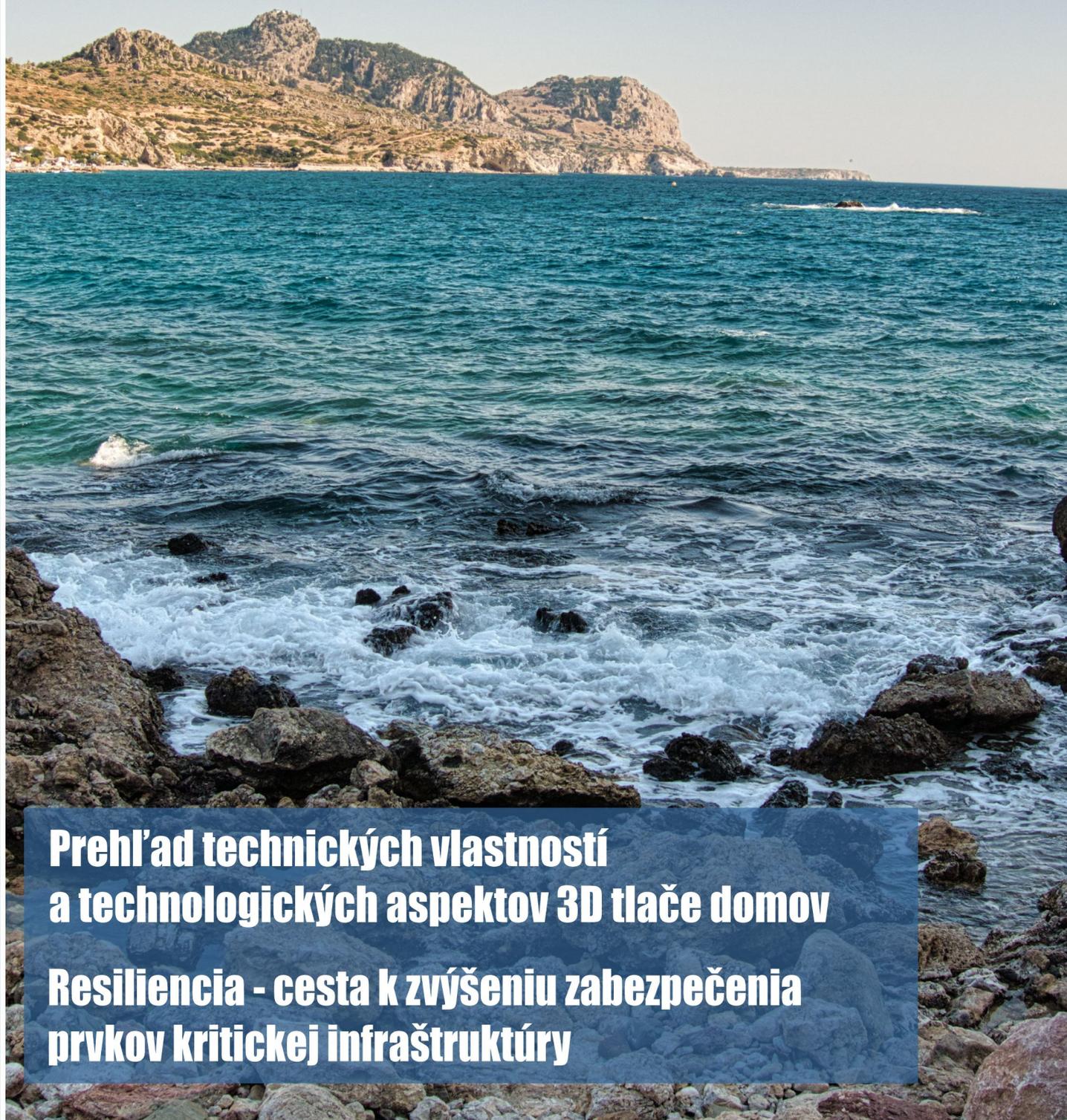


# Mladá veda

## Young Science



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# Mladá veda

## Young Science

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#### VYDAVATEĽ

Vydavateľstvo UNIVERSUM, spol. s r. o.

