

International police cooperation in investigating cases of smuggling of migrants in Kosovo

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Abstract

Migrant smuggling today has taken on the dimensions of the global phenomenon by being present almost in all countries and continents, regardless of whether they are countries of their origin, transit or a destination. Nevertheless, the presence of this form of crime is also present in Kosovo, hence this is the object of this paper. In this paper, the international police co-operation in the migrant smuggling investigation cases in Kosovo is concretely considered as a multidimensional and complex problem. However, the challenges, and problems that Kosovo faces in the realization of the international police cooperation is also examined, given the fact that it is the not yet part of some international regional and global mechanisms dealing with the prevention and combating of organized crime. Treating migrant smuggling cases from a scientific point of the view requires more in-depth study and an elaboration of the literature that exists nowadays on this issue. Thus, through this paper is presented the assessment and the analysis of 31 investigated cases of the migrant smuggling from the Kosovo police for the time period 2011-2015 with the emphasis on the manner of the realization of the international police cooperation during the investigation of these cases. At the very end of this paper, based on the findings of the research, and the analysis performed, recommendations are issued, the implementation of which in

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the practice would increase the efficiency of the police in detecting, and combating migrant smuggling in Kosovo.

Keywords: The international police cooperation, the migrant smuggling, Interpol, Europol, Selec, joint investigation teams, the mutual legal assistance.

1. Introduction

At most basic point, no country is spared from the criminal offences that contains international elements. The very dynamic increase of this kind of criminality, among other factors contributes the geographical position of Kosovo through which roads pass through Western and Central Europe towards the Near East and vice versa and through which a very huge circulation of people and wealth takes place. Contemporary means of communication and transport enables criminals to quickly move from one place to another thus avoiding capture, i.e. detection. (Maloku, 2015:119)

The migrant smuggling today has taken on the dimensions of a global phenomenon by being present in almost all countries and continents, whether they are countries of the origin, transit, or destination. Migrant smuggling as a global phenomenon has existed since ancient times only that its forms of manifestation are changed in different ways. In modern times, this phenomenon has become a sophisticated form of material exploitation of individuals or groups belonging to different economic, social and gender categories. Although this phenomenon has been accompanied by major transformations throughout history, its purpose has remained essentially the same, which is the illicit material gain of organized criminal groups. Also during the criminal-legal treatment and forensic investigation of this criminal offense should be taken into account the transboundary character of this phenomenon since the preparatory actions and planning for its occurrence begin in one state, continue in other states while the final consequences appear entirely in the states of third. As the crime of migrants smuggling is a transboundary crime and with elements of organized crime and affecting not only one country but several countries, its investigation and detection cannot be successfully carried out by a single country without genuine international and police cooperation. Therefore, for successful international and police cooperation, law enforcement institutions conducting criminal investigations needs to be integrated through the interplay of all police structures at the global and regional levels.

With the development of the human society, developed also different types of criminality especially of organized crime and this has made that the investigative bodies of different countries of the world to build cooperation bridges between themselves in order to have much more easier to combat this negative phenomena in the whole world. (Maloku, 2015:461)

The problems faced by all countries affected by this phenomenon are different, so the Republic of Kosovo besides these problems regarding to the realization of international police cooperation, as a new country faces different problems given the fact that it is not yet part of regional and global international mechanisms such as Interpol, Europol, Selec etc.

The International Criminal Police Organization (ICPO-INTERPOL), simply known as INTERPOL, is an international organization which facilitates international police cooperation (Rutse, 2010). With 194 members (Interpol, 2020), INTERPOL is the most influential actor in matters of transnational policing with a global reach, and one of the largest international organizations to exist altogether. (Savino, 2010)

When it comes to international police cooperation, this issue is very important one and can be accomplished in various ways and forms, both through informal contacts and through formal procedures within the framework of mutual legal assistance. The UNDOC guidelines on international cooperation in human trafficking and migrant smuggling (UNDOC, 2010), regulate some aspects of this international cooperation in relation of trafficking in human beings, as well as smuggling of migrants. There are various international and regional documents defining the issue of formal and informal mutual cooperation and information sharing between agencies without the implementation of bureaucratic formal request procedures when it comes to human trafficking and migrant smuggling cases, as stated in the United Nations Convention against Transnational Organized Crime (UNODC, 2010)

