



EASTERN PARTNERSHIP

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Contents

| | |
|----------------------|----|
| ARMENIA | 3 |
| AZERBAIJAN | 6 |
| GEORGIA..... | 10 |
| HUNGARY | 15 |
| LATVIA | 22 |
| LITHUANIA | 25 |
| MOLDOVA | 30 |
| THE NETHERLANDS..... | 34 |
| POLAND | 37 |
| PORTUGAL | 40 |
| UKRAINE | 46 |

| ARMENIA | |
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| <p>1. Has your country ratified: a) the United Nations Convention against Transnational Organized Crime, b) the Protocol against the Smuggling of Migrants by Land, Sea and Air and c) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children?</p> | <p>Combating human trafficking and exploitation of people, as well as combating organisation of illegal migration that defy human rights and freedoms are important objectives in the Republic of Armenia.</p> <p>The Government of the Republic of Armenia pays a major attention to combating these crimes. After ratification of the UN Convention against Transnational Organized Crime and two supplementary protocols to the Convention (the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children) in 2003, the country adopted a number of legislative acts and inter-agency regulations in the sphere and still continues to improve counter-measures against these criminal activities.</p> |
| <p>2. Does your national legislation contain a specific definition of “facilitation of irregular migration” (hereafter the “facilitation” or “migrant smuggling”)? What activities are considered as facilitation?</p> | <p>Combating illegal migration and prevention of non-compliance with the migration legislation belong to priority spheres of activities of the Police of the Republic of Armenia.</p> <p>Until recently, the Criminal Code of the Republic of Armenia did not contain a separate article on organisation of illegal migration - as a result, actions of organisers of illegal migration were considered as fraud (Art. 178 CC RA), production and use of fraudulent documents (Art. 325 CC RA), and illegal crossing of the state border of the Republic of Armenia (Art. 329 of CC RA).</p> <p>Obviously, organisation of illegal migration is accompanied by actions covered by elements of crimes under the above CC articles, however, investigation materials and the criminal cases initiated often failed to reach their logical outcomes.</p> <p>In the framework of organisation of activities against illegal migration, development of relevant laws and regulations, and their harmonisation with generally recognised international legal instruments, the Directorate General against Organised Crime of the Police of Armenia, jointly with the State Migration Service of the Ministry of Territorial Administration of the Republic of Armenia developed and submitted to the Government of Armenia their draft Law on Amending the Criminal Code of the Republic of Armenia - the draft Law stipulated introduction of new Article 329¹ into the Code (Organisation of Irregular Migration).</p> <p>On June 21, 2014, the National Assembly of the Republic of Armenia adopted the said draft Law and the Criminal Code of Armenia was amended by new Article 329¹ (Organisation of Irregular Migration).</p> <p>Article 329¹ Organisation of Irregular Migration</p> <p>1. Organisation, for material gain, of entry to the Republic of Armenia, stay in the Republic of Armenia or transit travel (transportation) at the territory of the Republic of Armenia of a foreign national or a stateless person, in non-compliance with the legislatively set procedures of the Republic of Armenia for entry, stay or transit travel, or with submission of fraudulent documents or with provision of false information to get a requisite permit for entry, stay or transit, shall be punishable by a monetary fine from one hundred to two hundred minimal salaries or by imprisonment for the maximal term of three years.</p> <p>2. Organisation, for material gain, of departure from the Republic of Armenia, entry into a foreign country or stay in the foreign country of a citizen of the Republic of Armenia, a foreign national who resides permanently in the Republic of Armenia or a stateless person, in non-compliance with the legislatively set procedures of the Republic of Armenia for departure, entry or stay, or with submission of fraudulent documents or with</p> |

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| | <p>provision of false information to get a requisite permit for departure, entry or stay, shall be punishable by a monetary fine from one hundred to two hundred minimal salaries or by imprisonment for the maximal term of three years.</p> <p>3. Actions envisaged in paragraphs 1 or 2 of this Article, if they were committed:</p> <ol style="list-style-type: none"> 1) with organisation of illegal migration of two or more persons, 2) by a group of persons on prior collusion, 3) in conditions dangerous for human life and health or humiliating human dignity of a person, 4) with abuse of official position, shall be punishable by an imprisonment for the term from three to eight years, with forfeiture of property or without such forfeiture, with deprivation of rights to hold certain positions or to engage into certain activities for the maximal term of three years or without such deprivation of rights. <p>Article 38 (para 5) and Article 39 (para 2) of the Criminal Code of the Republic of Armenia stipulate liability for facilitation.</p> <p>The accessory is the person who assisted to the crime through pieces of advice, instructions, information or provided means, tools, or eliminated obstacles, as well as, the person who had previously promised to harbour the criminal, to hide the means and tools of crime, the traces of the crime or the items procured through crime, as well as, also, the person who had previously promised to acquire or sell such items.</p> <p>The organizer, the abettor and the accessory are subject to liability under the article, which envisages the committed crime, referring to Article 38 of this Code, except those cases when they were at the same time the co-perpetrators of the crime.</p> |
| <p>3. What liability your legislation envisages for various types of criminal conducts, which could constitute facilitation (e.g. facilitation of illegal entry (border crossing), transit, or stay/residence, provision of forged documents, assistance in abuse of benefits system etc.)?</p> | <p>See answer to Q. 2</p> |
| <p>4. Do facilitators need to derive benefits to have committed an offence? Does your legislation allow sanctions to be waived if facilitation to irregular migrants is provided as humanitarian assistance?</p> | <p>See answer to Q. 2</p> |

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| <p>5. In case your legislation provides for a criminal liability for facilitation of irregular migration, does it provide for aggravating circumstances, e.g. endangering migrants' life or entail inhuman or degrading treatment?</p> | <p>See answer to Q. 2</p> |
| <p>6. Does your legislation envisage a liability for smuggled migrants for irregular entry and stay/residence per se? Are there any special conditions for smuggled migrants who agree to cooperate with authorities?</p> | <p>n/a</p> |
| <p>7. Please provide available statistics for 2014 - 2016 on detected cases of migrant smuggling (detected smugglers). What was the rate of cases reached to the court and rate of judgements of conviction in these cases?</p> | <p>In the period from 2014 to 2016, on the base of elements of crime under Article 329.1 of CC RA (Organisation of Illegal Migration) detected by law enforcement bodies of Armenia, 34 criminal cases were initiated by the Investigation Directorate of the National Security Service of the Republic of Armenia.</p> |
| <p>8. Please describe how your national law enforcement and judicial authorities cooperate to prevent, investigate and prosecute cases of migrant smuggling. Are any other authorities involved in this process, e.g. financial intelligence units tracking and investigating financial flows related to migrant smuggling?</p> | <p>n/a</p> |

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| <p>9. Please provide recent examples of effective international cooperation and cross-border operations to detect facilitators/smugglers. Which authorities have been involved? What challenges did you face in coordinating with counterparts?</p> | <p>In the course of combating organisation of illegal migration in the Republic of Armenia, close cooperation was organised between law enforcement bodies of Armenia and their international counterparts, as well as with local NGOs, including the Collective Security Treaty Organization, Bureau of the Coordination of the fight against organized crime (CIS), IOM, UN, etc.</p> |
| <p>10. What initiatives exist in your country in the field of preventing facilitation of irregular migration? Are specific information campaigns conducted? Does your country implement or is it considering implementing programs of regular migration as a tool to prevent irregular migration?</p> | <p>See answer to Q. 2</p> |
| <p>11. Does your country apply two distinct legal frameworks to migrant smuggling and trafficking in human beings, in line with the international legal framework? How do you address the risks of smuggled migrants becoming victims of human trafficking? What challenges exist in the identification of smuggled persons and victims of human trafficking?</p> | <p>n/a</p> |

AZERBAIJAN

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| <p>1. Has your country ratified: a) the United Nations Convention against Transnational Organized Crime, b) the Protocol against the Smuggling of</p> | <p>The Republic of Azerbaijan ratified the United Nations Convention against Transnational Organized Crime and its supplementary protocols - “The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children” and “the Protocol against the Smuggling of Migrants by Land, Sea and Air” on May 13, 2003.</p> |
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| <p>Migrants by Land, Sea and Air and c) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children?</p> | |
| <p>2. Does your national legislation contain a specific definition of “facilitation of irregular migration” (hereafter the “facilitation” or “migrant smuggling”)? What activities are considered as facilitation?</p> | <p>Facilitation (support) of illegal (irregular) migration has been envisaged in the Article 318-1 of the Criminal Code of the Republic of Azerbaijan.</p> <p>According to that Article facilitation (support) of illegal (irregular) migration includes the acts committed for organizing a foreigner and stateless person’s illegal entry to, illegal stay in, illegal transit through the territories of the Republic of Azerbaijan or illegal exit of any person from the territories of the Republic of Azerbaijan.</p> <p>Moreover, according to the Article 144-1.1 of the Criminal Code of the Republic of Azerbaijan the acts of trafficking in persons – recruitment, obtaining, keeping, harboring, transporting, giving or receipt of a person by means of threat or use of force, intimidation or other means of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, or by giving or receiving payments or benefits, privileges or concessions to achieve the consent of a person having control over another person, for purposes of exploitation also perceived as an act of facilitation (support) of illegal (irregular) migration. These law infringements are punished by imprisonment from 5 to 10 years with confiscation of property.</p> |
| <p>3. What liability your legislation envisages for various types of criminal conducts, which could constitute facilitation (e.g. facilitation of illegal entry (border crossing), transit, or stay/residence, provision of forged documents, assistance in abuse of benefits system etc.)?</p> | <p>See answer to Q. 2.</p> |
| <p>4. Do facilitators need to derive benefits to have committed an offence? Does your legislation allow sanctions to be waived if facilitation to irregular migrants is provided as humanitarian assistance?</p> | <p>According to the Article 318-1.2.2 of the Criminal of the Republic of Azerbaijan the punishment for the same act (facilitation (support) of illegal (irregular) migration) aggravates in case it is committed by officials with the use of his/her service position.</p> <p>The legislation envisages no punishment exception for the facilitators (supporters) for commitment of these acts due to humanitarian or other purposes</p> |

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| <p>5. In case your legislation provides for a criminal liability for facilitation of irregular migration, does it provide for aggravating circumstances, e.g. endangering migrants' life or entail inhuman or degrading treatment?</p> | <p>According to the Article 318-1.2 of the Criminal Code of the Republic of Azerbaijan the commitment of the same acts (mentioned in Article 318-1.1) in below circumstances is aggravating:</p> <ul style="list-style-type: none"> • Commitment by organized group; • Commitment by official with the use of his/her service position; • Repeated commitment; • Commitment with dangerous means for human life (source: Articles 318-1.21, 318.1.2.4 of Criminal Code) <p>According to the Article 144-1.2 of the Criminal Code of the Republic of Azerbaijan the commitment of the same acts (mentioned in Article 144-1.1) in below circumstances is aggravating:</p> <ul style="list-style-type: none"> • Commitment against two or more persons; • Commitment against minors; • Commitment against a woman obviously known as pregnant by the perpetrator ; • Commitment by crossing the victim of human trafficking through the state border of the Republic of Azerbaijan; • Commitment by a group of persons, by a group with a premeditated conspiracy or by an organized group or criminal community (organization); • Commitment by the perpetrator with the use his/her service position; • Commitment with use or threat to use of violence which is dangerous for life or health of the victim; • Commitment with torturing the victim or with other cruel, inhuman or degrading treatment; • Commitment with the purpose of using the organs and tissues of the victim (source: Articles 144-2.2.1 and 144-2.2.6 of the Criminal Code). |
| <p>6. Does your legislation envisage a liability for smuggled migrants for irregular entry and stay/residence per se? Are there any special conditions for smuggled migrants who agree to cooperate with authorities?</p> | <p>The legislation of the Republic of Azerbaijan envisages administrative liability for infringement of rules on stay, residence in the Republic of Azerbaijan or transit through the country by foreigners and stateless persons. According to the Administrative Offences Code, the migrants who have committed that kind of infringements are fined in the amount of 300 to 400 manats with or without being expelled from the boundaries of the Republic of Azerbaijan in administrative order.</p> <p>According to the Article 318 of the Criminal Code of the Republic of Azerbaijan the crossing of protected state border of the Republic of Azerbaijan without determined documents or outside of border check point is punished by the penalty at a rate from 1500 to 3000 manats and imprisonment for up to two years term. The provisions of this Article is not applicable in regard to foreigners and stateless persons arrived in the Azerbaijan Republic with infringement of rules of crossing protected border of the Republic of Azerbaijan with a purpose of use of the right on political asylum envisaged by the Constitution of the Azerbaijan Republic, in case the actions of these persons do not contain other criminal act. According to the Law of the Republic of Azerbaijan on "On status of refugees and internally displaced (persons displaced within the country) persons" the person, who arrived illegally in the Republic of Azerbaijan from other country and applied to the relevant governmental body as soon as possible shall stay exempt from the responsibility envisaged by the legislation of the Republic of Azerbaijan based on the grounded decision of that body.</p> <p>Moreover, expulsion way from the borders of the Republic of Azerbaijan in an administrative order is not applied to the foreigners and stateless persons who assist the prosecuting authorities until the end of prosecution.</p> |

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| <p>7. Please provide available statistics for 2014 - 2016 on detected cases of migrant smuggling (detected smugglers). What was the rate of cases reached to the court and rate of judgements of conviction in these cases?</p> | <p>8 organized groups, in total consisting of 69 persons (66 citizens of the Peoples' Republic of Bangladesh and 3 citizens the Islamic Republic of Pakistan), which used illegal migration channel for Azerbaijan-Iran-Turkey-Europe route were detained during the measures against illegal migration within 2014-2016. 10 of them including 7 Bangladeshi and 3 Pakistani citizens were the organizers and 59 Bangladeshi citizens were the users of these channels. The detained foreigners were brought to administrative liability, expelled from the territory of the Republic of Azerbaijan and their entries to the country were banned.</p> |
| <p>8. Please describe how your national law enforcement and judicial authorities cooperate to prevent, investigate and prosecute cases of migrant smuggling. Are any other authorities involved in this process, e.g. financial intelligence units tracking and investigating financial flows related to migrant smuggling?</p> | <p>State Migration Service cooperates with local executive authorities and municipalities on revealing irregular migrants. Relevant investigations are conducted in all residential area of the Republic and information on irregular migrants is obtained. In order to combat violation of migration legislation of the Republic of Azerbaijan State Migration Service of the Republic of Azerbaijan signed separate Action Plans with State Border Service of the Republic of Azerbaijan and Ministry of Interior of the Republic of Azerbaijan and ensures regular implementation of the measures in this direction.</p> |
| <p>9. Please provide recent examples of effective international cooperation and cross-border operations to detect facilitators/smugglers. Which authorities have been involved? What challenges did you face in coordinating with counterparts?</p> | <p>State Migration Service of the Republic of Azerbaijan actively participates in the international events organized in the framework of "Consolidation of Migration and Border Management Capacities in Azerbaijan" Project implemented by International Organization for Migration, "Support to the Implementation of the Mobility Partnership with Azerbaijan (MOBILAZE)" Project implemented by the International Centre for Migration Policy Development, as well as "Better Coordination of Protection of the Land Border Between Azerbaijan and Georgia" project implemented via UNDP and expands cooperation on the mentioned direction.</p> <p>The Republic of Azerbaijan realizes measure to strengthen the bilateral cooperation ties with border countries in the migration field. Thus, the Republic of Azerbaijan negotiates with the governments of the Republic of Turkey, Russian Federation and Georgia to sign bilateral agreement on cooperation in the migration field.</p> |
| <p>10. What initiatives exist in your country in the field of preventing facilitation of irregular migration? Are specific information campaigns conducted? Does your country implement or is it considering implementing programs of regular migration as a tool to prevent irregular migration?</p> | <p>Intensive measures are being implemented by State Migration Service for the purpose of raising public awareness on migration field. Thus, in order to ensure awareness of foreigners and stateless persons entering the country on existing legislative acts in migration field, press releases and statements for media were prepared, round tables and legal awareness events were organized. Moreover, informative films and video clips were broadcasted on local television channels and interviews on different topics were arranged on radio channels. As well as, awareness raising and enlightenment events were held at higher education institutions (Baku State University, Azerbaijan State Oil Academy, Sumgayit State University, Ganja State University, Azerbaijan Medical University, Baku Slavic University).</p> <p>Furthermore, video clips and slides presented by the Service in different languages were demonstrated in bus stops. As well as, broadcasting of informative video materials is continued at the Heydar Aliyev International Airport and Baku Train Station throughout the day taking into account of travel itineraries of migrants. Video clips and slides presented by the Service are shown in the ships of Azerbaijan Caspian Shipping Company sailing from Baku to Aktau seaport of Kazakhstan and to Turkmenbashi seaport of Turkmenistan and opposite routes.</p> |