[www.universum-eu.sk](http://www.universum-eu.sk)

Javorinská 26, 080 01 Prešov

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# RESPONSE OF THE AUTHORITIES OF THE EUROPEAN UNION AND THE SLOVAK REPUBLIC TO IRREGULAR MIGRATION

REAKCIA ORGÁNOV EURÓPSKEJ ÚNIE A SLOVENSKEJ REPUBLIKY  
NA NELEGÁLNU MIGRÁCIU

**Matúš Vyrosto**<sup>1</sup>

The author is as an internal doctoral student at the Department of Public Law Disciplines, Faculty of Public Administration, University of Pavol Jozef Šafárik in Košice. In his research, he focuses primarily on irregular migration and human smuggling in the European Union, as well as legal tools to eliminate extremism against national minorities and ethnic groups in Central Europe.

Autor pôsobí ako interný doktorand na Katedre verejnoprávných disciplín, Fakulty verejnej správy, Univerzity Pavla Jozefa Šafárika v Košiciach. Vo svojom výskume sa venuje predovšetkým nelegálnej migrácii a prevádzachtvu v Európskej únii, ako i právnym nástrojom eliminovania extrémizmu smerujúceho proti národnostným menšinám a etnickým skupinám v strednej Európe.

## **Abstract**

Irregular migration is a negative phenomenon that has become more widely known to the professional and lay public mainly with the emergence of the so-called migration crisis in 2015. In view of the fact that irregular migration is often associated with other negative phenomena as well as organized crime such as human smuggling, trafficking of human beings or illegal employment, it is natural for the European Union and Slovak Republic authorities to take measures against irregular migration. The aim of the paper is to evaluate these measures against irregular migration at the level of the European Union and the Slovak Republic as well as to point out various approaches of political leaders and authorities of the European Union and the Slovak Republic to the elimination of irregular migration especially after 2015.

Key words: migration crisis, irregular migration, human smuggling

## **Abstrakt**

Nelegálna migrácia je negatívny jav, ktorý sa zrejme do širšieho povedomia odbornej i laickej

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<sup>1</sup> Contact: PhDr. Matúš Vyrosto, University of Pavol Jozef Šafárik, Faculty of Public Administration, Department of Public Law Disciplines, 040 11 Košice  
E-mail: matus.vyrostko@student.upjs.sk

verejnosti dostal spolu so vznikom tzv. migračnej krízy v roku 2015. S ohľadom na fakt, že nelegálna migrácia je často spojená s ďalšími negatívnymi javmi ako i organizovanou kriminalitou ako napr. prevádzachstvo, obchodovanie s ľuďmi či nelegálne zamestnávajúanie je prirodzené, že orgány Európskej únie a Slovenskej republiky prijímajú opatrenia proti nelegálnej migrácii. Cieľom príspevku je zhodnotiť tieto opatrenia proti nelegálnej migrácii na úrovni Európskej únie a Slovenskej republiky ako i poukázať na rôzne prístupy politických lídrov a orgánov Európskej únie a Slovenskej republiky k eliminácii nelegálnej migrácie najmä po roku 2015.

**Kľúčové slová:** migračná kríza, nelegálna migrácia, prevádzachstvo

## **Introduction**

It can be said that discussions of the professional public on irregular migration have intensified with the emergence of the so-called migration crisis, when a large number of migrants arrived in the European Union at the turn of 2014 and 2015. A large proportion of third-country immigrants arrived illegally in the European Union, making it difficult to identify and stop migratory waves. The implementation of an effective return policy has proved equally problematic. In some Member States of the European Union, in particular in Germany and Sweden, which have been and still are attractive destinations for irregular migrants, identification and return of most irregular migrants to their countries of origin still proves to be problematic. In view of the negative consequences of irregular migration, it is natural that the authorities of the European Union as well as of the Member States, including the Slovak Republic, take measures against irregular migration and other negative phenomena such as human smuggling, or trafficking of human beings. Although the Slovak Republic is a transit country for most irregular migrants, it is evident that without effective measures against irregular migration, the Slovak Republic would serve as an easy way for irregular migrants to other Member States or would be made more attractive as a destination country without the risk of legal sanctions or return to the country of origin. In this context, we therefore consider it necessary to examine interdisciplinarily and comprehensively the response of the European Union authorities and the Member States to the extent of irregular immigration to the European Union in the form of measures currently being adopted and implemented.

