cross the border), the routes of illegal migrants and cross-border crime on the green and blue borders, it is necessary to continuously monitor the most endangered routes suitable for illegal crossing of the state border. solutions for permanent surveillance of the future external border.

Political and humanitarian crises in third countries in the previous period have resulted in the displacement of a large number of people in search of international protection in the countries of the European Union. Bearing in mind that the Montenegrin sea border will also be the future external border of the European Union, the direction of illegal migrants could be redirected to the sea part of the border. In view of these threats, there is a need for interconnection of all state bodies with responsibility at sea, **the Border Police, the Navy, Customs and the Maritime Security Administration.**

Enforcement capacity

There are 1,364 job positions in the border police, out of which 1,321 are occupied, for a border of 840 kilometers. The difference between the existing staff and the required staff under the Schengen Action Plan is 650 border guards, which is a key challenge in this area. Prevention and response capacities are insufficient in strategic areas, where borders are at most under pressure. There are no human resources and capabilities for development planning. In order to compensate for the lack of personnel, the army is occasionally deployed to provide support to the border police, in case of pressure from migrants. Insufficient autonomy of border police in criminal investigations hinders the development of their analytical capacities and intelligence on smuggling networks.

The human resources involved in the fight against organized crime have increased to 82 (from 72 in 2019), and ten vacancies still need to be occupied. New jobs have been opened in the sector to combat drug trafficking. However, this is still insufficient for the scope of work in this area. The capacity of the Special Prosecutor's Office has been increased, with 54 employees (46 in 2019), including 16 special prosecutors. Montenegro has not established a centralized database on organized crime and corruption, collecting data from all relevant authorities, supporting strategic monitoring and policy making. The renewal of some special investigative measures, which were suspended after the decision of the Constitutional Court from 2018, are awaiting amendments to the Code of Criminal Procedure.

Montenegro has expanded its participation in the European Multidisciplinary Platform against Criminal Threats (EMPACT) for weapons and explosives, aiding illegal migration, cybercrime, synthetic drugs, cocaine, cannabis, heroin and environmental protection. In September 2020, Montenegro engaged 103 officers in the Days of Joint Action for Southeast Europe, a Europol operation focused on illegal migration, drug and arms smuggling, and brought together 34 countries. Other Joint Action Days, such as Danube 5 Joint Action Days and Mobile 3 Joint Action Days, have yielded tangible results, such as the seizure of vessels and vehicles, the discovery of forged documents, the seizure of tobacco and narcotics and the prevention of smuggling of 52 migrants by sea.

When the answer of criminal justice / criminal prosecution is in question, it is realized by:

- Ensuring a more proactive approach to the work of the police and the prosecutor's office in order to combat all forms of organized crime and smuggling;
- Creating links between law enforcement agencies in Montenegro and agencies in Europe in order to develop police practices and cooperation in the judiciary, in line with EU standards;
- Ensure the operationalization of joint investigation teams through the initiation of investigations and joint training activities;
- Strengthen the capacity of the judiciary to achieve effective prosecution and more efficient identification and confiscation of criminal assets.

4. Institutional framework

Institutions involved in the fight against human trafficking in Montenegro are: Ministry of Interior - Department for Integrated Border Management, Ministry of Justice and Human and Minority Rights, Ministry of Foreign Affairs, Police Directorate, Revenue and Customs Administration, Maritime Security and Port Management Directorate, State Prosecutor's Office and Supreme Court,

The Ministry of the Interior has central authority in this area. Namely, the Rulebook on Internal Organization and Systematization of the Ministry established an organizational unit, the Department for Integrated Border Management, which, among other things, performs tasks related to: supervision over the implementation of the Strategy in the field of integrated border management, preparations for concluding and implementing agreements on border crossings and border traffic with neighboring countries, harmonization of traffic at border crossings in cooperation with neighboring countries and coordination and synchronization of border service activities. An organizational unit was also formed,

The Department for the Management of Facilities and Border Crossings, among other things, performs activities related to: organization and financing of current and investment maintenance of the Ministry's facilities, border crossings and other facilities shared by the Ministry and the Police Directorate; organization and financing of the construction of border crossings and other border infrastructure facilities, which are necessary for the smooth flow of traffic, control and other border activities.