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| | <p>Necessary organizational measures have been taken to ensure operation of official website of the Service in 3 languages – Azerbaijani, English and Russian, as well as foreigners and stateless persons’ application to the “Question-answer” section and email addresses of the agency related with the issues interesting them to obtain timely legal assistance in one of the three language which is convenient for them. Besides, publication of “Migration” analytical-information journal (Azerbaijani, Russian and English) was continued for the purpose of delivering news occurred in migration sphere of the country and the world to foreigners and stateless persons, as well as citizens of the Republic of Azerbaijan.</p> <p>Operation of Call Center of State Migration Service in three languages - Azerbaijani, English and Russian is of great importance to ensure transparency in this field and citizens’ right to obtain necessary information. Moreover, brochures on implementing mechanism of migration legislation were published in Azerbaijani, Russian, English, Arabic, Farsi and Urdu by the Service.</p> |
| <p>11. Does your country apply two distinct legal frameworks to migrant smuggling and trafficking in human beings, in line with the international legal framework? How do you address the risks of smuggled migrants becoming victims of human trafficking? What challenges exist in the identification of smuggled persons and victims of human trafficking?</p> | <p>Although the term “trafficking in human beings” is defined in the national legislation of the Republic of Azerbaijan and is considered as a criminal offence, “smuggling of migrants” is not categorized as a special offence. As mentioned above the notion of “organization of illegal migration” is determined equal to that term by the Criminal Code of the Republic of Azerbaijan.</p> |

| GEORGIA | |
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| <p>1. Has your country ratified: a) the United Nations Convention against Transnational Organized Crime, b) the Protocol against the Smuggling of Migrants by Land, Sea and Air and c) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children?</p> | <p>Government of Georgia prioritizes and pays particular attention to combat Trafficking in Human Beings. For the effective implementation of this goal relevant legal and institutional mechanisms are taken at national and international level.</p> <p>In 2005 Georgia ratified the United Nations Convention against Transnational Organized Crime and its protocols against the Smuggling of Migrants by Land, Sea and Air and to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. All the mentioned treaties have come into force for Georgia since 5 October, 2006.</p> <p>Since 2006 Georgia is also the member of the Council of Europe Convention on Action against Trafficking in Human Beings.</p> |
| <p>2. Does your national legislation contain a specific definition of “facilitation of irregular migration” (hereafter the “facilitation” or</p> | <p>Article 344 of the Criminal Code of Georgia (CCG) criminalizes Illegal transfer of a migrant across the state border of Georgia and/or creation of the relevant conditions (facilitation) for a migrant's illegal stay in Georgia and imposes imprisonment for such an act from 2 to 5 years. The sanctions may be increased based on the aggravated circumstances.</p> |

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| <p>“migrant smuggling”)? What activities are considered as facilitation?</p> | |
| <p>3. What liability your legislation envisages for various types of criminal conducts, which could constitute facilitation (e.g. facilitation of illegal entry (border crossing), transit, or stay/residence, provision of forged documents, assistance in abuse of benefits system etc.)?</p> | <p><i>Joint answer for Q.Q. 3 and 4</i></p> <p>As mentioned above, Article 344 of the Criminal Code of Georgia criminalizes Illegal transfer of a migrant across the state border of Georgia and/or creation of the relevant conditions (facilitation) for a migrant's illegal stay in Georgia and imposes imprisonment for such an act from 2 to 5 years. The illegal transfer of a migrant or facilitation of a migrant to stay illegally in Georgia by the provision of forged documents is an aggravated crime and is punishable by imprisonment from 5 to 8 years.</p> <p>Apart from it, Articles 24 and 25 of the Criminal Code of Georgia acknowledges liability of the accomplice, including an aider who facilitates another person in the commission of the crime. A facilitator shall be criminally liable according to the extent and nature of his/her participation in the commission of the crime.</p> |
| <p>4. Do facilitators need to derive benefits to have committed an offence? Does your legislation allow for sanctions to be waived if facilitation to irregular migrants is provided as humanitarian assistance?</p> | <p>In order a facilitator to be criminally liable for the commission of a crime, Georgian legislation does not require a facilitator to have the aim of getting any benefit.</p> <p>Criminal Code of Georgia releases an irregular migrant from criminal liability if he/she has entered Georgia directly from the territories where his/her life or freedom was endangered under Article 1 of the 1951 UN Convention on the Status of Refugees, is staying in Georgia illegally and who, in accordance with the same Convention and the legislation of Georgia, seeks asylum from the authorities of Georgia and he/she immediately appears before the public authorities and provides adequate explanation about his/her illegal entry or unauthorized stay in Georgia. In such a case the irregular migrant’s act shall not contain elements of any other crime.</p> <p>Legislation of Georgia does not release a facilitator to irregular migration from the criminal liability, however if a person facilitated another one to enter Georgia illegally with the aim of humanitarian assistance, based on the factual circumstances of the case a prosecutor may not start prosecution against the facilitator.</p> |
| <p>5. In case your legislation provides for a criminal liability for facilitation of irregular migration, does it provide for aggravating circumstances, e.g. endangering migrants' life or entail inhuman or degrading treatment?</p> | <p>Paragraphs 2 and 3 of Article 344 (<i>Illegal transfer of a migrant across the state border of Georgia and/or creation of the relevant conditions (facilitation) for a migrant's illegal stay in Georgia</i>) determine the aggravated circumstances of the crime. If the crime is committed a) repeatedly, b) with respect to two or more persons, c) by endangering a migrant's life or health, d) by inhuman or degrading treatment of a migrant, including exploitation or e) using forged documents, a perpetrator shall be punished by imprisonment for a term of five to eight years.</p> <p>If the crime is committed a) by an organized group or b) causing the death of the victim or other grave consequences, a perpetrator shall be punished by imprisonment for a term of eight to fifteen years.</p> |
| <p>6. Does your legislation envisage a liability for smuggled migrants for</p> | <p>As mentioned above, the Criminal Code of Georgia releases an irregular migrant from criminal liability if the following conditions are cumulatively satisfied: a) he/she has entered Georgia directly from the territories where his/her life or freedom was endangered under Article 1 of the 1951</p> |

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| <p>irregular entry and stay/residence per se? Are there any special conditions for smuggled migrants who agree to cooperate with authorities?</p> | <p>UN Convention on the Status of Refugees, b) he/she is staying in Georgia illegally and seeks asylum from the authorities of Georgia and c) he/she immediately appears before the public authorities and provides adequate explanation about his/her illegal entry or unauthorized stay in Georgia. In such case the irregular migrant's act shall not contain elements of any other crime.</p> <p>In addition, if a person committed the above mentioned act because of being a victim of human trafficking, before having gained the status of the victim of human trafficking, he/she will also be released from criminal liability.</p> <p>Furthermore, the LELP Public Service Development Agency of the Ministry of Justice of Georgia issues temporary residence permit to the victims of human trafficking to ensure their legal stay/residence in Georgia. Such resident permit shall be issued for the period of the victim's anticipated stay in Georgia, but no more than for six years. Temporary residence permit shall be extended under the same conditions as issued.</p> |
| <p>7. Please provide available statistics for 2014 - 2016 on detected cases of migrant smuggling (detected smugglers). What was the rate of cases reached to the court and rate of judgements of conviction in these cases?</p> | <p>Launched investigation on irregular migration cases according to the Georgian Legislation (Article 344 of the Criminal Code of Georgia (CCG): Illegal transfer of a migrant across the state border of Georgia and/or creation of the relevant conditions (facilitation) for a migrant's illegal stay in Georgia):</p> <ul style="list-style-type: none"> • 2014 – 5cases; • 2015 – 4 cases; • 2016 – 2 cases. <p>Number of prosecuted persons:</p> <ul style="list-style-type: none"> • 2014 – 3 cases; • 2015 – 4 cases; • 2016 – 1 cases. <p>Judgments of conviction by the court:</p> <ul style="list-style-type: none"> • 2014 – 2 cases; • 2015 – 2 cases; • 2016 – 4 cases. |
| <p>8. Please describe how your national law enforcement and judicial authorities cooperate to prevent, investigate and prosecute cases of migrant smuggling. Are any other authorities involved in this process, e.g. financial intelligence units tracking</p> | <p>In the event of migrant smuggling at the green border, the case is dealt with by the MIA Border Police of Georgia (BPG). In accordance with the Law of Georgia "On Police", BPG reveals, investigates and prevents cases of migrant smuggling. In particular, such cases are being investigated by the Operative-Investigative Bureau of the BPG, while being supervised during this process by the Prosecutor's office. In this regard, the Operative-Investigative Bureau cooperates, with different structural subdivisions of the Ministry of Internal Affairs of Georgia, namely: the Patrol Police Department, Migration Department, Information-Analytical Department, as well as other state institutions, such as State Security Service and the Ministry of Foreign Affairs of Georgia.</p> |

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| <p>and investigating financial flows related to migrant smuggling?</p> | <p>As regards the financial schemes used by migrant smugglers, according to the investigated cases, migrants intending to illegally cross Georgian borders had prepaid the coordinators in their countries of origin and were carrying the relevant amount for personal needs in cash; therefore, Georgian authorities were unable to detect, trace and confiscate smugglers' financial assets.</p> |
| <p>9. Please provide recent examples of effective international cooperation and cross-border operations to detect facilitators/smugglers. Which authorities have been involved? What challenges did you face in coordinating with counterparts?</p> | <p>In order to ensure effective management and protection of the State Borders of Georgia, MIA Border Police of Georgia has concluded several Cooperation Agreements with partner countries, which, among other issues, regulate and provide legal basis for planning and implementing cross-border operations. Within the frames of the aforementioned agreements, annual action plans are being approved regarding the sharing of information and best practices. In this regard, representatives of Investigative-Operations Agencies of the two cooperating partner countries meet periodically. During the recent period, BPG Operative-Investigative Bureau has been actively cooperating with the liaison officers on migration issues of the Republics of Lithuania, Latvia and Estonia based in Georgia.</p> <p>Apart from this, the Government of Georgia pays particular attention to expanding international cooperation in combating organized crime. Georgian law enforcement agencies closely cooperate with their counterparts through police attaches. Starting from 2013 Ministry of Internal Affairs of Georgia has increased the number of Georgian police attachés abroad. Currently, Georgia has 13 police attachés deployed in the following eleven countries: Armenia, Austria, Azerbaijan, Belarus, France, Germany, Greece, Italy, Poland (covering also Estonia, Latvia and Lithuania), Spain, Sweden, Turkey and Ukraine.</p> <p>Starting from 2014 the Ministry of Internal Affairs of Georgia intensified meeting of working groups consisting of criminal police representatives with partner countries in order to discuss issues related to and share information on organized crime.</p> <p>As regards the cooperation with the counterparts, Georgia has faces particular hindrances with organizing cross-border operations due to institutional incompatibilities between the relevant authorities of Georgia and other countries. In other words, structural differences represent the main obstacle in terms of performing such operations. It is also noteworthy, that joint trainings are being periodically organized for the relevant authorities of Georgia and it's neighboring countries.</p> |
| <p>10. What initiatives exist in your country in the field of preventing facilitation of irregular migration? Are specific information campaigns conducted? Does your country implement or is it considering implementing programs of regular migration as a tool to prevent irregular migration?</p> | <p>Providing an adequate and intensive information campaign on regular migration is among the top priorities 2016-2020 of Migration Strategy. It contains a separately dedicated chapter aiming at facilitating and improving the mechanisms for regular/legal migration. Information campaign, which outset from 2013 is planned by SCMI and inter alia implemented with local and international partners. The various methods are applied for campaigning including: TV broadcasts, printed material, permanent meetings with target audience and general public.</p> <p>Another action oriented on application of legal labor mobility as alternative to illegal migration is testing of circular migration schemes with EU member states relevant state institutions. Based on the gained experience, an in-depth evaluation has been done describing the entire cycle of the circular migration to be used and further enhanced in scope.</p> |
| <p>11. Does your country apply two distinct legal frameworks to migrant smuggling and trafficking in human beings, in line with the international legal framework? How do you address</p> | <p>Government of Georgia pays particular attention to combatting trafficking in human beings (THB). In this regard GOG is committed to take effective measures with regard to so called "4P" principles – Prevention, Prosecution, Protection and Partnership.</p> <p>Since 2003 trafficking in human beings is explicitly criminalized under Criminal Code of Georgia. It ensures separately criminal liability for sexual and labor exploitation of adults and minors. In particular, Article 143 of the Criminal Code of Georgia prohibits selling or buying a person or carrying</p> |

the risks of smuggled migrants becoming victims of human trafficking? What challenges exist in the identification of smuggled persons and victims of human trafficking?

out any other form of illegal transactions, as well as enticing, transferring, harboring or receiving a person by means of coercion, blackmail or deception, by using vulnerable situation or abusing of power, with the purpose of exploitation.

Trafficking in human beings is punished by imprisonment from seven to twelve years, by deprivation of the right to occupy a position or pursue a particular activity for three years.

If the human trafficking is committed in aggravating circumstances, the term for imprisonment increases up to 20 years.

The Code also prohibits trafficking against minors. Article 143 deals with the trafficking in minors. The sanction for this crime is imprisonment from 8 to 15 years. If trafficking in minors is committed in aggravating circumstances the term for imprisonment increases up to 17 years, if this act caused the death of minor, the perpetrator will be punished by imprisonment from 17 to 20 years or by life imprisonment.

Liability of legal person for trafficking in human beings is also regulated under Criminal Code of Georgia. Namely, legal person will be punished by deprivation of the right to pursue its business or by liquidation.

In addition, Article 143 of the Criminal Code criminalizes use of the service of the trafficking victim. Sanction for this crime is the deprivation of liberty up to 4 years or imprisonment from 3 to 5 years. If the crime is committed in aggravating circumstances the sanction increases up to 15 years.

It is worth mentioning that in 2015 legal amendment was introduced to the Article 143³ of the Criminal Code aiming at encouraging the reporting of the using of services of THB Victims and providing the security for testimonies. In particular, if a person who has used the services of the THB victim, reports about the THB crime to the law enforcements before the investigation is launched and he/she has not committed any other crime, he/she will be released from criminal liability.

Apart from the Criminal Code of Georgia, the Law on Combating Trafficking in Persons was adopted in 2006 aiming at preventing, protecting and prosecuting trafficking offenders. The latter was amended in accordance with the recommendation of the Group of Experts on Action against Trafficking in Human Beings (GRETA) in April 2012. In particular, new chapter inserted in the Law refers to the social and legal protection, assistance and rehabilitation of the child victims.

Identification of victims of trafficking in persons, including smuggled migrants is one of the priority of Government of Georgia. To address the issue 4 TIP inspection mobile groups composed of representatives of law enforcements agencies (detective-investigators) under the Ministry of Internal Affairs regularly operate in the high risk areas. The mobile groups also check organizations with vague job offers in Georgia and abroad. Law enforcements regularly interview Georgian nationals deported from other countries in order to reveal potential TIP cases.

Apart from it, in order to proactively identify victims of human trafficking at the borders, the Council is currently elaborating Guidelines on Identification of victims of human trafficking for Border Police and the officers of Revenue Service working at the borders.

In addition, Government of Georgia disseminates information leaflets and various brochures in different languages among Georgian nationals and foreigners at the border check points.

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| | <p>In close cooperation with IOM and with the financial support of INL information brochures and banners in Georgian, English Turkish and Russian languages are disseminated at the Sarpi border Check point. Apart from it, videos in 4 languages are also screened on the monitors at the Passport Control Points. The same campaign is also being conducted in Vale border Check point, where the information brochures are disseminated in five languages (Georgian, English Turkish, Russian and Persian).</p> <p>One of the main deficiencies with regard to Human Trafficking is identification of the victims of labor exploitation. However, the grounded installed cooperation between Central Criminal Police Department (CCPD) and Labor Inspectorate Department established in 2015 seems to tackle this issue. The Labor Inspectorate Department was established under the Ministry of Labor, Health and Social Affairs of Georgia. It carries out inspections on non-voluntary basis and monitor labor conditions. In order to promote effective investigation of the THB cases (in particular forced labor and labor exploitation) the “Memorandum of Mutual Cooperation on promotion of detection of cases of trafficking in human beings” between the Labor Inspectorate Department and Central Criminal Police Department (CCPD) was signed on August 13, 2015. It ensures the prompt sharing of information and intelligence and reporting of possible THB cases. On the basis of the MOU, Labor Inspectorate department provides the CCPD with list of organizations considered to be risk categories and CCPD starts proactively checking of such organizations.</p> |
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| HUNGARY | |
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| 1. Has your country ratified: a) the United Nations Convention against Transnational Organized Crime, b) the Protocol against the Smuggling of Migrants by Land, Sea and Air and c) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children? | Hungary has ratified: <ul style="list-style-type: none"> a) the United Nations Convention against Transnational Organized Crime, on 22. December 2006 (promulgated by Statute 2006. CI.) b) the Protocol against the Smuggling of Migrants by Land, Sea and Air, on 22. December 2006 (promulgated by Statute 2006. CIII.) c) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, on 22. December 2006 (promulgated by Statute 2006. CII.) |
| 2. Does your national legislation contain a specific definition of “facilitation of irregular migration” (hereafter the “facilitation” or “migrant smuggling”)? What activities are considered as facilitation? | <p>In Hungary, the Criminal Code contains a specific definition of “facilitation of irregular migration”; „353§ (1) Any person who provides aid to another person for crossing state borders in violation of the relevant statutory provisions is guilty of a felony...”</p> <p>Activities considered as facilitation, e.g.: transition across the state border, instruction (showing the way), giving map illustrating irregular border crossing routs, providing accommodation the night before crossing the border if the perpetrator was aware of the person’s plans. Consequently, this crime can only be committed intentionally, so the perpetrator has to know, that the person – to whom he helps – is not entitled to cross the border.</p> |
| 3. What liability your legislation envisages for various types of criminal conducts, which could constitute facilitation (e.g. facilitation of illegal | <p>Migrant smuggling (facilitation of irregular migration) is a criminal offence according to the Hungarian Criminal Code. This crime is punishable by imprisonment from one to five years.</p> |

