

## **The characteristics of people smuggling in Hungary**

### **Introduction**

In our globalising world, persistent mass migration is a growing transnational security risk and threat. Due to the geographical location and infrastructural characteristics of Hungary, the land routes of irregular migration to the European Union continue to cross its territory.

The scale of irregular migration in Hungary peaked in 2015, when the number of irregular migrants exceeded 400,000. As a result of the integrated measures introduced to protect the ordered conditions at the state border (increased law enforcement and military presence in the border area, physical implementation of the temporary security border barrier for border surveillance purposes and the continuous development of the legal environment), the level of irregular migration decreased considerably (to 36.5 thousand) in 2016. The downward trend continued; in 2017, 20,000 offences related to illegal migration were recorded, in 2018 less than 18,000, but in 2019 the number of these offences exceeded 25,000 again.<sup>1</sup>

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<sup>1</sup> To quantify illegal migration, the following sets of offences recorded by the police were used; people smuggling, facilitation of unauthorised stay, infringement of an exclusion order, forgery of public documents related to illegal migration, offences related to the border barrier, as well as illegal border crossing and the attempt to do so and the offences related to the policing of foreigners. Source: Országos Rendőr-főkapitányság Határrendészeti helyzetkép 2015-2019 [The situational picture of border policing 2015 to 2019] Source: <http://www.police.hu/hu/a-rendorsegrol/statisztikak/hatarrendeszet> Accessed: 20.10.2020.

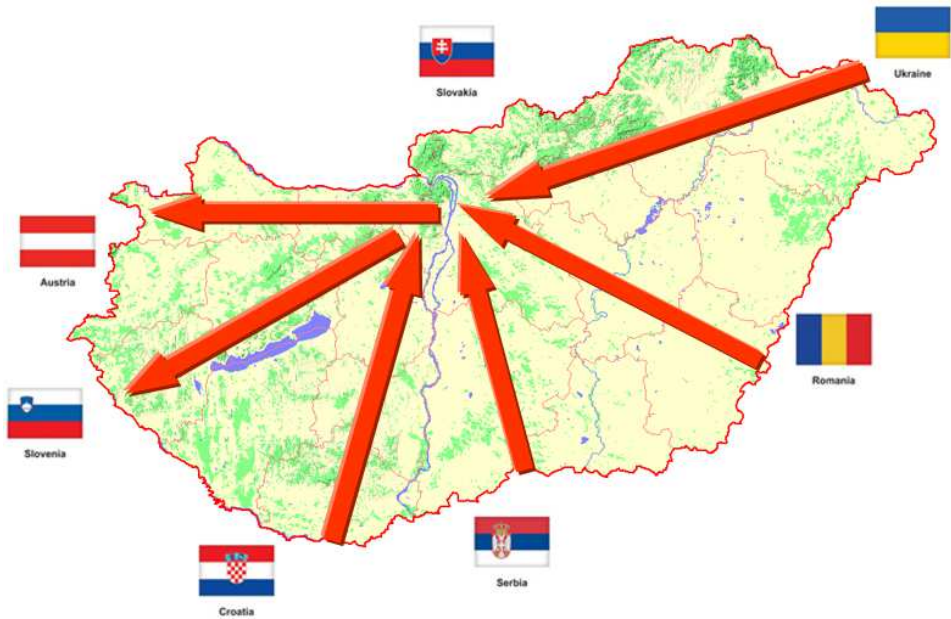


Figure 1: The main directions of illegal migration in Hungary (2015 to 2019)

### Offences related to illegal migration

Among the classic examples of prohibitions under criminal law related to the unlawful forms of migration (including unauthorised entry and stay), we can think of illegal border crossing, the illegal stay of foreigners in the country or the facilitation or support of such reprehensible conduct, such as people smuggling, facilitation of illegal stay or – perhaps – the illegal employment of foreigners.

The element that forms a direct link between these behaviours and illegal migration is that they all aim to punish and thus discourage migration caused by violations of the rules related to human migration, long-term stay and settlement.

Illegal migration can be supported not only by facilitating the illegal crossing of the state border, but also by facilitating illegal residence, employment of the illegal resident and ultimately by establishing family ties for the purpose of stay. Criminal law measures have been taken to discourage such behaviour, too, resulting in the codification of offences such as facilitating unauthorised residence<sup>2</sup> or the unlawful employment of third-country nationals<sup>3</sup> in the Hungarian Criminal Code.