In the Criminal Police Sector, among others, the Department for the Suppression of Crimes of Smuggling, Trafficking in Human Beings and Illegal Migration, the Department for Criminal Intelligence, the Group for International Targeted Investigations and the Department for International Operational Police Cooperation INTERPOL - EUROPOL - SIRENE were established. Sector for the Fight against Organized Crime and Corruption, the Investigation Group for Organized Crime, Terrorism and War Crimes and the Department for the Fight against Drug Smuggling.

Border control is the responsibility of the Police Administration - the Border Police Sector, which performs state border surveillance, border checks and assessment of threats to the security of the state border, radio security of the state border:

- Protection of human life and health and the environment;
- Preventing the commission and detection of criminal offenses and misdemeanors and finding and apprehending their perpetrators;
- Prevention of illegal migration;
- Preventing and detecting other activities and actions that endanger the security of the state border, public order and public health.

State border control includes measures, actions and authorizations taken along the state border and between border crossings in order to combat cross-border crime, prevent illegal crossing of the state border and protect its inviolability, on land, sea and inland waters.

In order to perform the above tasks in the Police Directorate - Border Police Sector, the following organizational units have been formed:

- State Border Surveillance Department;
- Border Control Department;
- Department for Foreigners and Suppression of Illegal Migration;
- Shelter for Foreigners and Center for the Application of Milder Measures;
- Department of Operational Work and Risk Analysis;
- Mobile unit;
- National Communication Center-NCC Podgorica;
- Regional Center of the Border Police North - headquarters Bijelo Polje;

- Regional Center of the Border Police Center - headquarters in Podgorica;
- Regional Center of the Border Police South - headquarters Budva
- Border Police Stations and Units Rožaje, Berane, Plav, Pljevlja and Bijelo Polje; stations and units of the Border Police of Podgorica, Kolašin, Airport of Podgorica, Nikšić and Plužine and units of patrol boats Božaj and Virpazar; stations and units of the Border Police Ulcinj, Bar, Budva, Tivat, Kotor, Herceg Novi and units of patrol boats and boats Ulcinj, Bar, Kotor and Herceg Novi.

Ministry of Justice, Human and Minority Rights, in order to improve cooperation with border services in the implementation of the IBM concept, especially in order to conduct investigations, surveillance and prosecution at the regional and international level through the application of bilateral and multilateral agreements governing international cooperation in criminal matters .

Ministry of Foreign Affairs, reporting to diplomatic and consular missions of Montenegro and international organizations on measures taken by competent public authorities, in monitoring the implementation of the UN and Council of Europe Conventions on Combating Smuggling and the *acquis communautaire* regulating this issue. Also, in communication with Montenegrin citizens who can turn when they find themselves in trouble abroad.

The Maritime Safety and Port Authority cooperates with EMSA and has implemented in Montenegro a number of European maritime surveillance systems used by both Member States and institutions such as FRONTEX and MAOC as the EU LRIT Data Center. ships), SafeSeaNet (European system for announcing the arrival of ships), IMS (Integrated Maritime System), etc.

Pursuant to the Decree on the Organization and Manner of Work of the State Administration, the Revenue and Customs Administration, within the Sector for Customs Security and Control, performs tasks related to: monitoring control and analytical activities; monitoring of anti-smuggling, customs investigations and ex-post controls; the results of investigations or activities of anti-smuggling teams, participation in the implementation of international joint customs operations and professional activities related to the construction and implementation of risk management systems at the international and national levels; monitoring the updating of data on violations and suspicious activities in the database of risk analysis systems and other activities

Within **the Department for the Suppression of Smuggling**, activities are performed that relate, inter alia, to: taking measures and actions in order to detect and prevent customs offenses and customs crimes; performing complex tasks in the implementation of measures of supervision over the application of laws and other regulations within the scope of work of the department; performing activities and carrying out activities aimed at combating drug smuggling, prevention of money laundering; participation in the implementation of operational actions and emergency control measures in the entire customs territory of Montenegro; data collection, verification, analysis of collected data and compilation of intelligence and operational information; controls of import, export and transit of goods of natural and legal persons; detailed search of persons and inspection of goods, vehicles, containers, ships, planes and trains; checking customs documentation.

The Revenue and Customs Administration cooperates with OLAF, the World Customs Organization and other international organizations and institutions, as well as with the customs services of EU and regional countries through joint investigations, operations and trainings related to anti-smuggling initiatives.