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| <p>entry (border crossing), transit, or stay/residence, provision of forged documents, assistance in abuse of benefits system etc.)?</p> | <p>There are aggravating circumstances in connection to this crime like: carried out for financial gain or advantage, involving several persons for crossing state borders, carrying out by tormenting the smuggled person, or on a commercial scale.</p> <p>There are three more criminal offences in connection with the facilitation:</p> <ul style="list-style-type: none"> – 352/A.§ Illicit crossing of the border fence – punishable by three years imprisonment (having aggravating circumstances) – 352/B.§ Damaging of the border fence – punishable by imprisonment from one to five years (having aggravating circumstances) – 352/C.§ Hindering the building process of the border fence – punishable by one year imprisonment |
| <p>4. Do facilitators need to derive benefits to have committed an offence? Does your legislation allow for sanctions to be waived if facilitation to irregular migrants is provided as humanitarian assistance?</p> | <p>Deriving benefits is not a prerequisite for committing the offense.</p> <p>The Hungarian Criminal Code does not allow for sanctions to be waived if facilitation to irregular migrants is provided as humanitarian assistance.</p> |
| <p>5. In case your legislation provides for a criminal liability for facilitation of irregular migration, does it provide for aggravating circumstances, e.g. endangering migrants' life or entail inhuman or degrading treatment?</p> | <p>The Hungarian Criminal Code (353.§) provides for aggravating circumstances:</p> <p>(2) The penalty shall be imprisonment between two to eight years if illegal immigrant smuggling:</p> <ul style="list-style-type: none"> a) is carried out for financial gain or advantage; or b) involves several persons for crossing state borders. <p>(3) The penalty shall be imprisonment between five to ten years if illegal immigrant smuggling is carried out:</p> <ul style="list-style-type: none"> a) by tormenting the smuggled person; b) by displaying a deadly weapon; c) by carrying a deadly weapon; d) on a commercial scale; or e) in criminal association with accomplices. <p>(4) The crime is punishable by imprisonment from ten to fifteen years if</p> <ul style="list-style-type: none"> a) the illegal immigrant smuggling determined in the (3) section a) point is committed in the manner determined in the b) and e) points. b) the illegal immigrant smuggling determined in the (3) section b) point is committed in the manner determined in the a) c) and e) points. <p>(5) The organizer of the crime determined in the sections (3) and (4) is punishable by imprisonment from ten to twenty years.</p> <p>(6) Any person who engages in preparations for illegal immigrant smuggling is punishable by three years imprisonment.</p> |

| <p>6. Does your legislation envisage a liability for smuggled migrants for irregular entry and stay/residence per se? Are there any special conditions for smuggled migrants who agree to cooperate with authorities?</p> | <p>The Hungarian aliens policing law makes no distinction between smuggled migrants and migrants arrived in an illegal way – they both are subject to the same policing regulations.</p> <p>Irregular migrants cooperating with the authorities in individual cases may be subject to the following facilities:</p> <ul style="list-style-type: none"> - in the absence of residence conditions – on the basis of significant law enforcement or national security interest and upon the proposal of the prosecutor, the court, the law enforcement or national security agency or the investigative unit of the National Tax and Customs Authority – the third country national cooperating with the authorities in detecting a crime and significantly facilitating the proving or, having regard to him/her, other third country national shall be furnished with a residence permit for humanitarian purposes; - the aliens policing authority furnishes the third country national, in case of revocation of the decision on aliens policing expulsion and prohibition on entry and stay affecting him or her (revocation for the elapsing of the 12 months deadline), with a residence permit for humanitarian purposes in the absence of conditions set by law if the person has cooperated with the aliens policing authority in the carrying out of the expulsion. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| <p>7. Please provide available statistics for 2014 - 2016 on detected cases of migrant smuggling (detected smugglers). What was the rate of cases reached to the court and rate of judgements of conviction in these cases?</p> | <table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <thead> <tr> <th colspan="5" style="padding: 5px;">Migrant smuggling and facilitation of illegal stay</th> </tr> <tr> <th style="padding: 5px;">Year</th> <th style="padding: 5px;">2014</th> <th style="padding: 5px;">2015</th> <th style="padding: 5px;">2016</th> <th style="padding: 5px;">2017 I-VIII</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;">Total number of detected cases:</td> <td style="padding: 5px;">593</td> <td style="padding: 5px;">1177</td> <td style="padding: 5px;">253</td> <td style="padding: 5px;">89</td> </tr> <tr> <td style="padding: 5px;">Number of incriminations (migrant smuggling):</td> <td style="padding: 5px;">340</td> <td style="padding: 5px;">598</td> <td style="padding: 5px;">306</td> <td style="padding: 5px;">112 (I-IX)</td> </tr> <tr> <td style="padding: 5px;">Number of incriminations (facilitation of illegal stay):</td> <td style="padding: 5px;">2</td> <td style="padding: 5px;">277</td> <td style="padding: 5px;">659</td> <td style="padding: 5px;">72 (I-IX)</td> </tr> </tbody> </table> | | | | | Migrant smuggling and facilitation of illegal stay | | | | | Year | 2014 | 2015 | 2016 | 2017 I-VIII | Total number of detected cases: | 593 | 1177 | 253 | 89 | Number of incriminations (migrant smuggling): | 340 | 598 | 306 | 112 (I-IX) | Number of incriminations (facilitation of illegal stay): | 2 | 277 | 659 | 72 (I-IX) |
| Migrant smuggling and facilitation of illegal stay | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Year | 2014 | 2015 | 2016 | 2017 I-VIII | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Total number of detected cases: | 593 | 1177 | 253 | 89 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Number of incriminations (migrant smuggling): | 340 | 598 | 306 | 112 (I-IX) | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Number of incriminations (facilitation of illegal stay): | 2 | 277 | 659 | 72 (I-IX) | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <p>8. Please describe how your national law enforcement and judicial authorities cooperate to prevent, investigate and prosecute cases of migrant smuggling. Are any other authorities involved in this process, e.g. financial intelligence units tracking and investigating financial flows related to migrant smuggling?</p> | <p>National-wide coordination between local and regional units being responsible for investigating human smuggling cases is carried out by the National Bureau of Investigation (NBI) Illegal Migration Unit, as the top-level investigative unit in this regard.</p> <p>With national jurisdiction in the field of facilitation of illegal migration, the NBI Illegal Migration Unit is responsible of conducting criminal investigations against perpetrators, who are suspected of committing human smuggling in an organized manner, as a member of organized criminal groups (OCG).</p> <p>Criminal investigations commenced because of human smuggling also fall within the jurisdiction of the Illegal Migration Unit, where international cooperation is needed with foreign countries in order to successfully file the case to the respective prosecutor office.</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

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| | <p>NBI Illegal Migration Unit also serves as an information hub, all international cases with links to Hungary end up and being dealt by this unit. Moreover, as it was mentioned the regional coordination of ongoing human smuggling cases are also monitored here, giving a helping hand to the regional units.</p> <p>Due its national jurisdiction and competence, the Illegal Migration Unit also requests and receives all human smuggling related information, which analysed and assessed by the designated analysts within the unit, in order to establish new modus operandi, trends, illicit behaviour of facilitators, routes chose by smugglers to transit through the country etc.</p> <p>The central coordination and analyst work provided by the Illegal Migration Unit, with the outstanding results of the commenced preliminary / classified and open / criminal investigations targeting OCGs being active along the Western Balkan corridor, by addressing the criminal activity of OCG members with links / accomplices in Hungary or with residence in Hungary, facilitate both the proactive and the retroactive measures carried out by the HU LEAs to handle this phenomena.</p> <p>Financial investigations plays more and more significant role in the course of the criminal investigations against OCGs being involved in human smuggling. The ultimate aim is to track down and seize, confiscate any dirty money and criminal asset, which was acquired / obtained during the existence of the OCG. Our legislative framework entitles law enforcement authorities to do so. Utilizing the legal possibilities and offered support of US Immigration and Custom Enforcement Unit (US ICE) under the egis of Europol gives a chance to retrieve the suspicious money transactions of both migrants and smugglers at international level. The existence of HAWALA, as an almost intractable underground banking network is also known amongst the respective units targeting facilitated illegal migration. A separate unit of NBI provides assistance in financial investigations.</p> <p>International cooperation with neighbouring countries, countries of origin, transit and destination – as it was highlighted – is crucial in this field of crime. NBI Illegal Migration Unit maintains reliable and steady connection with these countries, bilateral and multilateral operational meetings, joint border meetings also contribute to the smooth and fast information exchange between the LEAs.</p> <p>All investigations commenced or taken over by the NBI Illegal Migration Unit is closely monitored and led by the respective prosecutor offices. Professional cooperation and work-meetings in person are the key factors of the successful prosecution of the high-profile human smuggling cases.</p> |
| <p>9. Please provide recent examples of effective international cooperation and cross-border operations to detect facilitators/smugglers. Which authorities have been involved? What challenges did you face in coordinating with counterparts?</p> | <p>The so called “Lorry Case” with 71 casualties in the cargo-bay of a refrigerated lorry found abandoned align the A1 motorway in Austria near to Pandorf. Suspects of the case had been captured within 48 hours after the lorry was found due to the smooth and fast international cooperation between the MSs. The case was filed to the prosecutor office, indictment was made against the perpetrators, all of them are kept in preliminary-detention and waiting for the decision of the first-instance court. Court trials are underway.</p> <p>Numerous successful cases had been investigated by the NBI Illegal Migration Unit under the framework of EMPACT (EU Serious and Organized Crime Policy Cycle) Illegal Immigration Priority between 2014-2017, as co-drivers and as action-leaders, in the course of the different actions organized by the unit.</p> <p>In the course of the preliminary investigations, which is solely based on operation work and intelligence received from various (human or technical) sources, we mainly cooperate with our neighbouring countries (SK, SRB, RO, SLO, CRO) located along the illegal immigration route, but also with those central units of our partner countries, which hold reliable and useful information on the target persons and vehicles.</p> |

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| | <p>It should be taken into consideration that no controlled delivery operations are possible during human smuggling investigations. The ultimate aim of our common endeavours is to detach the OCGs from the groups of vulnerable people. Therefore, cross-border operations may consist of the surveillance of the target persons but not the means of transportation used for human smuggling.</p> <p>Our partner countries in international and cross-border cooperation are changing case by case, the nature of the case would determine the operational needs and also the partners the Illegal Migration Unit should contact with in due time. Real-time information exchange between affected countries is crucial and inevitable for the purpose of successfully combating and dismantling OCGs.</p> <p>The lack of real-time information or the reluctance to cooperate with others is the only challenge to be mentioned in this field of national and international police work. In the course of the investigations the process of legal aid requests (MLAs) is considered to be a bit slow, which could prolong the timeframe of investigations, but it is only a side effect of the international law-enforcement cooperation.</p> |
| <p>10. What initiatives exist in your country in the field of preventing facilitation of irregular migration? Are specific information campaigns conducted? Does your country implement or is it considering implementing programs of regular migration as a tool to prevent irregular migration?</p> | <p>The Counter Illegal Immigration Unit, National Bureau of Investigation has been appointed to be the leader of actions (one or two in the yearly operational action plans - OAPs) designed and implemented under the EMPACT Illegal Immigration Priority. The Hungary-led action (the so-called TranSEEt under the OAP 2017) focuses on strengthened operational cooperation between the competent law enforcement agencies seated in core states (EU and third countries) in relation to the Western-Balkan channel and is intended to fight jointly against the illegal immigration to EU facilitated by organized crime groups. The main goal of the action is identify and arrest as much organized crime group members through the Western-Balkan and dismantle as many OSGs as possible.</p> |
| <p>11. Does your country apply two distinct legal frameworks to migrant smuggling and trafficking in human beings, in line with the international legal framework? How do you address the risks of smuggled migrants becoming victims of human trafficking? What challenges exist in the identification of smuggled persons and victims of human trafficking?</p> | <p>Smuggling of migrants and trafficking in human beings are separate offences under the Hungarian Criminal Code. Section 353 criminalizing smuggling of migrants is criminalized reads as follows:</p> <ul style="list-style-type: none"> (1) Any person who provides aid to another person for crossing state borders in violation of the relevant statutory provisions is guilty of a felony punishable by imprisonment not exceeding three years. (2) The penalty shall be imprisonment between one to five years if illegal immigrant smuggling: <ul style="list-style-type: none"> a) is carried out for financial gain or advantage; or b) involves several persons for crossing state borders. (3) The penalty shall be imprisonment between two to eight years if illegal immigrant smuggling is carried out: <ul style="list-style-type: none"> a) by tormenting the smuggled person; b) by displaying a deadly weapon; c) by carrying a deadly weapon; d) on a commercial scale; or e) in criminal association with accomplices. |

(4) Any person who engages in preparations for illegal immigrant smuggling is guilty of misdemeanor punishable by imprisonment not exceeding two years.

Section 192 on Trafficking in Human Being provides:

(1) Any person who:

- a) sells, purchases, exchanges, or transfers or receives another person as consideration; or
 - b) transports, harbors, shelters or recruits another person for the purposes referred to in Paragraph a), including transfer of control over such person;
- is guilty of a felony punishable by imprisonment not exceeding three years.

(2) Any person who - for the purpose of exploitation - sells, purchases, exchanges, supplies, receives, recruits, transports, harbors or shelters another person, including transfer of control over such person, is punishable by imprisonment between one to five years.

(3) The penalty shall be imprisonment between two to eight years if trafficking in human beings is committed:

- a) against a person held in captivity;
- b) by force or by threat of force;
- c) by deception;
- d) by tormenting the aggrieved party;
- e) against a person who is in the care, custody or supervision of or receives medical treatment from, the perpetrator, or if abuse is made of a recognized position of trust, authority or influence over the victim;
- f) for the unlawful use of the human body;
- g) by a public official, acting in an official capacity;
- h) in criminal association with accomplices; or
- i) on a commercial scale.

(4) The penalty shall be imprisonment between five to ten years, if:

- a) the criminal offense provided for in Subsection (2) is committed against a person under the age of eighteen years;
- b) the criminal offense provided for in Subsection (2) is committed against a person held in captivity, and either of the aggravating circumstances under Paragraphs b)-i) of Subsection (3) apply; or
- c) the criminal offense provided for in Subsection (2) results in particularly great damage or danger to life.

(5) The penalty shall be imprisonment between five to fifteen years if:

- a) the criminal offense provided for in Subsection (2) is committed against a person under the age of fourteen years;
- b) the criminal offense provided for in Subsection (2) is committed against a person under the age of eighteen years, and either of the aggravating circumstances under Subsection (3) apply;
- c) the criminal offense provided for in Subsection (2) is committed against a person under the age of eighteen years, and results in particularly great damage or danger to life; or
- d) the criminal offense provided for in Subsection (2) is committed against a person under the age of eighteen years for the purpose of child pornography.

- (6) The penalty shall be imprisonment between five to twenty years or life imprisonment if:
- a) the criminal offense provided for in Subsection (2) is committed against a person under the age of fourteen years, and either of the aggravating circumstances under Subsection (3) apply;
 - b) the criminal offense provided for in Subsection (2) is committed against a person under the age of fourteen years, and results in particularly great damage or danger to life; or
 - c) the criminal offense provided for in Subsection (2) is committed against a person under the age of fourteen years for the purpose of child pornography.

(7) Any person who engages in preparations for trafficking in human beings is guilty of misdemeanor punishable by imprisonment not exceeding two years.

(8) In the application of this Section, 'exploitation' shall mean the abuse of power or of a position of vulnerability for the purpose of taking advantage of the victim forced into or kept in such situation.

Forced Labour is criminalized under **Section 193**.

(1) Any person who forces another person by taking advantage of his vulnerable situation, or by force or by threat of force, to perform work against his will, is guilty of a felony punishable by imprisonment between one to five years.

(2) The penalty shall be imprisonment between two to eight years if the crime of forced labor is committed:

- a) by tormenting the victim;
- b) by causing a significant injury of interests; or
- c) against a person under the age of eighteen years.

Hungary also has a **dedicated national strategy against human trafficking**. The 2013-2016 National Strategy was adopted by the Government on 29 May 2013, and later its implementation period was extended to 2017.

Hungary is a possible transit country for asylum seeker and irregular migrant victims; however, so far, **no victim of human trafficking has been identified among asylum seekers and irregular migrants**. Two external factors are likely to limit the number of possible victims. First, the number of migrants arriving to Hungary or attempting to reach their destination country through Hungary has decreased in the recent months due to tightened border control. Second, human trafficking appears to be less prevalent on the Western Balkan Route.

The Immigration and Asylum Office is currently implementing an ISF funded project that will provide training on human trafficking for immigration officers. The training program will equip immigration officers with knowledge that will enable them to identify and refer trafficking victims. The training events are scheduled to be held in 2017.