## **Why is the European Union attractive to immigrants? Why do they come illegally?**

We believe that the European Union is an attractive destination for migrants for several reasons. Due to the motivation of their immigration, there are several forms of migration of persons to the European Union.

First of all, in the case of refugees, the European Union is a safe and relatively close place where they can resort if they flee before the war or persecution. However, this reason is only legitimate for those migrants who are covered by the so-called “Geneva Convention”.<sup>2</sup>

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<sup>2</sup> A refugee is a person covered by the Convention Relating to the Status of Refugees, so-called Geneva Convention of 1951, which the Slovak Republic respects together with other Member States of the European Union. In addition to the definition of refugee and his rights, the Convention Relating to the Status of Refugees also regulates his obligations. According to Art. 1, part A, par. 2 of the Convention Relating to the Status of

Secondly, there are migrants who are not in direct danger, but according to misleading information from smugglers or other migrants believe that they can improve their quality of life in the European Union. Such a form of migration is legitimate in the case of legal economic migration, where the migrant has a demonstrable effort and will to work and integrate into the majority society. It can be assumed, however, that a large proportion of migrants come to the European Union illegally and with a view to easily benefit from social benefits. Again, their interest is understandable, but in practice there may be disappointment. If a migrant does not apply for asylum, according to the so-called “Return Directive” a migrant is to be returned to the country of origin.<sup>3</sup>

However, several problems can be identified in this context. Human smuggling, as profitable organized crime, greatly facilitates the illegal arrival of migrants. Financially encouraged smugglers often misrepresent vulnerable migrants about easy life in the European Union. On the other hand, they do not point to the risks of such a journey. It is therefore evident that it is precisely the effective fight against irregular migration that is one of the strategies against unnecessary and tragic deaths of migrants on risky illegal routes to the European Union.

According to Europol and Interpol, up to 90% of migrants have paid smugglers for the journey to the EU (Gladstone 2016).

Perhaps the most commonly used and known categorization of migration is the motivation of the arrival of migrants or their leaving to another country (unless domestic migration). In this case, it is possible to speak of forced and voluntary migration – push and pull factors, while referring to the definitions of the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM).

Push factors have a rather negative character, because migrants are forced to leave the country (e.g. persecution, riots in the form of war conflicts, political instability, or other social and economic inequalities). Pull factors motivate the migrant to go to the destination country (work, leaving for the family, better standard of living, career development, better education and so on) (IOM and UNHCR 2009).

In relation to these factors, it is appropriate to divide and clarify migration in terms of whether the migrant leaves the country or migrates to another destination country. If the

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Refugees, a refugee is a person who, as a result of events prior to 1 January 1951, is outside his/her state and has legitimate concerns about being persecuted for racial, religious, national or social affiliation or political opinion. On the basis of these concerns, he/she cannot or refuses to accept the protection of its State. Under this Convention, a refugee is also a stateless person who is unable or unwilling to return to his State of residence on the basis of these concerns. The Convention also regulates the issue of a person who has several nationalities. A person shall not be deemed to be deprived of the protection of the State if he has waived the protection of one of the States of which he is a national without a serious reason based on legitimate concerns (Notice of the Ministry of Foreign Affairs of the Slovak Republic No. 319/1996 Coll. Convention Relating to the Status of Refugees). The New York Protocol subsequently cancelled the time limit on refugee status

<sup>3</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (hereinafter referred to as the "Return Directive"), which was transposed into the Slovak legal order into Act no. 594/2009 Coll. on the Residence of Aliens and on Amendments to Certain Acts, as amended, and subsequently to Act No. 404/2001 Coll. on the Residence of Aliens and on Amendments to Certain Acts, as amended.

migrant leaves the country, he is considered an emigrant. If a migrant is entering another country, he is considered an immigrant in the view of a receiving country. This is one of the reasons the migration crisis is referred to as the immigration crisis in the European Union, where a large number of irregular migrants and refugees arrive in the European Union. Examples of human migration reasons are given in Table 1.