The Operations Center of the Customs Administration unites the Customs Open Line, video surveillance from the border crossings Božaj, Debeli Brijeg, Dobrakovo, Dračenovac, Ranče, Sitnica and Sukobin-Muričani, monitoring information from the SEED system and updating the database.

The Basic State Prosecutor's Offices are responsible for the criminal prosecution of perpetrators of the crime of human trafficking, and the Special State Prosecutor's Office when the said criminal offense is committed in an organized manner. The Special State Prosecutor's Office was established for the territory of Montenegro and has its headquarters in Podgorica. It is responsible for prosecuting perpetrators of criminal offenses: (1) organized crime, regardless of the amount of the prescribed sentence; (2) high corruption; (3) money laundering; (4) terrorism; (5) war crimes; and (6) violations of suffrage.

The Supreme Court of Montenegro, as the highest court instance, aims to provide priority resolution of cases of smuggling of migrants by creating conditions for resolving cases within the legally prescribed period, harmonizing court practice, issuing principled legal opinions, etc.

International and regional security

In order to meet its border management obligations, to further strengthen partnership, stability and economic growth and reduce security risks, Montenegro established Integrated Border Management (IBM) in 2006 and continued to improve this system in line with EU recommendations and best practices. union.

Working arrangement for the establishment of operational cooperation between the Police Directorate and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)

In October 2019, a working arrangement was signed with Frontex, which entered into force on 1 July 2020. Under this arrangement it is said that:

- The Crna Gora Police Directorate and Frontex intend to exchange information between the Border Police Sector of the Crna Gora Police Directorate and the Frontex Risk Analysis Unit. The exchange of information shall take place only with such restrictions as are justified by legal or operational reasons.
- The Border Police Sector of the Police Administration of Montenegro will appoint a national contact person in the field of risk analysis to participate as an observer in the Frontex Risk Analysis Network (FRAN).
- Frontex may provide relevant analytical products to the Border Police Sector of the Crna Gora Police Directorate. Access to risk analysis tailored to Frontex or other information on risk analysis will be decided on a case-by-case basis by the Executive Director of Frontex.
- In accordance with Article 5 of the Frontex Regulation, cooperation in the field of training may take place on a case-by-case basis based on a decision of the Frontex Executive Director.
- Technical cooperation in the field of research and development in accordance with Article 6 of the Frontex Regulation may take place on a case-by-case basis based on a decision of the Frontex Executive Director.
- Frontex may invite representatives of the Border Police Sector of the Police Administration of Montenegro to participate as observers in joint operations, which will be decided on a case-by-case basis by the Executive Director of Frontex. Participation in joint operations will be possible only with the consent of the host EU member state.
- According to the terms of the agreement of the host EU member state, joint operations coordinated by Frontex at the borders between EU member states and Montenegro should be conducted in close cooperation and with the participation of the Border Police Sector of the Police Administration of Montenegro. Restrictions on this cooperation can only be justified by legal or operational reasons.
- The Border Police Sector of the Police Administration of Montenegro may send its border police officers to the focal point offices (FPOs) located at the external borders of the EU Member States on the basis of a Frontex proposal and an agreement with the host Member State.
- The Border Police Sector of the Montenegrin Police Administration and Frontex may consider developing cooperation in the field of joint return operations, and may also promote the active participation of the Border Police Sector of the Montenegrin Police Administration in joint return operations coordinated by Frontex and with the consent of the EU host country.
- The Border Police Sector of the Police Administration of Montenegro can be invited to participate in pilot projects launched by Frontex, which will be decided on a case-by-case basis by the Executive Director of Frontex.

The implementation of the first joint operation under the Agreement began on July 15, when Frontex deployed several officers to support Montenegrin border guards on the border with Croatia, and launched an operation on Montenegrin borders on October 14, 2020 to combat drug and arms smuggling, migrants and trafficking, people and terrorism, according to Frontex.

The agreement itself shows that it enabled operational cooperation between the Border Police and FRONTEX, on the basis of which joint operations were carried out at the EU external border, joint actions in the fight against cross-border crime, finding stolen vehicles and vessels, combating illegal migration, smuggling and trafficking in human beings and the detection of fraud in connection with travel documents.