Within the framework of the Immigration and Asylum Office's ISF funded project referred to above, **information material for migrants and asylum seekers on human trafficking and the help available to them is being developed**. To ensure a wide outreach to potential victims, the information material will be translated to five languages. The stakeholders involved in the implementation of the project are the Embassy of the United States of America, the Embassy of France, IOM, UNHCR, the Ministry of Interior, the National Police Headquarters and several NGOs.

| LATVIA | |
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| <p>1. Has your country ratified: a) the United Nations Convention against Transnational Organized Crime, b) the Protocol against the Smuggling of Migrants by Land, Sea and Air and c) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children?</p> | <p>Yes, Latvia has ratified: a) the United Nations Convention against Transnational Organized Crime <u>in 2001</u>; b) the Protocol against the Smuggling of Migrants by Land, Sea and Air <u>in 2003</u>; and c) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children <u>in 2004</u>.</p> |
| <p>2. Does your national legislation contain a specific definition of “facilitation of irregular migration” (hereafter the “facilitation” or “migrant smuggling”)? What activities are considered as facilitation?</p> | <p>No, the Criminal Law of Latvia does not contain a specific definition of “facilitation of irregular migration” as defined in the United Nations Protocol against the Smuggling of Migrants by Land, Sea. At the same time, features/elements of these concepts (“facilitation”/ “migrant smuggling”) are included in the national legislation. Illegal movement of persons across the state border and ensuring the possibility to reside in Latvia illegally are offences for which also facilitators are liable.</p> |
| <p>3. What liability your legislation envisages for various types of criminal conducts, which could constitute facilitation (e.g. facilitation of illegal entry (border crossing), transit, or stay/residence, provision of forged documents, assistance in abuse of benefits system etc.)?</p> | <p>The Criminal Law of Latvia foresees legal liability for:</p> <ul style="list-style-type: none"> • forgery of a document, seal and stamp and use and sale of a forged document, seal and stamp. The applicable punishment is deprivation of freedom for a period up to three years or temporary deprivation of freedom, or community service, or a fine; • illegal crossing of the state border. The applicable punishment is deprivation of freedom for a period up to two years or temporary deprivation of freedom, or community service, or a fine; • illegal movement of a person across the state border. The applicable punishment is deprivation of freedom for a period of three and up to fifteen years with probationary supervision for a period up to three years; or temporary deprivation of freedom or community service, or a fine with or without confiscation of property; • ensuring the possibility of residing illegally in the Republic of Latvia. The applicable punishment is deprivation of freedom for a period up to four years or temporary deprivation of freedom, or community service, or a fine, with deprivation of the right to take up a specific office for a period up to five years and with or without confiscation of property; • ensuring in bad faith with a possibility to acquire legally the right to reside in the Republic of Latvia, other Member State of the European Union, Member State of the European Economic Area or Swiss Confederation. The applicable punishment is deprivation of freedom for a period up to five years or temporary deprivation of freedom, or community service, or a fine, with or without confiscation of property. <p>The facilitators of these offences are punishable the same way as law offenders – punishments range from fines to the deprivation of freedom.</p> |

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| <p>4. Do facilitators need to derive benefits to have committed an offence? Does your legislation allow for sanctions to be waived if facilitation to irregular migrants is provided as humanitarian assistance?</p> | <p>No, according no relevant national legislation (Criminal Law) smugglers or facilitators do not have to derive any benefits to have committed offence. However, the Criminal Law also prescribes that if the criminal offence has been committed out of the desire to acquire benefits, it may be considered one of the aggravating circumstances.</p> <p>National legislation of Latvia does not <u>provide a separate/specific</u> mechanism for waiving punishments in those cases when illegal movement of persons across the border has been provided as humanitarian assistance. However, there are <u>general conditions</u> defined in the national legislation (which also include the provision of humanitarian assistance) when criminal liability is excluded (these can be also applied in the cases of illegal movement of persons across the border).</p> | | | | |
| <p>5. In case your legislation provides for a criminal liability for facilitation of irregular migration, does it provide for aggravating circumstances, e.g. endangering migrants' life or entail inhuman or degrading treatment?</p> | <p>Although the specific article of the Criminal Law that prescribes punishments for illegal movement of persons across the state border does not provide for the aggravating circumstances as mentioned in the question, the general provisions of the Criminal Law define aggravating circumstances that can be applied by court (also in the cases of smuggling). For example, Article 48 of the Criminal Law defines that the criminal offence which was committed with particular cruelty or with humiliation of the victim is aggravating circumstances.</p> <p>Furthermore, the Criminal Law also prescribes that if the criminal offence has been committed out of desire to acquire benefits, it may also be considered as one of the aggravating circumstances.</p> | | | | |
| <p>6. Does your legislation envisage a liability for smuggled migrants for irregular entry and stay/residence per se? Are there any special conditions for smuggled migrants who agree to cooperate with authorities?</p> | <p>Yes, national legislation envisages criminal liability for persons who intentionally commit illegal crossing of the state border (see the answer to Q 3).</p> <p>In addition, administrative liability is foreseen, if a person stays or resides in the Republic of Latvia without a valid visa, residence permit or valid travel document (according to the provisions of the Latvian Administrative Violations Code).</p> <p>No special conditions for smuggled migrants, who agree to cooperate with law enforcement authorities, are defined in the national legal acts. Nevertheless, in such cases the relevant general provisions of the Criminal Law can be applied, namely, the provisions on mitigating circumstances, for example, if the offender:</p> <ul style="list-style-type: none"> • has admitted his or her guilt, has freely confessed and has regretted the criminal offence committed; • has actively furthered the disclosure and investigation of the criminal offence; • has facilitated the disclosure of a crime of another person. | | | | |
| <p>7. Please provide available statistics for 2014 - 2016 on detected cases of migrant smuggling (detected smugglers). What was the rate of cases reached to the court and rate of judgements of conviction in these cases?</p> | | <p>2014</p> | <p>2015</p> | <p>2016</p> | |
| | <p>Criminal proceedings of migrant smuggling</p> | <p>20</p> | <p>38</p> | <p>21</p> | |
| | <p>Persons against whom criminal proceedings have been started</p> | <p>16</p> | <p>91</p> | <p>28</p> | |

| | | 2014 | 2015 | 2016 |
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| | Judgements of conviction in these cases | 4 | 37 | 21 |
| | Convicted persons | 4 | 37 | 21 |
| 8. Please describe how your national law enforcement and judicial authorities cooperate to prevent, investigate and prosecute cases of migrant smuggling. Are any other authorities involved in this process, e.g. financial intelligence units tracking and investigating financial flows related to migrant smuggling? | <p>Latvian national law enforcement and judicial authorities have established a successful cooperation in preventing, investigating and prosecuting migrant smuggling cases. For example, if other law enforcement authorities (e.g. State Police or the Customs Police Department of the State Revenue Service) have information on smuggling cases, the information is passed on to the State Border Guard for it to take the necessary actions. Furthermore, State Border Guard, in the case of necessity related to the investigation of the specific smuggling case, cooperates also with the Prosecution Office and the Office for Prevention of Laundering of Proceeds Derived from Criminal Activity (FIU Latvia), which operates under the Prosecution Office.</p> | | | |
| 9. Please provide recent examples of effective international cooperation and cross-border operations to detect facilitators/smugglers. Which authorities have been involved? What challenges did you face in coordinating with counterparts? | <p>State Border Guard of the Republic of Latvia has successful international cooperation in the area of combating the phenomenon of smuggling with other relevant competent authorities of Lithuania (Border Guard Service), Estonia (Police and Border Guard Board) and Poland (Border Guard).</p> <p>In the result of this effective international cooperation, several successful joint operations have been carried out in the previous years. For example, in 2016 (first five months) in cooperation with Lithuanian and Polish counterparts, the State Border Guard of Latvia has stopped the operation of the international criminal group that organized and implemented smuggling of irregular migrants from Vietnam through Russia and Baltic States to Poland. During these operations, 111 irregular migrants from Vietnam, and citizens of Russia and Poland, involved in smuggling, where detained (Latvian State Border Guards detained 38 Vietnamese citizens and 10 Russian citizens –smugglers). Similarly, joint operations have been carried out in cooperation with Estonian Police and Border Guard Board in 2016 and 2017, leading to the detention of irregular migrants (from Vietnam) and their smugglers.</p> <p>In 2016 an operational group was established within the State Border Guard with the aim to collect, analyze and exchange information about the organization of the illegal movement of third-country nationals (mostly Vietnamese citizens) across the state border. Such information is collected by all three Baltic States and then sent to the Criminal Investigation Unit of the Polish Border Guard for a comprehensive regional analysis.</p> <p>No specific big challenges can be identified in the area of international cooperation.</p> | | | |
| 10. What initiatives exist in your country in the field of preventing facilitation of irregular migration? Are specific information campaigns conducted? Does your country | <p>When the State Border Guard detects irregular movement of persons across state border, relevant information is disseminated to public via mass media and State Border Guard website. Thereby society is informed about the work done by the competent authorities to fight the smuggling of migrants.</p> | | | |

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| <p>implement or is it considering implementing programs of regular migration as a tool to prevent irregular migration?</p> | <p>Moreover, similar information dissemination methods are also used as regards the criminal proceedings and the imposed penalties in aforementioned cases. This is seen as a preventive measure as receiving such information increases the understanding of the society in the area and explains the criminal liability for involvement in smuggling and can, possibly, prevent possible offenders to commit similar criminal actions in the future.</p> <p>Besides that, State Border Guard officials are also involved in individual targeted work with inhabitants of the border areas in Latvia, to promote their understanding on the topic. In the result of the aforementioned activities, the State Border Guard regularly receives information from inhabitants living in the border areas on the possible irregular border crossing cases. As the local society has been rather active in this respect, it proves the effectiveness of the methods used by the State Border Guard.</p> <p>There are no special (targeted) programs in the area of legal migration that are developed and implemented to prevent irregular migration, nor the intentions to develop such programs.</p> |
| <p>11. Does your country apply two distinct legal frameworks to migrant smuggling and trafficking in human beings, in line with the international legal framework? How do you address the risks of smuggled migrants becoming victims of human trafficking? What challenges exist in the identification of smuggled persons and victims of human trafficking?</p> | <p>According to the national legislation of Latvia trafficking in human beings (THB) and migrant smuggling are two different kinds of offences. Criminal offences related to THB are investigated by the State Police, but those related to smuggling - by the State Border Guard.</p> <p>The State Border Guard officials are trained to identify potential victims of THB for reducing the risk for a person who crosses the border to become a victim of THB.</p> <p>In practice, it is rather difficult to identify cases when smuggled migrants become victims of THB, as it is possible only when there is information that exploitation of persons is planned and when forced measures are used against them. Plans for the exploitation are difficult to detect due to the following circumstances: firstly, possible victims often are not aware that they might become victims of THB and secondly, they do not want to perceive themselves as victims, as they search for better life prospects that were promised by the smugglers. In addition, even if a victim realizes his/her situation, he/she does not want to cooperate with the law enforcement authorities after he/she has been promised financial incentive from the criminal network.</p> |

| LITHUANIA | |
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| <p>1. Has your country ratified: a) the United Nations Convention against Transnational Organized Crime, b) the Protocol against the Smuggling of Migrants by Land, Sea and Air and c) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children?</p> | <p>Yes, Lithuania has ratified:</p> <p>a) the United Nations Convention against Transnational Organized Crime (2002.03.19); b) the Protocol against the Smuggling of Migrants by Land, Sea and Air (2003.03.25) c) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2003.04.22)</p> |

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| <p>2. Does your national legislation contain a specific definition of “facilitation of irregular migration” (hereafter the “facilitation” or “migrant smuggling”)? What activities are considered as facilitation?</p> | <p>Yes, Article 292 of the Criminal Code “Unlawful Transportation of Person across the State Border” defines what activities are considered as migrant smuggling.</p> <p>This Article indicates three types of acts performed unlawfully:</p> <ol style="list-style-type: none"> 1. The act of unlawful transportation of an alien not having a permanent place of residence in the Republic of Lithuania across the state border of the Republic of Lithuania; 2. The act when a person unlawfully transports (i.e. the alien is transferred/moved from one place to another) an alien within the territory of the Republic of Lithuania, who has already illegally crossed the state border of the Republic of Lithuania; 3. The act when a person unlawfully conceals an alien within the territory of the Republic of Lithuania, who has already illegally crossed the state border of the Republic of Lithuania. <p>Article 541 of Administrative Offence Code specifies the act of submission of false data in order to approve the invitations for foreigners to come to the Republic of Lithuania or of the assistance in another illegal manner to the foreigner to obtain the document confirming the right to stay or reside in the Republic of Lithuania.</p> <p>Article 539 of Administrative Offence Code specifies the act of granting of the living space to the aliens without the passport or without other travel document equivalent to the latter, as well as, if necessary, without the document confirming the alien’s right to stay and reside in the Republic of Lithuania.</p> |
| <p>3. What liability your legislation envisages for various types of criminal conducts, which could constitute facilitation (e.g. facilitation of illegal entry (border crossing), transit, or stay/residence, provision of forged documents, assistance in abuse of benefits system etc.)?</p> | <p>With regard to the <i>criminal sanctions</i>, paragraph 1 of 292 of Criminal Code foresees the sanctions for unlawful transportation of persons across the state border, which can be either a fine, an arrest or imprisonment for a term of up to six years. In addition, according to paragraph 2, the more severe sanctions are imposed, i.e. imprisonment for a term of up to eight years, for the performance of the above-mentioned criminal act if the latter is performed for mercenary reasons or where this poses a threat to human life. The maximum penalty is applied under paragraph 3 of Article 292, which indicates that the organizer shall be punished by imprisonment for a term from four to ten years.</p> <p>With regard to the <i>administrative sanctions</i>, Article 541 of Administrative Offence Code provides that the act of submission of false data in order to approve the invitations for foreigners to come to the Republic of Lithuania or of the assistance in another illegal manner to the foreigner to obtain the document confirming the right to be or live in the Republic of Lithuania is punishable by a fine from EUR 300 up to 850 EUR.</p> <p>Also with regard to the <i>administrative sanctions</i>, Article 539 of Administrative Offence Code provides that the act of granting of the living space to the aliens without the passport or without other travel document equivalent to the latter, as well as, if necessary, without the document confirming the alien’s right to stay and reside in the Republic of Lithuania is punishable by a fine from 70 EUR up to 600 EUR.</p> |
| <p>4. Do facilitators need to derive benefits to have committed an offence? Does your legislation allow</p> | <p>According to Article 4 of the Law on the State Border and its Protection Thereof (which will come into force in 2018.01.01), persons who have violated the state border crossing procedure and the legal regime of the border due to force majeure or due to necessity or important unforeseen circumstances: accident, faulty vessel towing, rescued people delivery, shall not be held liable under Administrative Offence Code.</p> |

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| <p>for sanctions to be waived if facilitation to irregular migrants is provided as humanitarian assistance?</p> | <p>Also Article 31 of the Criminal Code “Immediate Necessity” foresees that a person shall not be held liable under the criminal law for an act committed in an attempt to avert the danger which threatens him, other person or their rights, public or state interests, where this danger could not have been averted by other means and where the damage caused is less than the damage attempted to be averted.</p> |
| <p>5. In case your legislation provides for a criminal liability for facilitation of irregular migration, does it provide for aggravating circumstances, e.g. endangering migrants' life or entail inhuman or degrading treatment?</p> | <p>Yes, paragraph 2 of Article 292 of the Criminal Code foresees the sanctions for the unlawful transportation of persons across the state border if the latter is performed for mercenary reasons or where this poses a threat to human life. If those aggravating circumstances are proven, more severe sanctions are imposed (imprisonment for a term of up to eight years).</p> |
| <p>6. Does your legislation envisage a liability for smuggled migrants for irregular entry and stay/residence per se? Are there any special conditions for smuggled migrants who agree to cooperate with authorities?</p> | <p>With regard to the <i>criminal sanctions</i>, Article 291 of the Criminal Code “Illegal crossing of the state border” foresees the sanctions for the illegal crossing of the state border of the Republic of Lithuania. The sanction for this criminal act is a fine or arrest or imprisonment up to 2 years. However, in practice, smuggled migrants are not investigated under criminal law and they are not held liable under Criminal Code.</p> <p>There are no special conditions for smuggled migrants who agree to cooperate with authorities. Article 59 of the Criminal Code defines cooperation with authorities as one of mitigating circumstances for criminal responsibility.</p> |
| <p>7. Please provide available statistics for 2014 - 2016 on detected cases of migrant smuggling (detected smugglers). What was the rate of cases reached to the court and rate of judgements of conviction in these cases?</p> | <p>Year 2016: 26 pretrial investigation cases of migrant smuggling started, 38 smugglers detected.</p> <p>Year 2015: 61 pretrial investigation cases of migrant smuggling started, 98 smugglers detected.</p> <p>Year 2014: 33 pretrial investigation cases of migrant smuggling started, 54 smugglers detected.</p> |
| <p>8. Please describe how your national law enforcement and judicial authorities cooperate to prevent, investigate and prosecute cases of migrant smuggling. Are any other authorities involved in this process,</p> | <p>To prevent, investigate and prosecute cases of migrant smuggling, the national law authorities:</p> <ol style="list-style-type: none"> 1. Cooperate with each other (i.e. State Border Guard Service cooperates with Police and Customs). 2. Cooperate with law authorities of neighboring countries. (i.e. information on a systematic basis is exchanged between Lithuanian and Latvian as well as Lithuanian and Polish border guards, especially between criminal intelligence/investigation units. Furthermore, a bilateral agreement on joint patrolling between Lithuanian State Border Guard Service, the Police Department and the Latvian State Border |