The facilitation of unlawful residence is essentially an updated version of the offence of facilitation of unlawful residence inside the country, which is a recurring fact in the old criminal codes. According to the fact formulated in the Criminal Code, this offence can be committed by a national of a Member State of the European Union or of another State party to the Agreement on the European Economic Area or by a national having the same legal state as the nationals of such a state, who provides assistance to an unlawful stay in the territory of his or her state for the purpose of obtaining financial gain. Any person who, for financial gain, facilitates a foreign national's unlawful residence in Hungary shall also be punishable under this offence. This subsidiary offence is performed if a more serious offence (typically people smuggling or trafficking in human beings) has not been committed, if the offence has been committed for financial gain and, last but not least, the assisted person is not a national of a Member State of the European Union, of another State party to the Agreement on the European Economic Area (e.g. Norway, Iceland, Liechtenstein) or of a State having the same legal status (e.g. Switzerland).

In order to reduce illegal residence, the Hungarian Criminal Code also criminalises the abuse of family ties. This can be committed by a person of adult age who establishes a family relationship for financial gain, solely for the purpose of obtaining a document certifying the right of residence, or a person who consents to a statement of paternity of full effect. This is also

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<sup>2</sup> Hungarian Criminal Code (hereinafter CC) § 354

<sup>3</sup> CC § 356

a subsidiary offence, but it should be noted, as a distinction from the offence referred to above, that, while the offence *facilitation of unauthorised residence* is intended to punish only the facilitation of the unauthorised stay of persons who do not have the right of free movement, the abuse of family ties is an act of pretence intended to legalise, by intellectual means, the otherwise unlawful stay of a third-country national.

The illegal employment of a third-country national was a criminal offence already under the previous Criminal Code, albeit formulated by one of its last amendments. At the heart of this offence is the employment of a third-country national who does not have the authorisation to undertake gainful employment and who is employed without such an authorisation, regardless of whether they are residing in the country legally or illegally. The main reason for the creation of this offence is Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. The Directive requires the Member States to provide for criminal sanctions in their national legislation in serious cases, as specifically defined in the Directive.<sup>4</sup> Thus, the criminalisation of this offence, by implementing the provisions of the Directive in Hungary, proscribes illegal employment linked to migration with regard to the EU rules, too.

According to the wording of the special statutory provision, a person who employs a third-country national on a regular basis or frequently without authorisation or a substantial number of third-country nationals at the same time shall be guilty of a misdemeanour. Those who a) employ a third-country national without authorisation to undertake gainful employment under particularly exploitative working conditions or b) employ a third-country national without authorisation to undertake gainful employment who is the victim of trafficking in human beings shall be guilty of a felony. For the purposes of the relevant section, ‘substantial number’ shall mean

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<sup>4</sup> Polt Péter (chief ed.) (2013): Új Btk kommentár. 6. kötet. [New Criminal Code Commentary, Vol. 6] Budapest. Nemzeti Közszerkesztési és Tankönyv Kiadó. 177 (The cited section was written by Balázs Gellér.)

at least five persons, whereas ‘particularly exploitative working conditions’ shall mean the concepts defined by the Act on the Admission and Residence of Third-Country Nationals. These include, apart from conditions which are discriminatory on grounds of sex or other grounds, conditions which are manifestly disproportionate to the terms and conditions of employment of legally employed workers, where this discrepancy affects in particular the health and safety of workers and which violates human dignity.<sup>5</sup>

In the context of criminal legislation in relation to the illegal employment of third-country nationals, in order to enforce secondary EU legislation, the European Commission carried out a comprehensive investigation into the application of the sanctions directive, which was published in a communication.<sup>6</sup> According to the Communication, “*in all Member States bound by the Directive now prohibit the employment of irregular migrants and only a few have allowed an exception for those whose removal has been postponed.*” Several Member States have decided to go beyond the scope of the Directive, applying it also to third-country nationals who are staying legally but whose residence permit does not allow them to perform an economic activity. Certain Member States (e.g. Romania), however, do not specifically penalise illegal employment in cases of particularly exploitative working conditions or in situations where the employer was aware that the worker was a victim of human trafficking (Czech Republic, Estonia and Latvia). This is primarily due to the idea that the relevant illegal conduct is covered by national law on trafficking in human beings. This concept is actually based on the above-mentioned Anti-Trafficking Directive, which itself refers to the Sanctions Directive and sets out the criteria for the

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<sup>5</sup> Act on the Admission and Residence of Third-Country Nationals. §2, s)

<sup>6</sup> COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals

unlawful employment of a victim of trafficking in human beings.<sup>7</sup> The sanctions provided for in national criminal laws therefore vary considerably between Member States, raising doubts as to whether they are always effective, proportionate and sufficiently deterrent.