Montenegro has continued to actively cooperate with Europol and Interpol in combating cross-border criminal activities and to participate in the Frontex Risk Analysis Network for the Western Balkans.

Regional cooperation

Border control has been further strengthened thanks to the functioning of the Joint Center for Police Cooperation between the Ministries of Interior of Montenegro, BiH and the Republic of Serbia in Trebinje. Also, a Joint Center for Police Cooperation in Plav was established between the Ministries of Interior of Montenegro, the Republic of Albania and the Republic of Kosovo.

Bilateral co-operation with neighboring countries in the field of border management has continued despite a drastic reduction in joint border patrols in the context of a pandemic. Only 723 patrols were realized in 2020, including 570 joint patrols on the border with Albania. In October 2020, a new joint six-lane border crossing was opened at the Vračenovići-Deleusa crossing, on the border with Bosnia and Herzegovina. It is the second border crossing of that size in the country. A joint agreement on border traffic with Bosnia and Herzegovina was signed in December 2020. Although the plan to demolish 29 cross-border alternative roads with Serbia, agreed in March 2019, has been completed on the Montenegrin side, 15 other alternative roads to Serbia and 13 roads to Bosnia and Herzegovina still need to be demolished.

5. Analysis of court judgments

The subject of this analysis are the verdicts in cases in which the perpetrators of the criminal offenses of illegal crossing of the state border and smuggling of people were tried. All judgments processed in this analysis can be found on the website sudovi.me from which they were downloaded. The personal data of the persons involved in these proceedings, as well as the details of these crimes, were mostly censored, so the amount of information we could process was limited. Judgments of the Basic Courts were analyzed, as well as three judgments of the Higher Courts. As we pointed out in the introduction, we could not get hold of the judgments of higher instances, which limits this short analysis; it, nevertheless, provides certain guidelines when the case law of first instance courts is concerned.

A) LEGAL FRAMEWORK

Illegal crossing of the state border and smuggling of people

Article 405

- (1) Whoever crosses or attempts to cross the border of Montenegro without the prescribed permit, armed or using violence, shall be punished by imprisonment for a term not exceeding one year.
- (2) Whoever engages in the illicit transfer of other persons across the border of Montenegro or who, for the purpose of gaining financial or other benefits, enables another person to cross the border illegally or to stay or transit illegally shall be punished by imprisonment for three months to five years.
- (3) If the act referred to in paragraph 2 of this Article is committed by several persons in an organized manner, abuse of official position or in a way that endangers the life or health of persons whose unauthorized border crossing, stay or transit allows or smuggles a large number of people, the perpetrator will be sentenced to one to ten years in prison.
- (4) Money intended or used for the commission of the criminal offense referred to in Paragraph 1 to 3 of this article shall be seized.

Conclusions:

From the analysis of six judgments of the Basic Courts in Montenegro regarding the criminal offense of illegal crossing of the state border and smuggling of people, we can draw the following conclusions:

PERPETRATORS OF THE CRIMINAL OFFENSE

The perpetrators of the criminal offense of illegal crossing of the state border and the smuggling of people are often not just Montenegrin citizens, but also the citizens of neighboring countries (Serbia and Albania) and even the citizens of Cameroon. When it comes to Montenegrin citizens, they are usually persons who are residents of places along the border, most often Rožaje, but also the municipality of Tuzi. This should not come as a surprise, as it is logical that these people know the area best and they are familiar with alternative routes that can bypass the official border crossings as well as possible patrols.

PROPERTY STATUS

It can also be concluded that the perpetrators of these criminal offences are people of poor financial status, which should be taken with a grain of salt, since this information is communicated to prosecutors and judges by the defendants personally; it is not checked later and it is not uncommon that they provide false information, in order to obtain the mildest possible verdict. In other words, they say they have a poor financial situation as one of the mitigating circumstances.

MODUS OPERANDI

The manner of execution is the same in most cases and it is reflected in the fact that the state border is crossed in the late evening, often in cooperation with other persons from the territory of the state to which persons are smuggled, ie from which they enter Montenegro. These are, of course, the roads that bypass the official border crossings, and when it comes to smugglers, these are the people who know the region very well.