However, the regional cooperation creates collaboration between regional countries in the interested common fields which aims to strengthen the ability of the region in order to cope with the crime consequences. This regional cooperation develops in bilateral level, but also within the regional organizations as well. Till today, there are around 40 regional initiatives who provides a range of security matters, which mainly relate to police cooperation, courts, army and emergency. (Kušljugić, 2009:48)

Criminality as a social and complex phenomenon, respectively the reality in society in terms of nature, extent, dynamics, manifestations, subsequent

reflections and characteristics and also other specifics from the beginning of man till nowadays deserve special attention (Karović, 2018:836). Therefore, prevention and combating of transactional criminality will be more successful due to Kosovo's membership in regional and international security organizations as well as greater police cooperation both regionally and internationally.

The Republic of Kosovo as a new country in the Western Balkans has not yet joined the international police mechanisms such as Interpol, Europol, Selec, etc., and this situation presents an additional difficulty in combating all forms of trans-border crime including migrant smuggling.

1.1. Research methodology

During the preparation and compilation of this scientific paper a combination of different scientific methods were used, including methods of analysis, finding and processing of data from 31 investigated cases of smuggling of migrants by the Kosovo Police for the period 2011- 2015 from the aspect of realization of international police cooperation during the investigation of these cases. Also, during this research, from the theoretical point of view, many other sources and documents have been analyzed through the application of the method of studying documents, (documentary analysis), inductive and deductive methods, methods of analysis and synthesis, specializations and generalizations, abstractions and concretizations, descriptions, classifications, as well as a comparative method to identify similarities and differences between different cases.

It is also worth mentioning that during the realization of this research of different literature that has to do with the theoretical treatment of the phenomenon of migrant smuggling and the importance of international police cooperation, works and literature by various local and international authors have been used.

2. Literature review

During the research of various literature related to the development of the phenomenon of migrant smuggling and the importance of international police cooperation, it was found that different authors have written and many publications and books have been published, hence in this paper some of them will be mentioned and quoted.

The author Benjamin Perrin from the British University of Columbia University in Canada in his article quotes: "Just passing through? International legal obligations and policies of transit countries in the fight against trafficking in human beings and smuggling of migrants", identifies several key features of transit countries including: (1) the geographical proximity of attractive destinations; (2) insufficient legislation and its poor enforcement in cases of trafficking in human beings and migrant smuggling; (3) liberal immigration policies; and (4) a criminal operating infrastructure that allows victims to enter and exit the state. (Perrin, 2010).

Hana Korać, a professor at the Faculty of Law at the University of Travnik, Bosnia and Herzegovina, in her book *Organized Crime and Other Criminal Offenses* ((Korać, 2014), emphasizes that the International Criminal Police Organization (Interpol) also has a global role in the field of international police cooperation, which is the only international organization of criminal police, whose role is the fight against international crime, within which the police of each state has full sovereignty. She underlines that its regulation is not an international convention in the strict sense of the word, on the grounds that it is not necessary for this document to be ratified by the member states.

Furthermore, under the provisions of the Interpol statute, it is provided that the purpose of this organization is to promote mutual cooperation between criminal police bodies, in accordance with their national regulations, respecting the provisions of the Universal Declaration of Human Rights, and to establish institutions, which are likely to deal with the fight against criminal offenses of general crime. (Korać, 2014: 652)

Regarding to the importance of international police cooperation with Interpol, Eldan Mujanovic, a professor at the Faculty of Criminology and Security Studies (FKKSS) in Sarajevo, in his book *International Police Cooperation*, states: "Interpol carries out its activities through 4 different types of services that offers to the national police, namely. (Mujanović, 2015:106)

- a) Facilitating the realization of police communication between member police globally through a common platform,
- b) By providing operational support when dealing with databases (personal data, papillary line markings, DNA profiles, stolen items,
- c) Providing other operational services to the police and
- d) Providing various trainings and educations for police officers.