Presently, in the Hungarian Criminal Code<sup>8</sup> acts related to the criminalisation of illegal migration include the Facilitation of Unauthorized Residence (CC §354), the Abuse of Family Ties (CC §355) and the Unlawful Employment of Third-Country Nationals, but, above all, People Smuggling (CC §353).

### **People smuggling as a classic delict supporting illegal migration**

People smuggling as a phenomenon was initially not criminalised in law. For example, in the Act on the border police passed at the beginning of the 20th century, it is formulated that the organisation was established to carry out tasks such as preventing the smuggling of women breaching passport rules, illegal return or prosecuting offences committed by violating the rules on the registration and residence of foreigners at first instance.<sup>9</sup> However, the legal provisions of the time – also because crossing the state border was relatively easy – may not have defined the smuggling of women as conduct related to people smuggling in the modern sense, but its criminal

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<sup>7</sup> According to paragraph 26 of the preamble to Directive 2011/36/EU of the European Parliament and of the Council, Directive 2009/52/EC provides for sanctions against employers of illegally staying third-country nationals who have not been charged or convicted of trafficking in human beings but who engage the services or labour of a person knowing that the person concerned is a victim of trafficking in human beings. Also, Member States should consider the possibility of applying sanctions against persons who use any services of a victim of trafficking in human beings while they are aware that the person is a victim of trafficking in human beings. This additional criminalisation could include acts committed by employers of legally residing third-country nationals and EU citizens, as well as persons who use the sexual services of a victim of trafficking, irrespective of their nationality.

<sup>8</sup> Act C of 2012 on the Criminal Code

<sup>9</sup> § 2 j) and n) sections of Act VIII of 1903 on the Border Police

nature at the time was more similar to the criminal conduct related to trafficking in human beings mentioned above.

As a specific statutory element in criminal law, a norm strictly prohibiting the facilitation of unlawful crossing of the state border, people smuggling – similarly to illegal border crossing – appeared in the early 1960s, in the Criminal Law of the Hungarian People's Republic, which replaced the Csemegi Code (the first Hungarian Criminal Code, introduced in 1878). According to this law, this offence was committed by anyone who provided, offered or conspired to provide commercial assistance in illegal border crossing.<sup>10</sup> An interesting feature of this offence was that, despite its commercial nature, it was only applicable if a more serious offence had not been committed.<sup>11</sup> The offence of people smuggling appeared in the Criminal Code of 1978 in a broader formulation, but with the same punishment. It stated that *"anyone who assists, offers to assist or undertakes to assist an illegal border crossing for the purpose of asset acquisition or as a member or on behalf of an organisation facilitating such shall commit a criminal offence."*<sup>12</sup> The offence was qualified as a more serious case if it was carried out on a commercial basis. Also, following the relevant provision of the previous Criminal Code, the perpetrator of people smuggling was also subject to confiscation of property as a secondary punishment to sanction the assets derived from criminal conduct, while the perpetrator was also subject to a ban, in order that he would not be able to use his local knowledge necessary for the commission of the offence. In this case, the offence was worded in two ways: on the one hand, assisting (offering or undertaking to assist) anyone for gain was penalised, and on the other, the criminal sanctions were provided against members and agents of people smuggler organisations.

The wording of the crime did not change for more than a decade. Owing to the relaxation of the penalties for border-related offences, the text in

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<sup>10</sup> § 204, Act V. of 1961

<sup>11</sup> Horváth, Tibor (ed.) (1973): Magyar Büntetőjog II. Különös rész. [Hungarian Criminal Law II. Special Part] BM Tanulmányi és Propaganda Csoportfőnökség, Budapest. 338

<sup>12</sup> § 218. par. (1), Act IV. of 1978

force as of 1 January 1990, relaxed the penalties on the one hand and created a misdemeanour form of the felony on the other. The latter was committed by anyone who assisted in the illegal (armed) crossing of the border for financial gain or as a member of or on behalf of an organisation. The former was committed by anyone who did the same to help the crossing of the state border of the Republic of Hungary without permission or in an illicit way, which no longer constituted a criminal offence.<sup>13</sup> This way a privileged case of people smuggling was also created, which was unfortunately badly worded,<sup>14</sup> and which penalised the facilitation of unarmed perpetration. The above-mentioned facts were later amended to include an aggravated offence, which, by modifying both the definition of the felony and the misdemeanour, sanctioned the commission as a member of a criminal organisation or on its behalf as an aggravated offence and also specifically provided for the punishment of the preparation for any form of people smuggling.<sup>15</sup>