Emigration - Migrant leaves the country	Immigration - A migrant enters the country
Reasons for emigration	Reasons for immigration
<i>War conflict</i>	<i>Safety</i>
<i>Political instability</i>	<i>Social security, career growth, education</i>
<i>Persecution</i>	<i>Freedom</i>

Table 1 - Reasons for migration categorized as push and pull factors

Source: Own customization

Undoubtedly, legal and irregular migration is often confused and in the discussions of the professional and lay public about the migration crisis not always differentiated. Irregular migration is an illegal activity that applies to irregular migrants. It is often associated with human smuggling and other organized crime such as human trafficking or illegal employment. Irregular migration flows are very difficult to control and regulate. On the other hand, legal migrants make use of the legal possibilities of migration. It should be stressed that even a legal migrant can become an irregular migrant if, for example, he/she stays in the destination country even after the visa has expired, etc.

It is the lack of legal routes, the loss of documents for political reasons in the country of origin, as well as inadequate or misleading information about what migrants are expecting on their way to the European Union that can significantly contribute to increase of the scale of irregular migration. We think the need to combat irregular migration is therefore confirmed.

In this context, the study also showed that campaigns, news or stories from actors perceived as official by migrants are the least trusted forms of information among migrants. Migrants realize that most official campaigns are trying to discourage irregular immigrants from traveling to Europe. In this sense, it is unlikely that campaigns or websites perceived by migrants as coming directly from the EU institutions support migrants' efforts to improve their quality of life. Thus, in most cases, migrants do not trust them and nevertheless choose to travel (Sanchez et.al 2018).

The reasons and causes for migrants to leave the countries of origin are dealt with by many experts, including Bogdan and Fratzke.

It is possible to agree with Natalie Banulescu-Bogdan and Susan Fratzke from the Institute of Migration Policy (MPI) that several push and pull factors contributed to the migration crisis. Push factors include in particular:

- persistent hatred and instability in the countries of origin of migrants, which, on the one hand, contributed to the departure of migrants while making it impossible to return (particularly in the medium term),

- a reduction in living conditions in countries where migrants originally applied for asylum, making the Jordan and Lebanon countries more difficult to cross the border and making it impossible for migrants to escape there,
- persistent lack of employment and education opportunities for most refugees.
- geopolitical changes that have "closed" alternative target countries, such as Libya (Bogdan and Fratzke 2015).

One of the pull factors is the fact that in 2015, social networks enabled the rapid dissemination of reports that most Syrians who had been granted asylum in Germany and Sweden were granted asylum, which was encouraging for other refugees who were considering escaping. In addition, inconsistent controls and chaos at the external borders in 2015 contributed to the overall situation, which could be described as a crisis, causing even those who were not entitled to refugee status to enter the EU and continue to travel illegally (Bogdan and Fratzke 2015).

In the context of the emergence of the migration crisis, Collett and Coz emphasize that, apart from the very reasons for the migrants' departure from the countries of origin, inconsistent information on migration at the time was available to the European institutions and political representatives of the Member States. While many Member States' representatives had information about the increase in the number of incoming migrants to the European Union along the route later known as the so-called "Balkan migration route", as early as June 2015, the incompleteness, confusion and contradiction of this information meant that the overall situation did not seem critical enough to create a coordinated European migration agenda (Collett and Coz 2018).