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| <p>e.g. financial intelligence units tracking and investigating financial flows related to migrant smuggling?</p> | <p>Guard and the State Police of Latvia was signed on 27 September 2016. According to this bilateral agreement, operations are to be carried out on a regular basis in order to prevent smuggling of migrants from Latvia to Lithuania.)</p> <p>3. Implement targeted measures (i.e. after a new trend of illegal migrants’ smuggling by lorries has been discovered, a targeted border operation was launched, the main goal of which was to inspect lorries by heartbeat detectors.</p> <p>Criminal Information Analysis Centre (hereafter referred to as: “the Centre”) set up in Lithuania which consists of the Customs Department under the Ministry of Finance, the State Border Guard Service under the Ministry of the Interior, the Police Department under the Ministry of the Interior and the Financial Crime Investigation Service under the Ministry of the Interior. The Centre aims to develop cooperation through the analysis of information, collected by the parties participating in activities of the Centre, which are related to various criminal offences, specifically on social, legal, economic and other causes and circumstances surrounding offences and misdemeanors, as well as proposing, within the competence, measures to remove them. The State Border Guard Service draws up, in the framework of the cooperation within the Centre, the report on the subject-matter “Situational Analysis of the State Border” which also analyses the state of affairs of the irregular migration.</p> <p>On 9 February 2017 agreement (renewed) was signed between principal criminal intelligence agencies (i.e. between the Financial Crime Investigation Service under the Ministry of the Interior, the Prisons Department under the Ministry of Justice, the Customs Department under the Ministry of Finance, the Police Department under the Ministry of the Interior, the Special Investigation Service, VIP Protection Department under the Ministry of the Interior, the State Border Guard Service under the Ministry of the Interior, the Second Investigation Department under the Ministry of National Defense, the State Security Department) and the Prosecutor General’s Office on cooperation and coordination of criminal intelligence activities. In accordance with this agreement, criminal intelligence agencies exchange information on ongoing criminal intelligence investigations, organize and conduct, within the competence laid down in legal acts, joint criminal intelligence activities, prepare joint measures and joint operations within their competence, constantly exchange information on potential threats (individuals) and pursue prevention of criminal offences.</p> <p>Following the provisions of the Code of Criminal Procedure of the Republic of Lithuania, pre-trial investigation institutions coordinate, with one another, key crime investigation trends. In the organization of a pre-trial investigation, the prosecutor envisages measures and resources, which will be used for conducting a specific pre-trial investigation; he/she also takes a decision as to the number of prosecutors pursuing a pre-trial investigation (one prosecutor, a group of them or maybe even a group of officers of a few pre-trial investigation institutions). A prosecutor is a pre-trial investigation head and his/her instructions are mandatory to pre-trial investigation officers.</p> |
| <p>9. Please provide recent examples of effective international cooperation and cross-border operations to detect facilitators/smugglers. Which authorities have been involved? What challenges did you face in coordinating with counterparts?</p> | <p>In September 2016, in cooperation with colleagues in Lithuania and Latvia, Polish border guards dismantled an international criminal group, which organized an illegal migration of Vietnamese citizens across Russia and the Baltic States to Poland.</p> |

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| <p>10. What initiatives exist in your country in the field of preventing facilitation of irregular migration? Are specific information campaigns conducted? Does your country implement or is it considering implementing programs of regular migration as a tool to prevent irregular migration?</p> | <p>Lithuania intensifies cooperation with the third countries (including countries of origin of irregular immigrants) which could lead to increased capacity to disclose transnational human smuggling networks more effectively.</p> <p>Specific information campaigns as a tool to prevent irregular migration aren't conducted. The main reason - irregular migrants choose Lithuania as a transit country not as a destination country.</p> |
| <p>11. Does your country apply two distinct legal frameworks to migrant smuggling and trafficking in human beings, in line with the international legal framework? How do you address the risks of smuggled migrants becoming victims of human trafficking? What challenges exist in the identification of smuggled persons and victims of human trafficking?</p> | <p>Lithuania applies two distinct legal frameworks to migrant smuggling and trafficking in human beings. The primary Lithuanian national legal act, which defines what acts are to be considered crimes and what acts - misdemeanors, indeed separates these acts, i.e. migrant smuggling and trafficking in human beings. Trafficking in human beings encompasses criminal offences provided for in Article 147 (Trafficking in human beings), 1471 (Exploitation for forced labor or service), Article 1472 (Use of a person's forced labor or services) and Article 157 (Purchase or sale of a child) of the Criminal Code of the Republic of Lithuania.</p> <p>Criminal acts specified in Article 292 (Unlawful transportation of persons across the state border) and Article 293 (Organization of travels of citizens of the Republic of Lithuania abroad for the purpose of staying there illegally or abandoning them without assistance) of the Criminal Code are separated based on the purpose of transportation, i.e. if a person or persons are transported across the state border without the purpose of their further exploitation or transfer to exploiters, such smuggling will not be regarded as trafficking in human beings; however, if a person is smuggled across the state border with the intention of exploiting him/her or selling one for exploitation, both i.e. Article on human trafficking and Article 292 or Article 293 of the Criminal Code are incriminated as a coincidence.</p> <p>Lithuania is taking steps to improve identification of victims of trafficking among asylum seekers and illegal immigrants. With the aim of taking steps to ensure that all victims of trafficking in human beings are properly identified, the State Border Guard Service (SBGS) has obliged both the SBGS structural units that are in charge of profiling of passengers and the Foreigners Registration Centre where illegal immigrants are temporary kept under detention and asylum seekers are housed to carry out their activities in compliance with Recommendations on Identification of Victims of Trafficking, Pre-trial Investigation and Inter-institutional Cooperation (hereinafter – the Recommendations) approved by Order No. I-327/1V-1015/A1-758 on Approval of Recommendations on Identification of Victims of Trafficking, Pre-trial Investigation and Inter-institutional Cooperation of 17 December 2015.</p> <p>Moreover, in order to improve border guard officers' knowledge of criteria for identification of victims of trafficking in human beings as well as to enhance the cooperation maintained between the responsible institutions, agencies, governmental and non-governmental organizations that render assistance to victims of trafficking once they have been identified, the Recommendations have been used as a teaching material on trafficking in human beings when conducting trainings at the Border Guard School. Furthermore, the refresher courses "Fight against Trafficking in Human Beings" are given each year to officers of the SBGS structural units.</p> <p><u>Main challenges in identification of smuggled persons and victims of human trafficking:</u></p> <ul style="list-style-type: none"> - Lack of interpreters often slows down investigative proceedings; |

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| | <p>- Difficulties in confirmation of irregular immigrants' (especially of Vietnamese nationality) identity and consequent issuance of travel documents hinder the procedure of their return.</p> |
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| MOLDOVA | |
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| <p>1. Has your country ratified: a) the United Nations Convention against Transnational Organized Crime, b) the Protocol against the Smuggling of Migrants by Land, Sea and Air and c) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children?</p> | <p>Conventions and Protocols signed and ratified by Moldova:</p> <ul style="list-style-type: none"> - The United Nations Convention against Transnational Organized Crime ratified by the Parliament (Law # 15 of 17.02.2005). - Additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children to the United Nations Convention against Transnational Organized Crime ratified by the Parliament (Law # 15 of 17.02.2005). - The Council of Europe Convention against Trafficking in Human Beings. The Convention was signed in Warsaw on 16.05.2005 and ratified by Law # 67-XVI of the Republic of Moldova of 30.03.2006. |
| <p>2. Does your national legislation contain a specific definition of "facilitation of irregular migration" (hereafter the "facilitation" or "migrant smuggling")? What activities are considered as facilitation?</p> | <p>According to Article 362/1 of the Criminal Code of the Republic of Moldova, organisation of irregular migration for direct or indirect finance or material gain from illegal entry, stay, transit travel or departure from the territory of the country of a person, who is neither a citizen, nor a resident of the country - shall be punishable by a monetary fine of 650 conventional units [hard currency equivalents] to 850 conventional units, or by imprisonment for a term from 1 year to 3 years, with prohibition to hold certain positions or to engage into certain activities for a term from 1 year to 3 years, while a legal entity shall be punishable by a monetary fine from 2000 to 3000 conventional units, with prohibition to engage into certain activities or with liquidation of the legal entity.</p> <p>The same actions, if committed:</p> <ul style="list-style-type: none"> a) in respect to two or more persons; b) by two or more persons; d) by a public figure, an official, a person holding an important position in state authorities, a foreign public figure or an international official - shall be punishable by a monetary fine from 850 to 1150 conventional units or by imprisonment for a term from 3 years to 5 years, with prohibition to hold certain positions or to engage into certain activities for a term from 1 year to 3 years, while a legal entity shall be punishable by a monetary fine from 3000 to 4000 conventional units, with prohibition to engage into certain activities or with liquidation of the legal entity. <p>The actions stipulated by paragraphs (1) of (2):</p> <ul style="list-style-type: none"> a) if committed by an organised criminal group or a criminal organisation; |

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| | <p>b) if caused particularly high damages to public interests or to legitimate rights of physical persons and legal entities - shall be punishable by a monetary fine from 1150 to 1350 conventional units or by imprisonment for a term from 5 years to 7 years, with prohibition to hold certain positions or to engage into certain activities for a term from 3 years to 5 years, while a legal entity shall be punishable by a monetary fine from 4000 to 6000 conventional units, with prohibition to engage into certain activities or with liquidation of the legal entity.</p> |
| <p>3. What liability your legislation envisages for various types of criminal conducts, which could constitute facilitation (e.g. facilitation of illegal entry (border crossing), transit, or stay/residence, provision of forged documents, assistance in abuse of benefits system etc.)?</p> | <p>According to Article 362/1 of the Criminal Code of the Republic of Moldova, organisation of illegal migration for direct or indirect finance or material gain from illegal entry, stay, transit travel or departure from the territory of the country of a person, who is neither a citizen, nor a resident of the country - shall be punishable by a monetary fine of 650 to 850 conventional units, or by imprisonment for a term from 1 year to 3 years, with prohibition to hold certain positions or to engage into certain activities for a term from 1 year to 3 years, while a legal entity shall be punishable by a monetary fine from 2000 to 3000 conventional units, with prohibition to engage into certain activities or with liquidation of the legal entity.</p> |
| <p>4. Do facilitators need to derive benefits to have committed an offence? Does your legislation allow for sanctions to be waived if facilitation to irregular migrants is provided as humanitarian assistance?</p> | <p>According to paragraph (4) of Article 362/1 of the Criminal Code of the Republic of Moldova, organisation of illegal migration for direct or indirect finance or material gain from illegal entry, stay, transit travel or departure from the territory of the country of a person, who is neither a citizen, nor a resident of the country - shall be punishable by a monetary fine of 650 to 850 conventional units, or by imprisonment for a term from 1 year to 3 years, with prohibition to hold certain positions or to engage into certain activities for a term from 1 year to 3 years, while a legal entity shall be punishable by a monetary fine from 2000 to 3000 conventional units, with prohibition to engage into certain activities or with liquidation of the legal entity.</p> |
| <p>5. In case your legislation provides for a criminal liability for facilitation of irregular migration, does it provide for aggravating circumstances, e.g. endangering migrants' life or entail inhuman or degrading treatment?</p> | <p>See answer to Q. 2</p> |
| <p>6. Does your legislation envisage a liability for smuggled migrants for irregular entry and stay/residence per se? Are there any special conditions for smuggled migrants who agree to cooperate with authorities?</p> | <p>According to paragraph (4) of Article 362/1 of the Criminal Code of the Republic of Moldova, a victim of illegal migration shall be discharged of criminal liability for illegal entry, stay, transit travel or departure from the territory of the country, as well as for possession and use of fraudulent official documents for organisation of his/her illegal migration.</p> |

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| <p>7. Please provide available statistics for 2014 - 2016 on detected cases of migrant smuggling (detected smugglers). What was the rate of cases reached to the court and rate of judgements of conviction in these cases?</p> | <p>In 2014, 35 criminal cases of relevance to organisation of illegal immigration were registered (46 cases in 2015 and 18 cases in 2016).</p> |
| <p>8. Please describe how your national law enforcement and judicial authorities cooperate to prevent, investigate and prosecute cases of migrant smuggling. Are any other authorities involved in this process, e.g. financial intelligence units tracking and investigating financial flows related to migrant smuggling?</p> | <p>Criminal proceedings are regulated by the Code of Criminal Procedure (# 122 of 14.03.2003) and by Law #59 of 29.03.2012 on Special Search and Investigation Activities.</p> <p>According to paragraph (2) of Article 134² of the Code of Criminal Procedure, finance control and monitoring of finance transactions and access to finance information shall be authorised if criminal proceedings were initiated on crimes under articles 189-192, 196, 199, 206, 208, 209, 217-217, 220, 236, 237, 239-248, 251-253, 255, 256, 278, 279, 279¹, 283, 284, 290, 292, 301¹, 302, 324-327, 330¹, 333, 334, 343, 352, 361, 362 and 362/1 (Organisation of Illegal migration) of the Criminal Code.</p> |
| <p>9. Please provide recent examples of effective international cooperation and cross-border operations to detect facilitators/smugglers. Which authorities have been involved? What challenges did you face in coordinating with counterparts?</p> | <p>The Border Police Department particularly focuses on joint activities at the international level for prevention and combating illegal migration and transnational crime.</p> <p>To this end, the Border Police Department actively cooperates with the EU Border Assistance Mission to Ukraine and Moldova (EUBAM) and FRONTEX for:</p> <ul style="list-style-type: none"> - Exchange of knowledge and experience in the sphere of integrated border management; - Improvement of border control efficiency; - Improvement of exchange of operational information; - Identification of potential risks and threats; - Support of local personnel in the sphere of operational information exchange. <p>The Republic of Moldova did not sign specific mutual assistance in the sphere of combating illegal migration.</p> <p>At the same time, the Republic of Moldova signed several bilateral agreements on cooperation in combating organised crime and other types of crime, and agreements on cooperation in the sphere of migration, that contain provisions on mutual assistance in combating illegal migration, such as:</p> <ul style="list-style-type: none"> - Agreement between the Government of the Republic of Moldova and the Government of the Republic of Poland on Cooperation in Combating Organised Crime and other Types of Crime (2003). - Agreement between the Government of the Republic of Moldova and the Federal Government of Austria on Cooperation in Combating Crime (2010). |

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| | <p>- Agreement between the Government of the Republic of Moldova and the Government of Azerbaijan on Cooperation in the Migration Sphere.</p> <p>- Agreement between the Government of the Republic of Moldova and the Government of the Republic of Bulgaria on Cooperation in Combating Organised Crime, Drug Trafficking, Trafficking in Psychotropic Substances, Terrorism and other Types of Grievous Crimes (2004).</p> <p>- Agreement between the Government of the Republic of Moldova and the Government of the Czech Republic on Cooperation in Combating Organised Crime., Drug Trafficking, Trafficking in Psychotropic Substances, Terrorism and other Types of Grievous Crimes (2003).</p> <p>- Agreement between the Government of the Republic of Moldova and the Government of the Republic of Croatia on Cooperation in Combating Organised Crime, Drug Trafficking, Trafficking in Psychotropic Substances, Terrorism and other Types of Grievous Crimes (2006).</p> <p>- Agreement between the Government of the Republic of Moldova, the Government of Romania and the Cabinet of Ministers of Ukraine on Cooperation in Combating Crime (1999).</p> <p>- Agreement between the Government of the Republic of Moldova and the Government of the Slovak Republic on Cooperation in Combating Organised Crime (2007).</p> <p>- Agreement between the Cabinet of Ministers of Bosnia-Herzegovina and the Republic of Moldova on Cooperation in Combating Organised Crime, Drug Trafficking, Trafficking in Psychotropic Substances, Terrorism and other Types of Grievous Crimes.</p> <p>- Agreement between the Republic of Moldova and the Kingdom of Spain on Security and Combating Crime.</p> |
| <p>10. What initiatives exist in your country in the field of preventing facilitation of irregular migration? Are specific information campaigns conducted? Does your country implement or is it considering implementing programs of regular migration as a tool to prevent irregular migration?</p> | <p><u>Regular migration programs</u></p> <p>✓ On April 15, 1994, the Republic of Moldova signed - with other CIS countries - the Agreement on Cooperation in the Sphere of Labour Migration and Social Protection of Migrant Workers that provided a framework for subsequent bilateral agreements in the sphere of labour migration.</p> <p>Based on the above Agreement, the Republic of Moldova signed bilateral agreements that regulate labour activities and social protection of nationals working abroad - with the Russian Federation (1993), Ukraine (1994) and the Republic of Belarus (1995).</p> <p>✓ On May 5, 2008, in Luxembourg, the Republic of Moldova signed the Joint Declaration on a Mobility Partnership between the European Union and the Republic of Moldova. The range of participants of different projects in the sphere of migration policy under the Mobility Partnership with the Republic of Moldova include such EU MS as Bulgaria, the Czech Republic, Cyprus, France, Germany, Greece, Italy, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden and Hungary, as well as the European Commission, FRONTEX and the EU Education Fund.</p> <p>✓ On July 5, 2011, the Government of the Republic of Moldova signed the Agreement in the Sphere of Labour Migration and the Implementation Protocol to the Agreement with the Government of Italy, that stipulate:</p> <ul style="list-style-type: none"> • development of circular migration arrangements for Moldavian labour migrants; • joint technical assistance projects; |