A major change to the legal definition of people smuggling came into force 1 April 2002. It removed the link between the specific statutory offence of people smuggling and the state border of the Republic of Hungary. According to its wording, the offence in question was committed by *"whoever assisted another person to cross a state border (a) without authorisation, (b) in an unauthorised manner."*<sup>16</sup> There are a number of combined factors behind the change in the base case. On the one hand, the facts of the offence of people smuggling were linked to the illegal border crossing as an armed offence, which thus exhausted the offences of misuse of explosives or explosive devices (§ 263 of the Criminal Code) and the misuse of

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<sup>13</sup> Established by § 20 par. (2) of Act XXVIII of 1989 on Travelling abroad and passports.

<sup>14</sup> Erdősy, Emil – Földvári, József (1994): A magyar büntetőjog különös része [The Special part of Hungarian Criminal Law]. Janus Pannonius Tudományegyetem Állam- és Jogtudományi Kar, Pécs. 196

<sup>15</sup> Established by §29 of the Act LXXIII of 1997 on the modification of Act IV of 1978 on the Criminal Code.

<sup>16</sup> Established by §27 of the Act LXXIII of 1997 on the modification of Act IV of 1978 on the Criminal Code.



firearms or ammunition (§ 263/A of the Criminal Code).<sup>17</sup> On the other hand, the law linked each form of people smuggling to the state border of the Republic of Hungary. In order to eliminate the former parallelism, the legislator repealed the offence of illegal border crossing, and, due to the latter one, the law removed the restriction referring to the Hungarian state border, which resulted in the fact that the offence now could be connected to the border of any sovereign state. In addition, it made it an aggravated offence when committed for the purpose of obtaining financial gain or by helping several persons to cross the state border, and an even more severely punishable offence if committed armed with a firearm or explosive, by torturing the smuggled person, or for commercial purposes. Preparation remained as an element of the facts registered in the law, but only expulsion was defined as an ancillary punishment.

The currently effective Criminal Code continues to penalise the crime of people smuggling, retaining its classic function it punishes facilitating the crossing of the state border illegally (or more precisely, by violating the legal provisions).<sup>18</sup> The purpose of obtaining financial gain and assistance to more than one person remained elements of aggravated cases, and the range of more serious cases was supplemented – in addition to the torturing of the smuggled person and committing it while armed with a firearm or explosive – by committing it while carrying a deadly weapon, in a business-like manner or in criminal conspiracy. Preparations for people smuggling continue to be punished, while the ban on entry is no longer named among the punishments, either. The wording of the Criminal Code in the Hungarian Gazette was changed in 2015 regarding the aggravated offences and increasing certain penalties for people smuggling. It was the result of the migration situation and happened at the same time when the above-mentioned crimes related to border closure were codified. Such a new case was

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<sup>17</sup> Gaál, Gyula (2013): Az embercsempészás helyzete Magyarországon az ezredfordulón [The state of people smuggling in Hungary at the turn of the millennium]. In: Gaál, Gyula – Hautzinger, Zoltán (eds.): A modernkori magyar határrendészet százöt év. Magyar Rendészettudományi Társaság Határrendészeti Tagozat, Budapest. 133

<sup>18</sup> Cf. par. (1) §353, CC

committing the offence while destructing or damaging a facility or device ensuring the protection of the ordered conditions at the state border. Also, certain – more serious – cases of an organisers or managers of people smuggling must be treated as aggravated cases.<sup>19</sup>

### **The evolution and modus operandi of people smuggling in Hungary**

Organised criminal groups help the majority of migrants to enter the European Union and reach their destination. The countries of origin are far from the borders of the European Union, leaving migrants vulnerable to the exploitation of people smuggling organisations.

The main problem has been the activity of the Western Balkan migration route for years. Inward migration and organised people smuggling are concentrated on the Serbian-Hungarian border section.