In addition, the situation has stabilized considerably since 2017 and 2018 and the measures currently under way are mainly aimed at addressing the negative consequences of 2015 and 2016, in particular to streamline and speed up the return of irregular migrants who arrived in the EU in 2015-2016 and preventing another crisis to the same extent. It should also be added that, in 2015, the Council of the European Union responded to the lack of information gathering and exchange by activating the information exchange regime through integrated arrangements for political response to the crisis (IPCR).

Last but not least, other legal bases need to be mentioned in relation to irregular migration, but the aim of the article does not allow for a detailed discussion of the entire legal structure on irregular and legal migration. We analyse other key documents on the following pages.

### **What action is the European Union taking against irregular migration?**

It is natural that, given the scale of the migration crisis, i.e. the number of irregular immigrants arriving to the European Union, the European Union authorities, through individual political leaders, have realized the need to adopt swift and effective solutions to reduce further negative impacts of migratory waves. One of the strategies is precisely the adoption of measures against irregular migration as a negative phenomenon.

Since 2015, when the so-called migration crisis "broke out", The European Union, through the main authorities, in particular the European Commission, has been underlining

the need for a single migration policy. These efforts have so far been difficult to consider successful, given the failure of some measures, as well as the unwillingness to support a common migration and asylum policy by some Member States, in particular Hungary, Poland, the Czech Republic and partly also Slovakia. Particularly positive measures that have significantly contributed to reducing the number of irregular migrants arriving, as well as the measures being prepared in the countries of origin of migrants, can be viewed positively. However, the reluctance of these Member States to actively participate in the application of the EU common migration policy remains. This political unwillingness is however understandable and related to state sovereignty.

In particular, the initial reaction of the EU institutions and the Member States to the outbreak of the migration crisis in 2015, which was clearly insufficient given the number of irregular migrants entering EU territory in 2015, is criticized by the public.

The European Union is taking action against irregular migration and human smuggling to reduce the number of irregular migrants arriving to the European Union. Despite this objective, in addition to preventive measures to prevent the arrival of "future migrants" into the European Union, EU Member States are "forced" to take measures to address the high number of irregular migrants who have already arrived in the EU or are in the immediate vicinity of the Schengen border.

One of the essential 'responses' to the 2015 migration crisis was the decision of the Council of the European Union and the Luxembourg Presidency to activate the information exchange regime on the basis of the Integrated Crisis Response Arrangements (IPCR) on 30 October 2015. According to the Council of the European Union, the IPCR supports rapid and coordinated decision-making at EU political level in the event of major and complex crises, including terrorist acts. In practice, it is about ensuring the coordination of the political response to the crisis through cooperation between the EU institutions, the affected Member States and other actors (Council of the European Union 2018).

Following a lack of rapid and effective response to the migration crisis and insufficient measures against irregular migration and human smuggling in the second half of 2015, the extent of migration flows to the EU required such a better coordinated approach. The aim of this measure was, in particular, to monitor the evolution of migration flows, provide support for decision-making and better implement the agreed measures (Council of the European Union 2018b).

Taking into account the improvement of the situation after 2016 and in particular after 2017, which is evident in particular by the arrival of a much smaller number of irregular migrants into the European Union, it can be considered that activating the IPCR regime for the migration crisis was an effective basis for taking further key measures.

As Collett and Coz point out, several members of the European Commission in their interviews with the authors have identified the subsequent regular reports, the so-called ISAA, for the "hero of the migration crisis". According to the members of the European Commission, these reports ensured that all actors regularly receive the same information in clear form (Collett and Coz 2018).

Although it would be interesting to list and classify all measures against irregular migration and human smuggling at European Union level, their classification is hampered by

the lack of a coherent migration strategy at all levels (EU institutions and Member States), although such efforts can be seen. Other measures are underlined by the European Commission, the other by European Parliament and the Council of the European Union, and all the more different are the views of national representatives and the conclusions of the European Council. Therefore, the paper deals in more detail with selected measures against irregular migration and human smuggling, which according to the available information and opinions of the author contribute significantly to mitigating the negative impacts of irregular migration, human smuggling and their causes.