DIRECTIONS OF MOVEMENT-ROUTES

When it comes to routes, the analyzed verdicts lead to conclusion that the route on which smugglers are most active is the one towards Serbia, through Rožaje, since the largest number of verdicts is related to that route. Routes from the direction of Albania through the region of Dinoše and Malesia are also active. The route that leads directly to the EU, ie the route to Croatia, although less, is also in use, but it seems that very few people manage to break through that route and the assumption is that the reason for this is that it's best guarded route, given that FRONTEX is present there.

THE SMUGGLER-MIGRANT RELATIONSHIP

As for the treatment of smuggled persons by smugglers, the analyzed verdicts lead to the conclusion that the smugglers treat the smuggled persons "in a fair manner". This means it is not uncommon for smugglers to ask for larger sums of money from the smuggled persons in order to bring the latter to their final destination and they mostly "stick" to the original agreement.

PENAL POLICY

As it can be noticed, the penal policy in most cases includes sentencing below the legal minimum, indicating a relatively mild penal policy, which is not the case only with this criminal offense. This is still a problem when it comes to general and special prevention.

JUDICIAL PRACTICE

The analysis of the mentioned verdicts also established that there is an uneven practice in the actions of prosecutors from the north of Montenegro and prosecutors from the central and southern regions. Namely, when it comes to the cases of the Basic Court in Rožaje, the prosecutors in their closing remarks proposed specific sentences to which the defendants should be sentenced, while this is not the case when it comes to prosecutors from Podgorica and the coast. It is also important to state that, out of the analyzed verdicts, in only one of them did the court "accept" the prosecutor's proposal and convicted the defendant in the manner proposed by the prosecutor in his closing argument (K.no. 77/19), while in the other two verdicts the Basic Court in Rožaje imposed milder sentences than those proposed by the prosecutor.

With some reservations, given the small number of available cases, we can say that this further indicates the uneven practice of basic prosecutor's offices in Montenegro, which should be paid attention to and synchronize the course of action because it will ultimately contribute to greater fairness in trials.

ANALYSIS OF JUDGMENTS OF HIGHER COURTS

We also analyzed three judgments of the High Court in Podgorica, one of which was convicting, one acquitting and one reversing the verdict.

Perpetrators of the crime

In the conviction K-S / 2014 , the criminal organization consisted of 14 persons, 13 of whom are Montenegrin citizens and one person is from a country with the initial initials P (assumption is Pakistan). When it comes to Montenegrin citizens, these are people who are residents of places along the border, most often Rožaje, but also the municipalities of Tuzi and Podgorica.

Property status

The largest number of perpetrators of the criminal offense are people of poor financial status, only two persons stated that they are of medium financial status, which should also be taken with a grain of salt, as this information is communicated to prosecutors and judges by the defendants personally; it is not uncommon for perpetrator to present false information in order to obtain the mildest possible verdict, as one of the mitigating circumstances.

Modus operandi

The court proved that this was an organized criminal group. agreed on the takeover and transportation of foreign asylum seekers from P. to R., which he provided from certain persons, the accused and other unidentified persons with whom he also arranged their smuggling, gave instructions regarding their transportation and handover and further transfer from C.G. in S. past the official border crossing, with the aim of further departure to the countries of the European Union, to the accused members of this criminal organization. Having created an action plan, the accused created and formed the organization in order to strengthen their activities, all in order to act together, giving these members of the organization, as previously described, specific tasks and instructions for taking over, transporting, accepting, accommodating asylum seekers until their smuggling from C.G. in S., leading them via forest roads outside the border crossing over the C.G. in the RS, handing over to unidentified persons in the territory of the RS for transport through the S. for the purpose of further departure to the countries of the European Union, monitoring the roads by which asylum seekers were transported and ensuring uninterrupted transport. The manner of execution is as follows: persons who entered Montenegro were gathered in one predetermined place. This gathering was performed by a member of an organized criminal group (OGP). to the taxi association, these persons were transported to the border crossing where they were picked by other members of the OGP and transferred to another country illegally. Illegal roads bypass official border crossings, as smugglers know the region very well.

Direction of movement-Route

When it comes to the route, the analyzed verdict leads to the conclusion that the route established was towards Serbia via Rožaje. The gathering of migrants was always in one place in the suburbs of Podgorica and that was the starting point, They were further transported with a taxi or more vehicles depending on their number, commonly ranging from two to ten persons. The route ended in Rožaje, from which persons were transferred to Serbia.