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| | <ul style="list-style-type: none"> • implementation of joint initiatives for Moldavian nationals in Italy; • provision of vocational training and the Italian language courses organised by Italian entities in the Republic of Moldova. <p>According to the Agreement and the Protocol, the both Parties seek to promote activities for voluntary return of Moldavian nationals and for development of programs in the sphere of circular migration of labour migrants.</p> <p>✓ On October 16, 2012, the Government of the Republic of Moldova and the Government of Israel signed the Agreement on Temporary Employment of Labour Migrants from the Republic of Moldova in Certain Economic Sectors of Israel (Construction). The Agreement became effective on January 06, 2013.</p> <p>As a priority objective, the Agreement and the Implementation Protocol seek to ensure legal employment, in a fair, transparent and well-known manner for citizens of the Republic of Moldova to be employed in Israel.</p> |
| <p>11. Does your country apply two distinct legal frameworks to migrant smuggling and trafficking in human beings, in line with the international legal framework? How do you address the risks of smuggled migrants becoming victims of human trafficking? What challenges exist in the identification of smuggled persons and victims of human trafficking?</p> | <p>Yes.</p> |

| THE NETHERLANDS | |
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| <p>1. Has your country ratified: a) the United Nations Convention against Transnational Organized Crime, b) the Protocol against the Smuggling of Migrants by Land, Sea and Air and c) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children?</p> | <p>Netherlands ratified all three treaties.</p> |
| <p>2. Does your national legislation contain a specific definition of “facilitation of irregular migration”</p> | <p>Yes, according to article 197a of the Dutch Penal Code: <i>Any person who provides assistance to another person to obtain entry to the Netherlands or to transit the Netherlands, another member state of the European Union, Iceland, Norway or any 103 state which has acceded to the Protocol against the Smuggling of Migrants by Land, Sea and Air</i></p> |

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| <p>(hereafter the “facilitation” or “migrant smuggling”)? What activities are considered as facilitation?</p> | <p><i>concluded in New York on 15 November 2000 supplementing the Convention against Transnational Organized Crime adopted in New York on 15 November 2000, or provides that person with opportunity, means or information enabling him to do so, while he knows or has serious reason to suspect that such entry or transit is unlawful, shall be guilty of the smuggling of human beings and shall be liable to a term of imprisonment not exceeding four years or a fine of the fifth category.</i></p> <p>Article 197a (2) of the Dutch Penal Code considers any person who in pursuit of gain provides assistance to another person to acquire residence in the Netherlands, or provides that person with opportunity, means or information enabling him to do so, while he knows or has serious reason to suspect that said residence is unlawful, shall be liable to a term of imprisonment not exceeding four years or a fine of the fifth category.</p> |
| <p>3. What liability your legislation envisages for various types of criminal conducts, which could constitute facilitation (e.g. facilitation of illegal entry (border crossing), transit, or stay/residence, provision of forged documents, assistance in abuse of benefits system etc.)?</p> | <p>Article 231 of the Dutch Penal Code criminalizes fraudulent travel or identity document (only in general and not specific for the purpose of smuggling migrants).</p> |
| <p>4. Do facilitators need to derive benefits to have committed an offence? Does your legislation allow for sanctions to be waived if facilitation to irregular migrants is provided as humanitarian assistance?</p> | <p>At this moment the Netherlands has chosen to not include the element ‘financial or other material benefit’ in trans border smuggling cases because the legislator did not want to complicate the investigations on migrant smuggling. Furthermore there is no humanitarian clause in the migrant smuggling provision in the criminal code because such a clause would lead to difficulties in evidence gathering. It was considered that the Dutch legislation offered enough possibilities (such as verdict of guilt without any kind of punishment).</p> |
| <p>5. In case your legislation provides for a criminal liability for facilitation of irregular migration, does it provide for aggravating circumstances, e.g. endangering migrants' life or entail inhuman or degrading treatment?</p> | <p>Yes, Art. 197a of the Criminal Code further broadens the scope of criminalisation by include aggravated offenses acts that lead eg to grievous bodily harm, grave danger or result in death.</p> |

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| <p>6. Does your legislation envisage a liability for smuggled migrants for irregular entry and stay/residence per se? Are there any special conditions for smuggled migrants who agree to cooperate with authorities?</p> | <p>No, this is only available for victims of human trafficking. Since smuggled migrants are in principle not considered victims by the Dutch authorities, there is no special residence/legal rehabilitation available.</p> |
| <p>7. Please provide available statistics for 2014 - 2016 on detected cases of migrant smuggling (detected smugglers). What was the rate of cases reached to the court and rate of judgements of conviction in these cases?</p> | <p>n/a</p> |
| <p>8. Please describe how your national law enforcement and judicial authorities cooperate to prevent, investigate and prosecute cases of migrant smuggling. Are any other authorities involved in this process, e.g. financial intelligence units tracking and investigating financial flows related to migrant smuggling?</p> | <p>An Expertise Centre for Human Trafficking and Smuggling was established in May 2005, consisting of employees from the National Crime Squad (NR), Royal Military Constabulary (Kmar), Immigration and Naturalisation Service (IND) and the Social Security Intelligence and Investigation Service (SIOD). Information is collected, analysed and disseminated to all partners.</p> <p>The National Expert Group on Trafficking in Human Beings (LEM) was established within the National Police Project on prostitution and trafficking in human beings in 1997. Experts on human trafficking and smuggling from all police regions address operational problems and share experiences. Coordination meetings between human trafficking and smuggling prosecutors also take place on a regular basis</p> |
| <p>9. Please provide recent examples of effective international cooperation and cross-border operations to detect facilitators/smugglers. Which authorities have been involved? What challenges did you face in coordinating with counterparts?</p> | <p>Within the Royal Marechaussee a special unit is responsible for the investigations on human smuggling. In The Netherlands there are public prosecutors specialized in human smuggling dealing with these human smuggling cases. Moreover a Dutch liaison magistrate is stationed in Italy.</p> <p>Besides the expertise centre on human trafficking and people smuggling, a special operational multidisciplinary team was established targeting human smuggling in the Netherlands in 2014. This facilitates focus on human smuggling cases of all actors and authorities involved. It also yields better coordination and the exchange of information. This multidisciplinary team also links with several operational actions within Empact projects of Europol. Facilitated Illegal Immigration so there's also a focus on sharing information with international partners and Europol as well. There's an important role for the international liaison network of both the Royal Marechaussee liaisons and the National Police.</p> <p>We also work within the Joint investigation teams and also other smuggling investigation in which we work together with other member states there is certainly focus on financial investigating and the confiscation of assets related to the smuggling of migrants.</p> |
| <p>10. What initiatives exist in your country in the field of preventing</p> | <p>A barrier model human smuggling has been developed by Royal Marechaussee, DG for Immigration Ministry of Security and Justice, National Police, Immigration and Naturalization Service, Public Prosecutor and Ministry of Foreign Affairs. It describes the route a migrant travels from the</p> |

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| <p>facilitation of irregular migration? Are specific information campaigns conducted? Does your country implement or is it considering implementing programs of regular migration as a tool to prevent irregular migration?</p> | <p>moment on he decides he/she wants to be smuggled in his country of origin, his secondary movements until he arrives in his country of destination. During this travel, he has to overcome several barriers like transport, ID, shelter, entrance etcetera. These barriers can be influenced by the partners as mentioned above and they all have effect on detecting, investigating and prosecuting migrant smuggling.</p> <p>We implemented some of the following information programs:</p> <ol style="list-style-type: none"> 1. The Royal Marechaussee also provides specific training in recognizing signals of migrant smuggling in the border police process. 2. The Ministry of Foreign Affairs and the ministry of Security and Justice funded and implemented some of information and awareness raising campaigns targeting prospective migrants in third countries to inform them on the risks of the journey and smugglers recently the NL implemented campaigns in Ethiopia and Albania. <p>Combatting migrant smuggling is part of the comprehensive approach supported by NL to deal with irregular migration. As such, the Netherlands supports various activities to this end in partner countries such as Mali and Niger.</p> |
| <p>11. Does your country apply two distinct legal frameworks to migrant smuggling and trafficking in human beings, in line with the international legal framework? How do you address the risks of smuggled migrants becoming victims of human trafficking? What challenges exist in the identification of smuggled persons and victims of human trafficking?</p> | <p>Yes, there is a legal distinction between our migrant smuggling and human trafficking framework. The Ministry of Foreign Affairs and the Ministry of Security and Justice funded and implemented some of information and awareness raising campaigns targeting prospective migrants in third countries to inform them on the risks of the journey and smugglers recently the NL implemented campaigns in Ethiopia and Albania.</p> |

| POLAND | |
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| <p>1. Has your country ratified: a) the United Nations Convention against Transnational Organized Crime, b) the Protocol against the Smuggling of Migrants by Land, Sea and Air and c) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children?</p> | <p>Poland ratified following convention and protocols: a) the United Nations Convention against Transnational Organized Crime, b) the Protocol against the Smuggling of Migrants by Land, Sea and Air and c) the Protocol to Prevent Suppress and Punish Trafficking in Person, especially Women and Children.</p> |

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| <p>2. Does your national legislation contain a specific definition of “facilitation of irregular migration” (hereafter the “facilitation” or “migrant smuggling”)? What activities are considered as facilitation?</p> | <p>The Polish legislation does not contain a specific definition of ‘facilitation of illegal migration’. The organization of irregular migration is stated in art. 246 § 3 Penal Code: “Whoever organises the crossing of the border of the Republic of Poland for other persons, in violation of the relevant regulations...”. Furthermore, in the art. 264a is stated: “whoever, in order to obtain financial or personal gain, enables or facilitates another person to stay in the territory of the Republic of Poland in violation of the relevant regulations...”.</p> |
| <p>3. What liability your legislation envisages for various types of criminal conducts, which could constitute facilitation (e.g. facilitation of illegal entry (border crossing), transit, or stay/residence, provision of forged documents, assistance in abuse of benefits system etc.)?</p> | <p>The penal code envisages the penalty of deprivation of liberty for a term of between 3 months and 5 years.</p> |
| <p>4. Do facilitators need to derive benefits to have committed an offence? Does your legislation allow for sanctions to be waived if facilitation to irregular migrants is provided as humanitarian assistance?</p> | <p>Organizers of illegal migration do not need to derive benefits to have committed an offence only facilitators of illegal stay need to derive it what is above mentioned - art. 264a. The legislation does not allow for sanctions to be waived if facilitation to illegal migrants is provided as humanitarian assistance.</p> |
| <p>5. In case your legislation provides for a criminal liability for facilitation of irregular migration, does it provide for aggravating circumstances, e.g. endangering migrants' life or entail inhuman or degrading treatment?</p> | <p>The Polish legislation does not provide additional criminal responsibility for the facilitators for e.g. endangering migrants’ life or entail inhuman or degrading treatment. Human life or dignity is protected in other articles.</p> |
| <p>6. Does your legislation envisage a liability for smuggled migrants for irregular entry and stay/residence per se? Are there any special conditions for smuggled migrants who agree to cooperate with authorities?</p> | <p>The penal code envisages a liability for smuggled migrants for crossing the border of the Republic of Poland in violation of the relevant regulations. There are not any special conditions for smuggled migrants who agree to cooperate with authorities but a prosecutor has an ability to file in his indictment about lower penalty.</p> |

7. Please provide available statistics for 2014 - 2016 on detected cases of migrant smuggling (detected smugglers). What was the rate of cases reached to the court and rate of judgements of conviction in these cases?

| comparison of illegal migration in years 2014-2016. | | | | | | | | | |
|--|---|--|---|---|--|---|---|--|---|
| | 2014 | | | 2015 | | | 2016 | | |
| | Art. 264 § 2 kk illegal border crossing | Art. 264 § 3 kk organisations of illegal migration | Art. 264a kk facilitation of illegal stay on the Polish territory | Art. 264 § 2 kk illegal border crossing | Art. 264 § 3 kk organisations of illegal migration | Art. 264a kk facilitation of illegal stay on the Polish territory | Art. 264 § 2 kk illegal border crossing | Art. 264 § 3 kk organisations of illegal migration | Art. 264a kk facilitation of illegal stay on the Polish territory |
| number of conducted investigations | 1 113 | 70 | 50 | 1 451 | 98 | 72 | 1 786 | 69 | 83 |
| number of investigations reached to the court including conviction sentences | 794 | 26 | 13 | 1 086 | 44 | 21 | 1 377 | 30 | 26 |

8. Please describe how your national law enforcement and judicial authorities cooperate to prevent, investigate and prosecute cases of migrant smuggling. Are any other authorities involved in this process, e.g. financial intelligence units tracking and investigating financial flows related to migrant smuggling?

Border Guard is main and the most important law enforcement authority in Poland responsible to countering irregular migration. The service cooperates with national and foreign stakeholders by sharing information, coordinating of actions within the framework of Europol, Interpol or liaison's officers. The Border Guard collaborates as well with the General Inspector of Financial Information. Wiretapping and other operative measures are conducted after court consent. Investigations are conducted under the supervision of the prosecutor's office.

9. Please provide recent examples of effective international cooperation and cross-border operations to detect facilitators/smugglers. Which authorities have been involved? What challenges did you face in coordinating with counterparts?

Polish Border Guard conducted an investigation against an international organized crime group responsible for organization of irregular migration of Ukrainian citizens in connection with trafficking in human being and forging documents. The group was acting on the Ukrainian, Latvian, Polish and British territory. The group recruited in Ukraine people in difficult financial and life situation, promised them well paid job and organized them further transport through Poland, Germany, France to the United Kingdom or from Lithuania to the same destination. The migrants were deprived of the freedom of movement and forced into a slave labour. The following modus operandi was used. The migrants crossed the Schengen border using their own documents individually or in small groups through one of the crossing points. The original documents were taken away from them and substituted by false ones on the European Union territory. The migrants were transported to the United Kingdom. That case was investigated by law enforcement authorities from Poland, Ukraine, Lithuania and the United Kingdom.

10. What initiatives exist in your country in the field of preventing facilitation of irregular migration? Are specific information campaigns conducted? Does your country implement or is it considering

A strategy included in the document 'Polish migration Policy' was revoked due to the necessity to make changes.

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| <p>implementing programs of regular migration as a tool to prevent irregular migration?</p> | |
| <p>11. Does your country apply two distinct legal frameworks to migrant smuggling and trafficking in human beings, in line with the international legal framework? How do you address the risks of smuggled migrants becoming victims of human trafficking? What challenges exist in the identification of smuggled persons and victims of human trafficking?</p> | <p>Poland does not apply two distinct legal frameworks to migrant smuggling and trafficking in human beings but it exists so-called non-punishment provision. Article 26 Convention on Action against Trafficking in Human Beings states: Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.</p> <p>Smuggled migrants could become THB victims due to their situation, unawareness of reality in destinations countries, etc.</p> <p>There are following main challenges in the identification of trafficking of human beings victims: lack of self-identification being THB victim, lack of trust in law enforcement authorities, troubles to find solid interpreters.</p> |

| PORTUGAL | |
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| <p>1. Has your country ratified: a) the United Nations Convention against Transnational Organized Crime, b) the Protocol against the Smuggling of Migrants by Land, Sea and Air and c) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children?</p> | <p>Yes, Portugal has ratified the United Nations Convention against Transnational Organized Crime, and both protocols: the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, being September 6th of 2004 the effective date.</p> |
| <p>2. Does your national legislation contain a specific definition of “facilitation of irregular migration” (hereafter the “facilitation” or “migrant smuggling”)? What activities are considered as facilitation?</p> | <p>Yes, the Portuguese Immigration Act¹ defines the crime of “action to facilitate illegal immigration” on its article 183.</p> <p>It practices the crime of “action to facilitate illegal immigration” whoever favours or facilitates by any means the illegal entry or transit of a foreign citizen in national territory or whoever favours or facilitates by any means the illegal entry or transit of a foreign citizen in national territory, for profit.</p> |

¹ Act no.23/2007, of July 4th of 2007 – amended by the Act no.29/2012 of August 9th, by the Act no.56/2015, of June 23rd, by the Act 63/2015, of June 30th and by the Act no.59/2017, of July 31st – which establishes the conditions and procedures on the entry, stay, exit and removal of foreign citizens from the Portuguese territory, as well as the long-term resident status.