The conclusions of the European Commission, which, as a 'representative' of the interests of the European Union" lists on its website, clearly define the basic objectives and measures and should be the starting point for identifying measures against irregular migration and human smuggling at European Union level.

The European Commission defines three basic groups of measures on the official website of the European Union "Europa.eu". These are stopping smuggling, improving controls at the external borders and a humane return and readmission policy (European Commission 2018).

In addition to the above-mentioned groups of measures, the European Commission already adopted in 2015 the so-called European Migration Agenda, setting out four pillars for better management of migration. The above measures can be included in the first and second pillars related to irregular migration. According to the EC, the following pillars are needed for better management of migration:

- reducing incentives for irregular migration by strengthening Frontex, sending liaison officers to migrants' countries of origin, drawing up action plans, etc.,
- border management - saving lives and securing external borders, also by strengthening Frontex,
- Europe's protection obligation: a strong common asylum policy, which should ensure the uniform implementation of the common asylum system, support for the identification and fingerprinting and efforts to reduce its abuse,
- a new policy on legal migration, which should take into account the demographic decline in the EU, adjust integration policies and modernize and redesign the blue card system (European Commission, 2015).

In order to identify further individual measures and, in particular, strategies and plans related to irregular migration, it is also important to look at the information provided on the official portal of the European Council and the Council of the European Union. Right at the outset of the text on finding solutions to the problem of migration pressures on the European Council's Internet portal, its position is highlighted, where the European Council plays an important role in this endeavour by setting strategic priorities. The role of the Council of the European Union, which sets out the direction of action and mandates for negotiations with third countries, adopts legislation and defines specific programs based on the priorities adopted by the European Council and thus the association of Member States' leaders, (European Council and Council of the European Union 2018).

Measures against irregular migration and human smuggling can also be defined on the basis of routes, or the paths through which irregular migrants arrive. While the measures adopted between 2015 and 2016 were mainly aimed at eliminating irregular migration at the so-called the eastern Mediterranean route, most of the measures in 2017, 2018 and 2019 concern so-called routes through the central Mediterranean. It can be said that the reason for shifting the European Union's attention to the Central Mediterranean route is to successfully reduce the arrival of irregular migrants on the Eastern Mediterranean route (the so-called Balkan migration route) to a minimum. Two measures can be considered as the most successful - the adoption of a readmission agreement between the EU and Turkey and the closure of the Balkan migration route.<sup>4</sup>

We believe that the key actions against irregular migration should include:

- the regulation of irregular migration and human smuggling, their definition and the legal basis for further action at national level - in this sense legal instruments, in particular the classification of proceedings as offenses or criminal offenses,
- effective control of external borders,
- bilateral and multilateral readmission agreements - in particular an effective readmission agreement with Turkey,
- the work of Frontex with enhanced powers and competences,
- measures in the countries of origin of migrants,
- other measures such as: effective return of irregular migrants to their countries of origin, provision and information on the possibilities of legal routes to the European Union, etc.

Effective control of the external Schengen borders can be considered as one of the key measures agreed by most European political leaders. Insufficient control would mean insufficient regulation and control of both legal and irregular migration flows. Precisely because of the lack of control and regulation of incoming irregular migrants to the EU in early 2015, some Member States have applied Article 25 of Regulation 2016/399 of the European Parliament and of the Council of 9 March 2016 establishing a Union Code on the rules governing the movement of persons through the Schengen Borders Code. According to Art. 29, par. 1 of the Schengen Borders Code, and in exceptional circumstances, if the overall functioning of the area without border control is jeopardized as a result of insufficient external border control, and these deficiencies would constitute a serious threat to public policy or internal security in an area without internal border control, control at the internal borders may be restored for a maximum period of six months. According to Art. 29, par. 2 of the Schengen Borders Code, The Council of the European Union recommends such a possibility as a last resort if the measures referred to in Article 21 par. 1 are not effective. This recommendation is based on a proposal from the European Commission. Member States may also be initiators who may ask the EC to submit such a proposal to the EU Council for a recommendation.