PENAL POLICY

On the issue of deliberating on which sentence to be imposed on the accused, the court, in terms of Article 42 of the Criminal Code of Montenegro, considered all the circumstances affecting the nature of the sentence - on the part of the accused, mitigating circumstances were previous non-conviction, age at the time of the commission of the crime, being a family person and a parent. Previous convictions of the accused were not taken as an aggravating circumstances, as they were for criminal offenses that not identical to the criminal offenses for which they were found guilty and convicted. The court deemed there was room for mitigation of certain offenses and pronounced them below the limit prescribed by law for crimes they were found guilty. Evaluating the aforementioned circumstances of the previously accused, the Court determined individual prison sentences for the criminal offenses listed in the operative part of the Verdict and sentenced these accused to single prison sentences. The court, in relation to the accused found guilty for the criminal offense of creating a criminal organization, did not consider as mitigating circumstances the poor material condition to which they referred to, bearing in mind that the criminal offenses were committed for profit, thus using material status as mitigating circumstance was unjustifiable. The defendants were sentenced to prison terms ranging from 6 months to 4 years and 10 months.

It was undoubtedly established that in the present cases the police were not prevented from carrying out the necessary checks on the applicants. Namely, from the content of the cited cases of the Ministry of Foreign Affairs and European Integration as well as the cited acts of the police, it was determined that the Directorate General for Consular Affairs in each case, except for the two Chinese and Yemen , addressed the Police with requests for visas. In each of these requests, the personal data of the applicant as well as the data on his travel document were stated, in which way, the defendant obviously would not have acted if he had wanted to avoid the participation of the Police and benefit the said persons. Furthermore, from the contents of the mentioned cases, it was also established that the applicants had valid travel documents, as well as that the submitted applications contained all the prescribed information that the visa application should contain, and that the applicants attached appropriate documentation, which everything was enough for the Diplomatic-Consular Affairs, authorized to do so by law, to assess the fulfillment of the stated conditions for issuing visas. After assessing that the conditions for issuing visas were met from their aspect, acting in

accordance with the cited legal provision for the purpose of obtaining consent, by inspecting the files at the Ministry of Foreign Affairs and European Integration, it was also established that the Directorate for Consular Affairs requested the police to state if there were security obstacles to issuing visas to the said persons, providing them with the said personal data for the applicant. According to the evidence, the allegations of the prosecution that the defendant enabled the said citizens of Bangladesh to enter and stay in Montenegro for smuggling into EU countries were not substantiated, nor can the defendant's actions be related to their illegal transfer from Montenegro to Serbia. Namely, the conducted evidence, inspecting the files of the Ministry of Foreign Affairs, established that the Directorate General for Consular Affairs (GDKP) for all these persons required the police to state their opinion concerning the consent for which purpose they were provided with personal data of the applicants. Also, from the contents of the case file of the Ministry of Foreign Affairs, it was determined that all these persons applied for visas on the basis of the Invitation Letter from the Ministry of Economy of Montenegro, which, as well as the Chamber of Commerce of Montenegro, organized a forum. The evidence does not indicate that the defendant knew what some of these persons would try to do during their stay in Montenegro and whether they would commit a crime or misdemeanor, which, according to witnesses, happened in cases when the police gave their consent to issue visas. It is also clear from the testimony of the witness that he and his friend decided to go to Serbia on their own initiative, in which a certain person from Greece helped them in the described way.

The third verdict KV.S 10/2017 [2] is a change in the decision on the sentence of the final verdict, which became final in relation to this convict on June 24, 2016, by which the person. found guilty of committing the criminal offense of creating a criminal organization under Article 401a paragraph 2 in conjunction with paragraphs 1 and 6 of the CC of Montenegro (for which criminal offense he was sentenced to imprisonment for a term of 1 year and 5 months) and for the crime illegal crossing of the state border and smuggling of people from Article 405 paragraph 3 in connection with paragraph 2 of the CC of Montenegro (for which he was sentenced to 1 year and 4 months in prison) and by which sentence he was sentenced to a single prison sentence in for a term of 2 (two) years and 7 (seven) months, by imposing a single prison sentence of 3 (three) years and 6 (six) months. Article 421 para. deed in acquisition.