3. What liability your legislation envisages for various types of criminal conducts, which could constitute facilitation (e.g. facilitation of illegal entry (border crossing), transit, or stay/residence, provision of forged documents, assistance in abuse of benefits system etc.)?

| TYPE OF CRIME | CRIMINAL CONDUCT | TERMS OF IMPRISONMENT |
|---|---|----------------------------|
| “Action to facilitate illegal immigration” [article 183 of the Portuguese Immigration Act] | Nr.1 - Whoever favours or facilitates by any means the illegal entry or transit of a foreign citizen in national territory | Three years or less |
| | Nr.2 - Whoever favours or facilitates by any means the illegal entry or transit of a foreign citizen in national territory, for profit | One to five years |
| | Nr.3 - If on the course of an action to facilitate illegal immigration the facts are carried out by transporting or maintaining the foreign citizen under inhuman or degrading conditions, or risking his/her life or causing serious threat to his/her physical health or causing death | Two to eight years |
| “Association for facilitating illegal immigration” [article 184 of the Portuguese Immigration Act] | Nr.1 - Whoever promotes or founds a group, organisation or association whose activity is to practice the crimes provided for in the preceding Article Nr.2 - Whoever is part of such groups, organisations or associations, as well as those supporting or providing assistance for recruiting new elements | One to six years |
| | Nr.3 - Whoever leads the groups, organisations or associations mentioned in paragraph 1 one to eight years | Two to eight years |
| “Trafficking in human beings” [article 160 of the Portuguese Penal Code] Nr.8 - The consent of the victim of the crimes foreseen in the previous numbers does not exclude in any case the illegality of the fact. | Nr.1 - Whoever offers, delivers, recruits, solicits, accepts, transports, houses or hosts a person for the purpose of exploitation, including sexual exploitation, exploitation of labour, begging, slavery, extraction of organs or exploitation of other criminal activities: (a) through violence, abduction or serious threat; (b) through trick or fraudulent manoeuvre; (c) with abuse of authority resulting from a relationship of hierarchical, economic, work or family dependence; (d) taking advantage of the psychic incapacity or situation of special vulnerability of the victim; or (e) by obtaining the consent of the person having control over the victim; Nr.2 - The same penalty shall apply to any person who, by whatever means, recruits, solicits, transports, | Three to ten years |

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| | <p>accommodates or receives children, or delivers, offers or accepts them for the purpose of exploitation, including sexual exploitation, exploitation of work, slavery, extraction of organs, adoption or exploitation of other criminal activities.</p> | | |
| | <p>Nr.3 - In the case mentioned in paragraph 2, if the agent uses any of the means provided for in paragraph 1, or acts professionally or for profit</p> | <p>Three to twelve years</p> | |
| | <p>Nr.4 - The penalties provided for in the preceding paragraphs shall be increased by one third, within their minimum and maximum limits, if the conduct referred to therein: (a) has endangered the life of the victim; (b) has been committed with particular violence or has caused the victim particularly serious damage; (c) it has been committed by an official in the performance of his duties; (d) it has been committed in connection with a criminal association; or (e) results in the suicide of the victim</p> | <p><i>nr.1 to nr.3 increased by one third, within their minimum and maximum limits</i></p> | |
| | <p>Nr.5 - Whoever, through payment or other consideration, offers, delivers, solicits or accepts minors, or obtain or give consent in its adoption</p> | <p>One to five years</p> | |
| | <p>Nr.6 - Whoever, having knowledge of the practice of the crime foreseen in paragraphs 1 and 2, uses the services or organs of the victim</p> | <p>One to five years</p> | |
| | <p>Nr.7 - Whoever withholds, conceals, damages or destroys identification or travel documents of a person who is a victim of a crime, as mentioned in paragraphs 1 and 2</p> | <p>Three years or less</p> | |
| | <p>“Falsification or counterfeiting of a document”</p> <p>[article 256 of the Portuguese Penal Code]</p> | <p>Nr.1 - Who, with intent to cause injury to another person or the State, to obtain for himself or to another person an illegitimate benefit, or to prepare, facilitate, execute or cover another crime: (a) to manufacture or to produce a false document, or any of the intended components to embody it; (b) falsify or alter document or any of the components that integrate it; (c) abuse another person's signature to falsify or counterfeit document; (d) falsely state that a document or any of its components is legally relevant; (e) use a document</p> | <p>Three years or less</p> |

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| | | referred to in the preceding paragraphs; or (f) by any means, furnish or hold forged or counterfeit document | | |
| | | Nr.3 - If the facts referred to in paragraph 1 relate to a document authentic or of equal force, a closed testament, a coupon, a bill of exchange, a check or other commercial document transmitted by endorsement, or any other not covered by Article 267 | Six months to five years | |
| | | Nr.4 - If the acts referred to in paragraphs 1 and 3 are committed by an official, in the performance of his duties | One to five years | |
| <p>4. Do facilitators need to derive benefits to have committed an offence? Does your legislation allow for sanctions to be waived if facilitation to irregular migrants is provided as humanitarian assistance?</p> | <p>No, and the attempt to commit the provided offences is also punishable, namely concerning the crimes of “action to facilitate illegal immigration”, “association for facilitating illegal immigration” and “falsification or counterfeiting of a document”.</p> | | | |
| <p>5. In case your legislation provides for a criminal liability for facilitation of irregular migration, does it provide for aggravating circumstances, e.g. endangering migrants' life or entail inhuman or degrading treatment?</p> | <p>Yes, relating the crime of “action to facilitate illegal immigration”, see above – answer Nr.3 – the Nr.3 of the article 183 of the Portuguese Immigration Act.</p> <p>Relating the crime of “trafficking in human beings”, see above – also answer Nr.3 – the Nr.4 of the article 160 of the Portuguese Criminal Code.</p> | | | |
| <p>6. Does your legislation envisage a liability for smuggled migrants for irregular entry and stay/residence per se? Are there any special conditions for smuggled migrants who agree to cooperate with authorities?</p> | <p>Relating the first question, “the foreign citizen who illegally enters or stays in national territory is detained by a police authority and, when possible, handed over to the Portuguese Immigration and Borders Service, with the respective police report. The citizen shall be presented within forty eight-hours at the most to the judge of the lower criminal court under his/her jurisdiction or to the district court in other areas of the country, in order to validate and possibly enforce coercive measures”.²</p> <p>Also according to the Portuguese Immigration Act, under certain conditions “the foreign citizen who illegally enters or stays in national territory shall be notified by SEF to voluntarily leave national territory within the period that will be settled, from 10 to 20 days”.³</p> | | | |

² Portuguese Immigration Act – article 146.

³ Portuguese Immigration Act – article 138.

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| | <p>Relating the second part of the question, a residence permit shall be granted to the foreign citizen who is or has been a victim of offences related to “trafficking in human beings” or subject of an “action to facilitate illegal immigration”, even if he/she has illegally entered the country or does not meet the necessary requirements for being granted a residence permit⁴.</p> <p>The residence permit mentioned in the preceding paragraph shall be issued after the expiry of a certain reflection period, provided that:</p> <p>(a) It is necessary to extend the stay of the party concerned in national territory considering the interest that his/her presence may have to judicial investigations and proceedings;</p> <p>(b) Whether he/she shows a clear intention to cooperate with the authorities in the investigation and suppression of human trafficking and or of actions to facilitate illegal immigration;</p> <p>(c) Whether he/she has cut all ties with those suspected of the offences listed in the preceding paragraph.</p> <p>The conditions established in subparagraphs (a) and (b) may be exempted under special legislation in the case of a foreign citizen identified as a victim of “trafficking in human beings”.</p> |
| <p>7. Please provide available statistics for 2014 - 2016 on detected cases of migrant smuggling (detected smugglers). What was the rate of cases reached to the court and rate of judgements of conviction in these cases?</p> | <p>Between 2014 and 2016, 333 investigations involving suspects of the crime of “action to facilitate illegal immigration” were registered and / or investigated by the Portuguese Immigration and Borders Service [SEF].</p> |
| <p>8. Please describe how your national law enforcement and judicial authorities cooperate to prevent, investigate and prosecute cases of migrant smuggling. Are any other authorities involved in this process, e.g. financial intelligence units tracking and investigating financial flows related to migrant smuggling?</p> | <p>According to the Portuguese Penal Code - article 263, “the direction of a criminal investigation is the responsibility of the Public Prosecutor's Office, assisted by the Criminal Police authorities” - such as the Portuguese Immigration and Borders Service [SEF], thus “the Criminal Police authorities act under the direct guidance of the Public Prosecutor's Office and in its functional dependence”.</p> <p>Relating the analysis of financial flows, in 2011 it was created the Asset Recovery Office, under de dependency of the Portuguese Judiciary Police. Its mission is to identify, locate and seize goods or products related to crimes, internally and internationally, and its competence is to carry out the financial or patrimonial investigation by decision of the Public Prosecutor's Office.</p> |

⁴ Portuguese Immigration Act - Subsection V – articles 109 to 115.

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| <p>9. Please provide recent examples of effective international cooperation and cross-border operations to detect facilitators/smugglers. Which authorities have been involved? What challenges did you face in coordinating with counterparts?</p> | <p>Several organized criminal groups that help to encourage illegal immigration through the marriage or partnership of convenience have been investigated involving foreign citizens of Bangladesh, India and Pakistan, associated with Portuguese citizens, and some of those investigations had connections with investigations in other EU countries, such as Belgium and Ireland.</p> <p>These marriages either occurred in Portugal or in other EU countries – namely Belgium or Ireland – and these investigations were possible only with international cooperation established mainly through Europol.</p> <p>In 2012, a criminal organization with connections to Spain and France was investigated, consisting of citizens of China and Malaysia, who were involved in the introduction of illegal immigrants, mainly from China, in Europe and North America. The organization's links were extended to several EU countries – namely France, Greece, Ireland, Portugal, Spain and the United Kingdom – but, after several arrests, the criminal organization stopped using the Portuguese territory as a transit country, which led to a slowdown in the investigations.</p> <p>In 2015, the same modus operandi was again detected, and an investigation is currently under way, with the cooperation of the other European authorities.</p> |
| <p>10. What initiatives exist in your country in the field of preventing facilitation of irregular migration? Are specific information campaigns conducted? Does your country implement or is it considering implementing programs of regular migration as a tool to prevent irregular migration?</p> | <p>Existing initiatives are mainly focused on the fight against and the prevention of trafficking in human beings.</p> |
| <p>11. Does your country apply two distinct legal frameworks to migrant smuggling and trafficking in human beings, in line with the international legal framework? How do you address the risks of smuggled migrants becoming victims of human trafficking? What challenges exist in the identification of smuggled persons and victims of human trafficking?</p> | <p>Yes, see in the answer to question Nr.3 the detailed information relating the crime of “action to facilitate illegal immigration” and the crime of “trafficking in human beings”, namely the criminal conduct and the terms of imprisonment.</p> <p>Regarding the second part of the question, in what the Portuguese Immigration and Borders Service [SEF] is concerned, criminal investigators have specific guidance and training in these matters, namely in order to identify whether or not a certain person is a victim of offences related to “trafficking in human beings” or subject of an “action to facilitate illegal immigration”.</p> |

| UKRAINE | |
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| <p>1. Has your country ratified: a) the United Nations Convention against Transnational Organized Crime, b) the Protocol against the Smuggling of Migrants by Land, Sea and Air and c) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children?</p> | <p>The United Nations Convention against Transnational Organized Crime of 15.11.2000, the Protocol against the Smuggling of Migrants by Land, Sea and Air of 15.11.2000 and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children 15.11.2000 were ratified by Law of Ukraine of 04.02.2004 (Law #1433-IV). These instruments became effective for Ukraine on 21.05.2004.</p> |
| <p>2. Does your national legislation contain a specific definition of “facilitation of irregular migration” (hereafter the “facilitation” or “migrant smuggling”)? What activities are considered as facilitation?</p> | <p>According to para 5 of Article 27 of the Criminal Code of Ukraine (CC of Ukraine), "the accessory is a person who has facilitated the commission of a criminal offense by other accomplices, by way of advice, or instructions, or by supplying the means or tools, or removing obstacles, and also a person who promised in advance to conceal a criminal offender, tools or means, traces of crime or criminally obtained things, to buy or sell such things, or otherwise facilitate the covering up of a criminal offense". The Article 332 of CC of Ukraine stipulates criminal liability for "Illegal movement of persons through the state border of Ukraine".</p> <p>Facilitation of the latter crime includes provision of advice and guidance on the most convenient routes to the state border, places and time for illegal border crossing, etc., provision of transportation means, temporary storages, camouflage, means to conceal traces of crimes, provision of maps and charts, diversion of attention of border guards at the border, etc.</p> <p>As movements through the state border mean actions of accompanying or transporting persons through the assumed line of the state border, a crime is considered completed from the moment of completion of certain actions, e.g., from the moment when the advice has been provided, regardless of actual crossing of the state border.</p> |
| <p>3. What liability your legislation envisages for various types of criminal conducts, which could constitute facilitation (e.g. facilitation of illegal entry (border crossing), transit, or stay/residence, provision of forged documents, assistance in abuse of benefits system etc.)?</p> | <p>According to para 2 of Article 29 of CC of Ukraine "The organizer, abettor and accessory shall be criminally liable under the respective paragraph of Article 27 and that article (or paragraph of the article) of the Special Part of this Code which provides an offense committed by the principal."</p> <p>In particular, paragraph 1 of Article 332 of CC of Ukraine stipulates that "organizing of illegal movement of persons across the state border of Ukraine, coordinating or facilitating any such actions by advice, instructions, provision of means or removal of obstacles, - shall be punishable by imprisonment for a term of two to five years.</p> |
| <p>4. Do facilitators need to derive benefits to have committed an offence? Does your legislation allow for sanctions to be waived if facilitation to irregular migrants is provided as humanitarian assistance?</p> | <p>According to para 2 of Article 332 of CC of Ukraine, "actions stipulated by para 1 or para 2 of this Article, if committed by an organised group or committed for material gain, - shall be punishable by imprisonment for a term of seven to nine years, with prohibition to hold certain positions or to engage into certain activities for a term up to three years, with forfeiture of property".</p> |

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| | <p>In subjective terms, the crime is characterised by a specific intent, therefore, motives and the purpose of the crime are not of significance for its classification. However, if crimes under paragraphs 1 or 2 of Article 332 of CC of Ukraine are committed for material gain, supplementary sanctions may be imposed - as forfeiture of property (instruments of crime).</p> <p>According to paragraph 6 of Article 27 of CC of Ukraine, "the concealment of a criminal offender, tools or means of a criminal offense, traces of crime or criminally obtained things, or buying or selling such things shall not constitute complicity where they have not been promised in advance. Persons who have committed such acts shall be criminally liable only in cases prescribed by Articles 198 and 396 of this Code", while according to paragraph 7 of Article 27 of CC of Ukraine "A promised failure to report a crime which is definitely known to be in preparation or in progress, prior to the consummation of such, shall not constitute complicity. Any such person shall be criminally liable only if the act so committed comprises the elements of any other criminal offense."</p> <p>According to paragraph 1 of Article 44 of CC of Ukraine "A person, who committed a criminal offense, shall be discharged from criminal liability in cases prescribed by this Code..."</p> <p>In particular, a person may be discharged from criminal liability:</p> <ul style="list-style-type: none"> - in view of effective repentance (Article 45 of CC of Ukraine); - due to a limitation period (Article 49 of CC of Ukraine). |
| <p>5. In case your legislation provides for a criminal liability for facilitation of irregular migration, does it provide for aggravating circumstances, e.g. endangering migrants' life or entail inhuman or degrading treatment?</p> | <p>According to paragraph 1 of Article 67 of CC of Ukraine, the following circumstances are considered as aggravating ones:</p> <ol style="list-style-type: none"> 1) repetition of an offense or recidivism; 2) the commission of an offense by a group of persons upon prior conspiracy (paragraph 2 or 3 of Article 28); 3) the commission of an offense based on racial, national or religious enmity and hostility; 4) the commission of an offense in connection with the discharge of official or public duty by the victim; 5) grave consequences caused by the offense; 6) the commission of an offense against a minor, an elderly or helpless person; 7) the commission of an offense against a woman who, to the knowledge of the culprit, was pregnant; 8) the commission of an offense against a person who was in a financial, official or other dependence on the culprit; 9) the commission of an offense through the use of a minor, a person of unsound mind or mentally defective person; 10) the commission of an especially violent offense; 11) the commission of an offense by taking advantage of a martial law or a state of emergency or other extraordinary events; 12) the commission of an offense by a generally dangerous method; 13) the commission of an offense by a person in a state of intoxication resulting from the use of alcohol, narcotic, or any other intoxicating substances. |
| <p>6. Does your legislation envisage a liability for smuggled migrants for irregular entry and stay/residence per se? Are there any special conditions for</p> | <p>In Ukraine, administrative liability is stipulated for illegal crossing (attempted illegal crossing) of the state border of Ukraine under Article 204-1 of the Code of Ukraine on Administrative Offences, as well as non-compliance of foreigners and stateless persons with the rules of stay in Ukraine and transit travel via the territory of Ukraine (Article 203 of the Code of Ukraine on Administrative Offences).</p> |