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<sup>19</sup> Cf. §32 of Act CXL of 2015 on the modification of certain acts related to the management of mass immigration

	2015	2016	2017	2018	2019
Air	1	0	0	0	2
Ukrainian	13	3	6	3	11
Romanian	63	29	40	14	31
Serbian	550	93	48	95	57
Croatian	83	10	8	0	14
In the territory of Hungary	467	118	39	21	40
<b>Total</b>	<b>1177</b>	<b>253</b>	<b>141</b>	<b>133</b>	<b>155</b>

Table 1: The distribution of offences people smuggling and facilitation of unauthorised stay according to the various types of border and areas 2015-2019 <sup>20</sup>

People smuggling organisations are organised according to citizenship and form a closed community. The organisation is mainly based on kinship or ethnicity. The basic goal of criminal groups is financial gain; the more migrants are sent to the destination countries, the more income they get.

Organised criminal groups are not very fragmented. Some trustees, attached to the leader, are in direct contact with people in the countries of origin, transit and destination, who appear during the crime process. The responsibilities of these people can be divided into the following activities:

- recruiters in the countries of origin;
- transporters and facilitators who help find accommodation in neighbouring countries (Serbia, Romania, Croatia);
- persons helping with crossing the green border (‘walkers’);

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<sup>20</sup> The table was compiled by the authors, based on the data of the Border policing situational picture

Source: [http://www.police.hu/hu/a-rendorsegrol/statisztikak/hatarrendeszet\\_](http://www.police.hu/hu/a-rendorsegrol/statisztikak/hatarrendeszet_)

Accessed: 20.10.2020.

- persons transporting the migrants onward to another country (Hungarian citizens or people from the country of destination);
- persons harbouring migrants until further travel is organised (owners of private houses, employees of guest houses and hotels);
- persons receiving irregular migrants in the countries of destination.<sup>21</sup>

The fact that the leaders of these criminal organisations<sup>22</sup> operate on Turkish, Greek, Serbian, Macedonian, Bulgarian and Romanian territory makes it difficult to tackle people smuggling organisations, and close cooperation with the competent authorities in these countries is therefore important.

The country of origin of the organisers and managers is usually the same as that of the migrants, but members of criminal organisations are also present in transit countries along the illegal migration route. The ratio of Hungarian offenders among facilitators is increasing, the majority of them acting as transporters or organisers.

In Hungary, people smuggling can be divided into two main types of activity. In the first case, organised criminal groups are involved in getting the migrants into the Schengen area illegally, while in the second case they assist in the onward travelling of irregular migrants to Western European countries.

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<sup>21</sup> Balog, Gábor (2016): Az embercsempészás elleni bűnüldöző munka nemzetközi vetületei, tapasztalatai [International aspects and experiences of combating people smuggling], Belügyi Szemle, 2016/12. 95-96

<sup>22</sup> “*Criminal organization shall mean when a group of three or more persons collaborate in the long term to deliberately engage in an organised fashion in criminal acts, which are punishable with five years of imprisonment or more.*” (§ 459, par. (1) 1, Act C of 2012 on the Criminal Code)

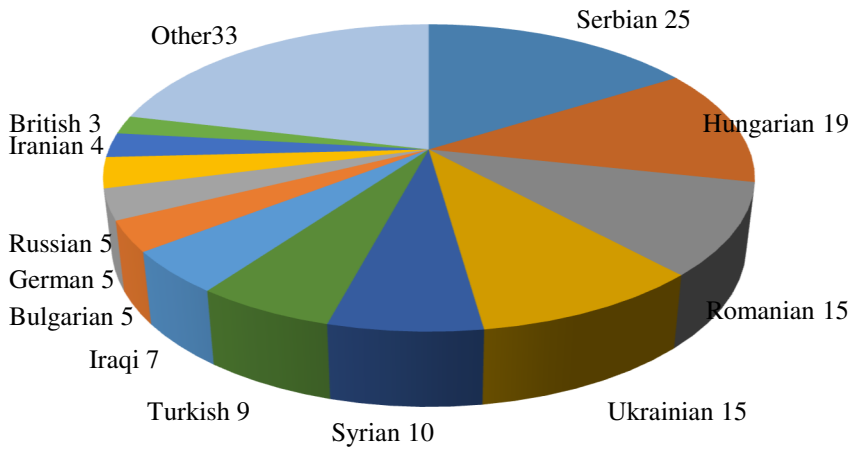


Figure 2 <sup>23</sup>

The distribution of offences people smuggling and facilitation of unauthorised stay according to nationality in 2019

Members of criminal organisations place great emphasis on conspiracy in their communications. They share only the most essential information, usually in pre-arranged jargon. The means of communication are often exchanged and combined. They consciously use infocommunication platforms (Viber and WhatsApp). Money is rarely transferred between irregular migrants and people smugglers. The negotiated amount is usually deposited in the countries of origin and the actual payment is made only after the successful transportation and arrival in the country of destination.