Article 421, paragraph 1, item 1 of the Criminal Procedure Code stipulates that a final verdict may be reversed without repeating the criminal procedure, if in two or more verdicts more than one sentence has been pronounced against the same convict, and the provisions on imposing a single sentence have not been applied. When determining the single sentence, the court had in mind the previously imposed sentence that it took as established, a prison sentence of 1 year and 5 months for the criminal offense of creating a criminal organization under Article 4.

It follows from the above that the convict was sentenced to several sentences, and the provisions on imposing a single prison sentence were not applied, so the panel finds that the legal conditions are met that the request of the convict's defense counsel should be granted.

When determining the single sentence, the court had in mind the previously imposed sentences that it took as established, imprisonment of 1 year and 5 months for the criminal offense of creating a criminal organization, imprisonment of 1 year and 4 months for the criminal offense of impermissible crossing the state border and smuggling people and imprisonment for 1 year for the crime of illegal crossing the state border and smuggling people, so he imposed the sentence as in the operative part of the verdict, finding that the sentence imposed in this way will achieve the purpose of punishment.

6. Conclusion with recommendations

Migrant smuggling is one of the most profitable types of criminal activities of organized criminal groups and as such represents one of the biggest humanitarian and security challenges for the EU, but also for the Western Balkans region as a transit route for smuggling.

Since 2006, Montenegro has taken many important legislative, strategic and institutional steps to address global migration challenges and to improve state border surveillance, as well as mechanisms for detecting and prosecuting smugglers.

The Criminal Code is largely harmonized with key international documents concerning human trafficking. Amendments to the 2017 Criminal Code have been harmonized with the Protocol against the Smuggling of Migrants by Land, Sea and Air.

Integrated Border Management (IBM) was established in accordance with the recommendations and best practices of the European Union. This process was followed by activities undertaken in cooperation with the European Union, with the following priorities: harmonization of legislation with the *acquis communautaire*; concluding bilateral agreements on the state border, border crossings and border traffic; signing bilateral agreements on police cooperation and protocols on joint patrols; harmonization of organizational and personnel concept; modernization and improvement of the education and training system and raising the level of professionalism of members of the border services; improvement of information system and border infrastructure; procurement of technical equipment necessary for conducting border checks and border surveillance; establishing and improving risk analysis and information exchange in accordance with a common integrated risk analysis model; strengthening capacity in the fight against corruption and strengthening the legal framework and mechanisms for bilateral and multilateral cooperation.

The focus of the EU's new IBM concept is on security and migration management. The European IBM implements FRONTEX with the border police of EU Member States and third countries, and special attention is paid to cooperation with FRONTEX, in accordance with the concluded Agreement.

On a practical level, there are still many challenges. The prosecution and investigation of the criminal offense of smuggling of migrants is still marked by a small number of processed cases under Article 405 of the Criminal Code of Montenegro - illegal crossing of the state border and smuggling of people. It is necessary to establish bodies that will work in a multisectoral manner and enable better connection between investigative and judicial bodies in the identification and investigation of cases of human trafficking. Also, it is necessary to work on strengthening the capacity of prosecutors to better recognize the connection between smuggling and human trafficking with the crimes of money laundering, corruption and the range of opportunities that such a model may have in gathering material evidence for its prosecution.

The number of border police posts is lower than envisaged in the Schengen Action Plan, which is a key challenge in this area. Prevention and response capacities are insufficient in strategic areas, where borders are most under pressure. There are not enough human resources and capabilities for development planning. Insufficient autonomy of border police in criminal investigations hinders the development of their analytical capacities and intelligence on smuggling networks. Montenegro needs to continue to strengthen its border management capacity and address a key staffing and equipment gap. Border control needs to be further strengthened in close cooperation with Frontex.

It is necessary to implement targeted training of professionals who are expected to perform better, given that smuggling is still a serious problem for all countries, not only in the region but in Europe as a whole.

As the fight against smuggling implies the need for the participation of a large number of institutions of different competencies, it is necessary to continue strengthening the system of coordination and monitoring of their activities, both at the local and national level. Of particular importance is the constant work on maintaining established and strengthening new partnerships with international organizations, in all segments of the fight against smuggling, but also in the creation of policies and activities, as well as their implementation organization in this field, and make the data and analyzes that result from the above available to the public.