| <p>smuggled migrants who agree to cooperate with authorities?</p> | <p>Besides that, accounting for socio-political situation in Ukraine, since April 2014., administrative liability is stipulated in Ukraine for non-compliance with rules of entry to the temporary occupied territory of Ukraine and departure from the territory (Article 204-2 of the Code of Ukraine on Administrative Offences).</p> <p>In addition, according to Law of Ukraine on Legal Status of Foreigners and Stateless Persons, the following sanctions may be applied:</p> <ul style="list-style-type: none"> - compulsory return of foreigners and stateless persons (Article 26); - compulsory expulsion of foreigners and stateless persons (Article 30); - bans for entry of foreigners and stateless persons to Ukraine (Article 13). | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|---|--------------|-------------|------|------|--|-----|------|------|--|------|------|------|--|----|----|----|--|------|------|------|---|------|-------|------|---|-----------|------------|------------|---|-----------|-----------|-----------|--|--------------|--------------|-------------|--|-----------|-----------|----------|
| <p>7. Please provide available statistics for 2014 - 2016 on detected cases of migrant smuggling (detected smugglers). What was the rate of cases reached to the court and rate of judgements of conviction in these cases?</p> | <p style="text-align: center;">Statistics on combating irregular migration in the period from 2014 to 2016</p> <p style="text-align: center;"><i>The State Border Guard Service of Ukraine</i></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Indicators</th> <th style="text-align: center;">2014</th> <th style="text-align: center;">2015</th> <th style="text-align: center;">2016</th> </tr> </thead> <tbody> <tr> <td>Persons apprehended for illegal crossing of the state border</td> <td style="text-align: center;">958</td> <td style="text-align: center;">1819</td> <td style="text-align: center;">1041</td> </tr> <tr> <td>Persons apprehended for non-compliance with the rules of stay in Ukraine</td> <td style="text-align: center;">1738</td> <td style="text-align: center;">1677</td> <td style="text-align: center;">1528</td> </tr> <tr> <td>Persons apprehended for non-compliance with the border regime and the regime of border crossing points</td> <td style="text-align: center;">22</td> <td style="text-align: center;">53</td> <td style="text-align: center;">43</td> </tr> <tr> <td>The total number of apprehended irregular migrants</td> <td style="text-align: center;">2718</td> <td style="text-align: center;">3549</td> <td style="text-align: center;">2612</td> </tr> <tr> <td>Irregular migrants who were not admitted to Ukraine in border crossing points</td> <td style="text-align: center;">9146</td> <td style="text-align: center;">13722</td> <td style="text-align: center;">3349</td> </tr> <tr> <td>Criminal proceedings under Art. 332 of the CC of Ukraine initiated on submissions of the State Border Guard Service of Ukraine</td> <td style="text-align: center;">99</td> <td style="text-align: center;">104</td> <td style="text-align: center;">124</td> </tr> <tr> <td>Apprehended persons engaged into irregular migration</td> <td style="text-align: center;">68</td> <td style="text-align: center;">79</td> <td style="text-align: center;">81</td> </tr> <tr> <td>Court sentences delivered / persons sentenced</td> <td style="text-align: center;">41/50</td> <td style="text-align: center;">32/33</td> <td style="text-align: center;">9/10</td> </tr> <tr> <td>Including persons sentenced to imprisonment</td> <td style="text-align: center;">22</td> <td style="text-align: center;">11</td> <td style="text-align: center;">2</td> </tr> </tbody> </table> <p style="text-align: center;"><i>The National Police of Ukraine</i></p> <p>In 2014, law enforcement bodies of Ukraine detected 117 groups of irregular migrants including 617 foreigners (Police authorities detected 19 groups/148 irregular migrants).</p> <p>In 2015, 239 groups of 1.1 thousand irregular migrants were detected (Police authorities detected 32 groups of 164 irregular migrants).</p> <p>In 2016, 146 groups of 716 irregular migrants were detected (Police authorities detected 27 groups of 152 irregular migrants).</p> | Indicators | 2014 | 2015 | 2016 | Persons apprehended for illegal crossing of the state border | 958 | 1819 | 1041 | Persons apprehended for non-compliance with the rules of stay in Ukraine | 1738 | 1677 | 1528 | Persons apprehended for non-compliance with the border regime and the regime of border crossing points | 22 | 53 | 43 | The total number of apprehended irregular migrants | 2718 | 3549 | 2612 | Irregular migrants who were not admitted to Ukraine in border crossing points | 9146 | 13722 | 3349 | Criminal proceedings under Art. 332 of the CC of Ukraine initiated on submissions of the State Border Guard Service of Ukraine | 99 | 104 | 124 | Apprehended persons engaged into irregular migration | 68 | 79 | 81 | Court sentences delivered / persons sentenced | 41/50 | 32/33 | 9/10 | Including persons sentenced to imprisonment | 22 | 11 | 2 |
| Indicators | 2014 | 2015 | 2016 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Persons apprehended for illegal crossing of the state border | 958 | 1819 | 1041 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Persons apprehended for non-compliance with the rules of stay in Ukraine | 1738 | 1677 | 1528 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Persons apprehended for non-compliance with the border regime and the regime of border crossing points | 22 | 53 | 43 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| The total number of apprehended irregular migrants | 2718 | 3549 | 2612 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Irregular migrants who were not admitted to Ukraine in border crossing points | 9146 | 13722 | 3349 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Criminal proceedings under Art. 332 of the CC of Ukraine initiated on submissions of the State Border Guard Service of Ukraine | 99 | 104 | 124 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| Including persons sentenced to imprisonment | 22 | 11 | 2 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

On November 26, 2015, amendments were introduced into Article 216 of the Code of Criminal Procedure of Ukraine as pertains to transfer of investigation jurisdiction over cases under Article 332 of the CC of Ukraine (Illegal Movement of Persons through the State Border of Ukraine) to the sphere of competence of investigation units of the National Police.

According to Section II of Finalising Provisions of Law of Ukraine on Amending the Code of Criminal Procedure of Ukraine, criminal proceedings that were initiated by investigators of the security service bodies, MoI bodies and prosecutor offices prior to enactment of the Law, shall be transferred to relevant pre-trial investigation bodies according to their investigation jurisdictions, within three months.

Therefore, criminal proceedings under Article 332 of CC of Ukraine were transferred from the Security Service of Ukraine to the National Police by 27.02.2016.

In particular, in 2016, 154 crimes were registered under Article 332 of CC of Ukraine (Illegal Movement of Persons through the State Border of Ukraine), except in closed criminal proceedings.

In 41 criminal proceedings, suspects were identified and notified on suspicion. Overall, in the course of pre-trial investigations, 56 persons who committed the said crime were identified.

Pre-trial investigations were completed in 83 criminal proceedings of the category: in 20 cases the decisions were made to submit cases to courts with indictments, and in 13 cases with plea agreements.

Based on materials of counter-trafficking units, the National Police detected 58 cases of illegal movement of persons through the state border. Investigation materials on 20 crimes detected by these units were submitted to courts.

Now, efficient counter-trafficking actions and provision of assistance to trafficking victims belong to the range of commitments of Ukraine for accession to the European Union. The EU-Ukraine Association Agreement stipulates implementation of efficient proactive policies to combat trafficking in persons and illegal migration.

One of tools for elimination of illegal migration in Ukraine is associated with documenting crimes under Article 358 of CC of Ukraine - forgery of documents, stamps, seals or letterheads in the sphere of migration and their use.

In particular, in 2015, from the moment of establishment of the National Police, based on materials of counter-trafficking units, 239 crimes under Art. 358 of CC of Ukraine were detected. Investigation materials of these units on 446 crimes were submitted to courts.

In 2016, counter-trafficking units detected 258 crimes under Article 358 of CC of Ukraine. Completed investigation materials on 212 crimes of the category were submitted to courts.

The State Migration Service of Ukraine

| Indicators | 2014 | 2015 | 2016 |
|-----------------------------|------|------|------|
| Irregular migrants detected | 3135 | 5111 | 6390 |



| | | | | | |
|--|---|-------|-------|-------|--|
| | Decisions made on compulsory return to countries of origin | 2384 | 4202 | 5954 | |
| | Decisions made on compulsory expulsion from the territory of Ukraine | 98 | 209 | 255 | |
| | Bans for entry to the territory of Ukraine | 512 | 576 | 895 | |
| | Foreigners and stateless persons held administratively liable for non-compliance with the migration legislation, under para 1 of Art. 203 of the Code of Ukraine on Administrative Offences | 13785 | 16019 | 20037 | |
| <p>8. Please describe how your national law enforcement and judicial authorities cooperate to prevent, investigate and prosecute cases of migrant smuggling. Are any other authorities involved in this process, e.g. financial intelligence units tracking and investigating financial flows related to migrant smuggling?</p> | <p>Cooperation of law enforcement and judicial bodies for prevention, investigation and prosecution of illegal migration is regulated by the due legislation of Ukraine (the Constitution of Ukraine, the Code of Criminal Procedure of Ukraine, the Criminal Code of Ukraine, the Code of Ukraine on Administrative Offences, agency-specific and inter-agency regulations, etc.). If deemed necessary, law enforcement bodies of foreign countries may be involved into investigations (including finance intelligence units), accounting for requirements of international treaties (agreements).</p> <p>Besides that, in order to ensure efficient and proactive policy for combating illegal migration, efficient and permanent information exchange arrangements were introduced to exchange information on relevant crimes between structural units of the National Police of Ukraine, the Security Service of Ukraine, the State Border Guard Service of Ukraine, the State Migration Service and the Foreign Intelligence Service of Ukraine.</p> | | | | |
| <p>9. Please provide recent examples of effective international cooperation and cross-border operations to detect facilitators/smugglers. Which authorities have been involved? What challenges did you face in coordinating with counterparts?</p> | <p>In August 2017, an international operation was completed - the operation was initiated by the State Border Guard Service of Ukraine for disclosure and elimination of activities of a criminal group with international connections that organised a transnational human trafficking channel, engaged into recruitment of Ukrainian nationals and their illegal transportation through Poland - Germany - France and through Poland - Lithuania - Latvia to the United Kingdom for labour exploitation.</p> <p>The operation was implemented with participation of officers of the Counter-trafficking Department of the National Police of Ukraine, the Border Guard Service of Poland, the UK National Crime Agency, the State Border Guard Service of Lithuania, and the finance intelligence unit of WESTERN UNION.</p> <p>As a result of these joint actions, on 07.08.2017, in Shaulay (Lithuania), officers of the State Border Guard Service of Lithuania apprehended 4 organisers of illegal activities (1 citizen of Ukraine and 3 citizens of Lithuania) and 9 trafficking victims in the course of their attempted transportation to the United Kingdom with passports of EU citizens issued to other persons.</p> | | | | |
| <p>10. What initiatives exist in your country in the field of preventing facilitation of irregular migration? Are specific information campaigns conducted? Does your country implement or is it considering implementing programs of regular</p> | <p>The State Border Guard Service of Ukraine daily informs the public via mass media outlets on the current situation and results of combating illegal migration, on legal consequences of these illegal activities for their organisers and facilitators. The information is disseminated at the central and regional levels, in TV, in printed media, in the Internet, etc.</p> <p>In order to promote cooperation with the general public, broad and comprehensive public awareness rising, the National Police organised permanent public disclosure of results of counter-trafficking activities at the official web site of the National Police of Ukraine.</p> | | | | |

| | |
|--|---|
| <p>migration as a tool to prevent irregular migration?</p> | <p>Publications on detection of crimes in the sphere of trafficking in persons are posted in social media (Twitter and Facebook), in the agency's YouTube channel and aired by Espresso TV channel in "Police Wave" program.</p> <p>According to Order No. 648 of the Ministry of Interior of Ukraine of 27.07.2017, the Counter-trafficking Department of the National Police of Ukraine (referred hereinafter to as the Department) maintains its official page on Facebook (www.facebook.com/dbzptl) - the page was upgraded and adjusted to requirements of the Ministry of Interior of Ukraine.</p> <p>The page provides information on actions implemented in the sphere of combating trafficking in persons and provides consultations on relevant issues (the page has already attracted more than 17 thousand visitors).</p> <p>Police officers actively cooperate and inform partner NGOs and IOs on results of their activities, on modern methods for detection and elimination of crimes associated with human trafficking, identification of related offences, on public events and information dissemination via mass media outlets, including Internet, for public awareness raising, to provide timely and efficient assistance to trafficking victims and to explain people how to avoid being lured by traffickers.</p> <p>In particular, they continuously cooperate with other NGOs and international organizations active in the sphere of combating human trafficking such as La Strada Ukraine, GRETA (on issues of implementation of the Convention of the Council of Europe by Ukraine), YCAT (Supervisory board of project "Countering Trafficking of Children and Youth in Ukraine"), delegations of the Ministry of International Affairs of Canada and the Ministry of Foreign Affairs of Norway, the US Embassy in Ukraine, the OSCE Centre in Kazakhstan, the International Organisation for Migration, the OSCE Project Coordinator in Ukraine, EUBAM (the EU Border Assistance Mission in Moldova and Ukraine), EUAM (the EU Advisory Mission), representatives of the Border Guard Service of Finland, etc.</p> |
| <p>11. Does your country apply two distinct legal frameworks to migrant smuggling and trafficking in human beings, in line with the international legal framework? How do you address the risks of smuggled migrants becoming victims of human trafficking? What challenges exist in the identification of smuggled persons and victims of human trafficking?</p> | <p>According to the Criminal Code of Ukraine, crimes under Article 332 - Illegal Movement of Persons through the State Border of Ukraine - are covered by Chapter XIV of the Code (Criminal Offenses Related to the Protection of State Secrets, Inviolability of State Borders, Conscriptation and Mobilization), while crimes under Article 149 - Trafficking in Human Beings and Other Illegal Transfer Deals in Respect of a Human Being - are covered by Chapter III (Criminal Offenses Against Liberty, Honour and Dignity of a Person). Therefore, legal frameworks in spheres of illegal migration and trafficking in persons are different.</p> <p>In order to minimise risks of trafficking for irregular migrants, the following measures were applied:</p> <ol style="list-style-type: none"> 1) In the framework of cooperation with the EU Border Guard and Coast Guard Service (FRONTEX), risk analysis experts of the State Border Guard Service of Ukraine participated in development of common analytical materials to annual Risk Profiles on identification of trafficking victims. 2) In order to identify trafficking victims and potential trafficking victims in the course of crossing the state border the national risk profile is applied - No. 3_2010_01_TL "Trafficking in Persons from Ukraine / in Ukraine". In the course of development of the profile, its developers particularly focused on trafficking prevention measures for combating trafficking in persons. Risk indicators in the profile and a potential algorithm of interaction were agreed with the International Organisation for Migration, Mission in Ukraine and with some units of the National Police of Ukraine. |

3) For purposes of implementation of the State Social Program of Combating Human Trafficking up to 2020 (approved by Decree # 111 of the Cabinet of Ministers of Ukraine of 24.02.2016) and in the framework of international project for "Strengthening Efforts of Ukraine to Combat Trafficking in Persons", officers of the State Border Guard Service **participated in training seminars** on "Capacity building of law enforcement bodies through enhancement of their roles in the national mechanism of interaction of counter-trafficking actors", organised by the IOM Mission in Ukraine.

4) With IOM assistance and with finance support of the US Department of State, in the framework of implementation of the international technical assistance project on "Development of a system of criminal analysis and risk analysis in line with EU standards in the framework of counter-trafficking law enforcement bodies of Ukraine":

➤ **a training for senior officers and 3 training courses for officers** of the National Police of Ukraine were conducted **on matters of risk analysis and criminal analysis** on the base of B. Khmelniysky National Academy of the State Border Guard Service of Ukraine. *Trainings for Police officers were conducted according to a tailored Program developed on the base of the training system of intelligence officers of the State Border Guard Service of Ukraine, accounting for modern European practices, including inter alia practices of the Polish Border Guards and the Common Integrated Risk Analysis Model of EU agencies (CIRAM II) ;*

➤ representatives of the State Border Guard Service of Ukraine, jointly with officers of operational units, specialised investigators and prosecutors **took part in e-learning course** on counter-trafficking matters - "Improvement of mechanisms to combat trafficking in human beings: an interactive training course for officers of law enforcement bodies on practical aspects of enforcement of the due legislation".

Some difficulties are encountered in the course of identification of irregular migrants and trafficking victims:

- some countries of migration risk do not have their embassies (or consular facilities) in Ukraine;
- some irregular migrants do not cooperate with law enforcement bodies of Ukraine, or provide false information on organisers and facilitators of illegal migration, routes of movements at the territory of Ukraine and abroad;
- insufficient availability of interpreters from languages of some countries of origin of irregular migrants, particularly interpreters from dialects of South East Asia and Africa countries.

In the framework of the State Social Program of Combating Human Trafficking up to 2020 (approved by Decree # 111 of the Cabinet of Ministers of Ukraine of February 24, 2016 and referred hereinafter to as the State Program), the National Police closely cooperated with other central executive bodies such as the Ministry of Social Policy, the Administration of the State Border Guard Service of Ukraine, the State Migration Service of Ukraine.

Law of Ukraine on Combating Trafficking in Persons (referred hereinafter to as the Law) defines organisational and legal framework of counter-trafficking activities, main directions of state policies and principles of international cooperation in the sphere, powers of executive bodies, procedures of determination of the status of trafficking victims and procedures for provision of assistance to such persons.

According to sub-paragraph 6 of paragraph 1 of Article 7 of the Law, central executive bodies, according to legislatively set powers in the sphere of combating trafficking in persons, shall take measures for determination of the status of trafficking victims, following the procedures set by the Cabinet of Ministers of Ukraine.

Powers of direct granting of the status of trafficking victims belong to the sphere of competence of the Ministry of Social Policy - the Ministry decides on granting (refusals to grant) the status after completion of the procedure of data gathering through local district-level state administrations that directly accept applications for the status (Procedures of Determination of the Status of a Victim of Trafficking in Persons, approved by Decree # 417 of the Cabinet of Ministers of Ukraine of May 23, 2012).

In its turn, the concept of trafficking in human beings is rather broad. If, in the case of application of trafficking victims themselves, their close relatives or family members, elements of crime under Article 149 of the CC of Ukraine (Trafficking in Human Beings and Other Illegal Transfer Deals in Respect of a Human Being) are found, a pre-trial investigation shall be launched.

According to Article 55 of the Code of Criminal Procedure of Ukraine, such persons shall be granted the status of a victim in criminal proceedings. Now, the Department has information from the Uniform Register of Pre-trial Investigations (EDREI) on victims in criminal proceedings - relevant data are provided periodically and are processed for production of generalised statistics. EDREI information is managed by the Office of the Prosecutor General of Ukraine.

Besides that, the Counter-trafficking Department of the National Police receives monthly reporting forms DIPKP "102" with information on victims by regions (men, women and children).

According to the State Program, the Ministry of Social Policy of Ukraine is responsible for development and approval of the list of indicators to facilitate identification of trafficking victims (including among stateless persons and internally displaced persons), however, the list has not been approved yet.