Increasingly, so-called "guaranteed delivery" is used, when smugglers guarantee to deliver irregular migrants to the destination country for a higher price. In these cases, even if the migrants are apprehended, they try to get them to the country of destination again, without any extra charge.

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<sup>23</sup> Source: The chart was compiled by the authors, based on the data of the Border policing situational picture

Source: <http://www.police.hu/hu/a-rendorsegrol/statisztikak/hatarrendeszet>

Accessed: 20. 10. 2020.

Tracing assets from people smuggling is difficult. Some members of organised criminal groups sometimes hold shares in companies as a front. In many cases, criminal organisations also have contacts with people with legal and economic expertise.

The Serbian-Hungarian border saw an increase in smuggling activities starting from the summer of 2016, primarily facilitated by the use of various methods to cross the temporary security border fence for border surveillance purposes (digging under and climbing over it). The smugglers used hand-held thermal cameras and drones in the Serbian territory to continuously monitor Hungarian police and military staff. When the illegal crossing of migrants was considered risky, they would wait for several days in the area on the other side of the border. They tried to conceal their movements until onward transport was assured.

Diversion was also among the methods used. Irregular migrants were pre-arranged, sometimes drawn by lot, as to who would be the "bait." The Hungarian authorities were distracted by small groups of migrants moving parallel to the border line and by damaging the border fence so that others would be able to enter Hungarian territory across the possibly unguarded section of the border. They mainly used ladders to cross the border. After crossing the state border, they abandoned their clothing in order to deceive the Hungarian authorities.

As a result of the legislative changes<sup>24</sup> of 28 March 2017, the smuggling routes were shifted to the common border between Serbia and Romania and Serbia and Croatia.

In recent years, the criminal people smuggling networks in Serbia and Romania have been taken over by Syrian, Afghan and Turkish facilitators with links to perpetrators in Austria, Italy and Germany. The members of the criminal networks arrived in Hungary only for the time while they committed the crime. A significant number of the perpetrators were Pakistani,

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<sup>24</sup> See Act XX of 2017 on the Amendment of Certain Acts Relating to Strengthening the Procedure Conducted in Border Surveillance Areas

Iraqi, Afghan and Serbian nationals with long-term residence permits in Austria.

A significant ratio of irregular migrants travelled from Romania to Austria, Germany, Slovakia and Poland via Hungary. Migrants arrived in Romania from Bulgaria and Serbia illegally and applied for asylum immediately after they were apprehended.

Groups of migrants also arrived in Hungary from Croatia, mostly from the Serbian-Croatian-Hungarian triple border area. However, from Croatia, smugglers typically transported migrants onwards towards Slovenia. From Serbia, migrants' attempts to cross the border were concentrated in the triple border area and in areas where the border barrier provides limited protection due to natural circumstances. Crossing the Tisza river into Hungarian territory using rubber boats emerged as a new *modus operandi*.

People smugglers could not pick up the migrants immediately after they got across the state border and the location was constantly changing, so the migrants often had to walk long distances. Smugglers were often unable to reach the area further away from the border or the transporters were intercepted by the Hungarian authorities. Facilitators also used false foreign registration plates for the transports. They sometimes cloned the number plates of vehicles stolen abroad, vehicles awaiting dismantling or with cancelled registration certificates, or used the same number plate on several vehicles. It was common for large groups of migrants to go from Romania to Germany and Poland via Hungary by hiding in the cargo holds of lorries of Turkish and Bulgarian origin.

## **Summary**

Based on the geography of migration, Hungary's geographical location and the characteristics of its infrastructure make it an important area for international illegal migration and the organised people smuggling activities based on it. Hungary is affected by irregular migration routes as a transit country. The development of the routes is determined by the geographical distance between the irregular migrants' countries of origin and destination,

the natural conditions, the infrastructure of transport and the settlement networks in the transit countries. The changes in these routes are influenced by the mode, duration and costs of the transportation of illegal migrants, as well as by the successful actions of border policing and law enforcement agencies against criminal people smuggling organisations.

The activities of smuggling organisations fully reflect one of the defining aspects of organised crime: the low risk of detection and the high profits that can be relatively easily made in a short time and with minimal effort. Depending on the degree of organisation, the distance and the conditions of the transportation, the fees for people smuggling vary widely, from a few hundred euros to several thousand euros, and the illegal proceeds can be measured in billions.