In Kosovo, with the emergency of trafficking in human beings, with its prevention and combating, first the local non-governmental organizations, then the international ones, reacted and then the governmental institutions joined. The progress of joint action has been particularly reflected since 2001, when the first defined bodies were formed designated - the appointment of the Victim Assistance Coordinator within the Department of Justice (UNMIK Regulation 2001/04), within the institution responsible for establishing mechanisms to prevent human trafficking and illegal migration. (Maloku & Maloku, 2020:41)

3. Results

The main objectives of Interpol are the functioning and development of a broad mutual police cooperation based on their internal regulations, and then the creation of various guidelines for the actions of local police. The activity of this international police organization is focused on public safety and international terrorism, organized crime, against illegal production and trafficking of narcotics, arms trafficking, human trafficking, money laundering, high-tech financial crime and corruption. (Mujanović, 2015:106)

When it comes to cooperation within the European Union, this cooperation is more diverse and it takes place through an organization called Europol. Europol is an international European police organization that coordinates cross-border investigations and assists national agencies in specific matters and makes assessments of the risk of organized crime by collecting data from all member states of the European Union. For the best implementation of this cooperation, a network of liaison officers has been established, as well as joint investigation teams have been set up. As part of the Schengen conventions that applies in more than the half of the EU member states, an information system has been developed that enables law enforcement agencies to share information with their colleagues almost immediately. It is also allowed to cross the border under certain conditions where law enforcement agencies are allowed, under certain conditions, to supervise other members, as well as to participate in the control of suspicious shipments. Europol was formed in October 1998 when the European Convention entered into force. In October 1999, shortly after the entry into force of the European Convention, a special EU consultation was held in Tampere, Finland, on strengthening the European Union in the field of justice and home affairs. Regarding to Europol at that meeting, it was

concluded, among other things, that the role of Europol should be strengthened by allowing it to accept operational data from member states. It was also authorized to require member states to initiate, implement or coordinate investigations or to establish joint investigative teams for certain specific areas of crime, respecting the judicial control system of the member states. This conclusion enabled a significantly more active role of Europol in criminal investigations. (Interpol and Europol co-operation Agreement of 5 November 2001)

Regarding to the regional cooperation between the police of the countries of southern Europe, we emphasize the importance of the cooperation that takes place through the European-Southern SELEC Center for the Implementation of Southern European Law which was established on October 7, 2011, instead of the SECI Center, from which the operational and strategic capacities were taken. The headquarters of this center is in Bucharest. The work of the SELEC Center is regulated by the card approved by the parties in the cooperation agreement on the prevention and fight against cross-border crime.

Regarding the services and tasks performed by this center according to the signed convention, as stated in the book by professor Sakib Softić from Sarajevo "International Criminal Law and Police Cooperation", the convention describes the following tasks of SELEC are, I quote. (Softić, 2013: 97)

- a) Coordinate regional operations and support the investigation and prevention of activities Cross-border crime of member states;
- b) Enable member states to exchange information and data and provide prompt and timely operational assistance;
- c) Collect, analyze and distribute as well as expand information and data on criminal activities;
- d) To make strategic analyzes and assessments of threats related to SELEC objectives;
- e) Create, use and maintain a computerized information system that includes the protection of personal data.

The benefit of this center is also to increase the possibility for joint investigations and operations aimed at preventing and combating trans-border criminal offenses (Softić, 2013: 97). SELEC is composed of two main bodies, the Council and the Secretariat, which lead this regional organization. The Council is the highest governing body of SELEC, in which each member state appoints its own representative. On the other

hand, the SELEC Secretariat consists of a Director General, a Director and a permanent staff. Of course, one of the most important mechanisms for the practical realization of police cooperation through SELEC are the so-called. 'National Units', composed of police liaison officers at the SELEC headquarters in Bucharest and national contact points in each member state. (Softić, 2013:97-98)

Taking into considering the characteristics and manners of committing the criminal offenses of smuggling of migrants, as well as the transnational character of these crimes, international police cooperation is essential in terms of the effectiveness of investigations. Looking at the police documentation through the analysis of the reviewed cases of smuggling with migrants in Kosovo, referring to the period 2011-2015., we have come to the data presented below in the table and graph.

Out of the total of 31 investigated cases, international police cooperation was requested in 6 cases, with 14 requests sent to the neighboring countries and other countries, through the Directorate for International Police Cooperation ILECU which operates within the Kosovo Police. Of these 14 cases where international police cooperation was found, 9 requests or 64.3% were sent to neighboring countries in the region and other countries directly. On the other hand, 4 or 28.6% of the requests were sent to Interpol through the liaison office operating within the UNMIK mission, while 1 or 7.1% were sent through the EULEX liaison office in Europol. All these requests were made at the time of the investigation of migrant smuggling cases.

Table no. 1: Presentation of the requests submitted in the framework of the implementation of the international police cooperation of the Kosovo Border Police

	Frequencies	Percentage	Valid percentage	The cumulative percentage
Requests sent to other countries	9	64.3	64.3	64.3
Requests sent to Interpol	4	28.6	28.6	92.9
Requests sent to Europol	1	7.1	7.1	100.0
A total of	14	100.0	100.0	

During this analysis of these findings, when we talk about the investigation of cases of smuggling of migrants in Kosovo based on the analysis of 31 cases investigated by the Kosovo Police belonging to the period 2011-2015., has been ascertained that in some investigated cases there was a need that besides the initial request, to also sent some additional urgency to obtain the requested response in the context of the realization of this international police cooperation during the investigation of these cases that have been under investigation.

These requests consisted of the needs to provide various information and to carry out some investigative actions. During this research, through looking at these 31 investigated cases, it was found that this type of international police cooperation of the Kosovo police was in most cases indirectly carried out through the mediation of other international mission bodies operating in Kosovo such as the Liaison Offices of UNMIK for Interpol and the EU mission, EULEX for Europol. These delays in returning of the required answers and this way of realization of international cooperation by the Kosovo Police due to the fact that it is not yet a member of these international police mechanisms, has made it difficult to successfully complete these investigations by contributing that these responses are not accepted in real time and have had impact on the quality of investigations carried out in cases of smuggling of migrants. (Sylejmani, 2019)

4. Conclusions and Recommendations

With the trans-border and trans-national character that smuggling with migrants has in itself, the need for importance and necessity of treatment and investigation of this crime is emphasized both from the theoretical point of view and the treatment of the international legal framework which regulates this cooperation and the practical point of view in order to successfully investigate it. There are mentioned a various international legal documents in this paper such as UN conventions and protocols, as well as specific regional treaties specific to the investigation on trafficking in human beings and smuggling of migrants.

Regarding to the international police cooperation in investigating and detecting migrant smuggling, are issues related to jurisdiction in cases of trafficking in human beings and migrant smuggling it is considered extremely important that this cooperation be as efficient and effective as

possible a prerequisite for the successful resolving of these cases. Also, of a great importance is the provision of mutual international legal assistance between states affected by the phenomenon and in particular the need to establish joint investigation teams, cooperation with international and regional police organizations such as Interpol, Europol and Selec, through good communication and cooperation with all countries, especially when it comes to exchanging information and conducting joint investigations regardless of the country of origin, transit or destination of migrants as victims of smuggling.

Furthermore, the membership of the Kosovo Police in all international police mechanisms is also considered as very important given that all types of transboundary crimes cannot be successfully investigated without this cooperation or otherwise those investigations may in most cases also fail.

Based on these findings during this research and analysis, it has been concluded that in order to advance the investigation and detection of these criminal offenses, which are increasingly present and widespread, some recommendations have been issued, the implementation of which in practice it would increase the efficiency of the police in detection and finding evidences of it such as:

- Given in consideration the transnational nature of the criminal act smuggling of migrants, it is recommended that in all cases of criminal investigation the involvement of international police cooperation with all countries be required, but also the need for Kosovo Police membership in all international police mechanisms to facilitate the conduct of joint investigations through the exchange of information, and other actions that would contribute to providing the necessary evidence.
- It is extremely important that during the investigation by the police in order to provide evidence and facts of this criminal offense, to initiate and conduct a parallel financial investigation against persons suspected of smuggling of migrants, in order to provide necessary evidence in relation to their financial transactions which they realize as material benefit from committing this type of crime.
- In order to successfully carry out the necessary special investigative and evidentiary measures and actions, it is necessary for the police to be equipped with modern technical and technological equipment, as their existing equipment is largely outdated.

- It is recommended that, in order to improve the advanced education of criminal investigators to design and create special training programs, at home and abroad, developed by local and international experts in the investigation of trans-border organized crime, especially migrant smuggling, and which programs should include prosecutors and judges as well.
- It is recommended that the competent authorities in the countries affected by this phenomenon initiate the necessary additions and changes to their criminal legislation because the penal policy is not adequate. In order to aggravate the penal policy, especially for criminal offenses related to migrant smuggling and transboundary organized crime, it is necessary to implement a stricter penal policy.

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