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<sup>4</sup> However, both of these measures „could not do without“ controversy. While the closure of the Balkan route was a measure that was not politically agreed by the Member States of the European Union, but only by some countries headed by Hungary, the readmission agreement with Turkey at the end of 2019 is considered by most political leaders to be inoperative.

Regarding the measures which, according to the Schengen Borders Code, take precedence over the reintroduction of internal border controls, pursuant to Art. 21 of the Schengen Borders Code concerns these 2 measures:

- initiating the deployment of European Border Guard Teams,
- the submission of strategic plans based on the risk assessment as well as information on the deployment of staff and equipment to the Agency for an opinion.

In this context, the European Commission has already noted on 4 May 2016 that the conditions for the application of Article 25 of the Schengen Borders Code have been met and made a recommendation to the EU Council, which the Council of the EU adopted by qualified majority. On this basis, the EU Council recommended five Member States (Norway, Sweden, Denmark, Austria and Germany) to reintroduce temporary checks at internal borders. Given the persistent threat, even after a six-month period, the Council adopted further implementing decisions recommending the extension of the controls. At the same time, the EU Council invited Member States to report to the European Commission and the EU Council on a monthly basis (Council of the European Union 2017).

The conclusion of readmission multilateral and bilateral agreements between the EU and the countries of origin of migrants can be considered as further significant measures. However, the conclusion of such contracts is particularly hampered in particular by the political situation, and therefore the conclusion of a readmission agreement with Turkey can be considered a significant achievement, although in most cases it is not the country of origin of irregular migrants but only transit space.

As stated by Žitňanský (2016), this is a mechanism that should operate on the principle of the exchange of migrants between the EU and Turkey. Turkey accepts irregular migrants without asylum in one of the Member States back in exchange for the European Union to accept those who are legally entitled to asylum and choose to travel legally to the EU. One of the essential requirements and conditions contained in the readmission agreement is Turkey's request to liberalize the visa regime for Turkish citizens. In addition, Turkey is asking, for example to speed up Turkey's accession negotiations to the EU, or a monetary contribution to admitted irregular migrants.

However, this readmission agreement is still under discussion and has been controversial. As Demiger (2016) states, as regards to the conditions of application of the agreement, it is precisely Turkey's requirement to liberalize the visa regime for Turkish citizens. The European Union demands 72 requirements from Turkey, of which seven have not yet been met. Unfulfilled requirements include changes in the anti-terrorism legislation, which, according to Demiger, is the thorn in the eye of EU officials. According to several EU officials, Turkish President Erdogan is abusing the "fight against terrorism" to persecute his political opponents and journalists.

However, efforts to conclude a readmission agreement with Turkey did not start in 2016 but before the outbreak of the migration crisis before 2011. However, same as in 2016, in 2011 Turkey also called for the lifting of the European visa restrictions for the Turks (Euractiv 2011).

In several official press releases, the EC considers the EU Treaty with Turkey on the Exchange of Migrants to be a successful agreement, the existence and implementation of which have had a significant impact on reducing irregular migration. Balkan migration route. However, the opposite view is presented by the political leaders of the V4 countries and Austria, according to which the closure of the Balkan migration route has been the key measure to prevent irregular migrants to travel further to European northern countries.<sup>5</sup>

The Balkan migration route led from Greece through Macedonia, Serbia and Croatia to Austria. Following intensive negotiations, this route can be described as closed after individual countries have applied stricter rules for migrants to cross borders and territories. The complete closure of the Balkan route has been criticized by several representatives of the European Union or individual Member States. In particular, the measure was criticized by German Chancellor Angela Merkel, who foresaw an even greater humanitarian crisis in Greece. The prerequisites for the routes that migrants would start to use more intensively were the sailing from Libya to Italy, the journey from Greece to Albania and further to Italy, Bulgaria, or the journey from Turkey through the Black Sea to Ukraine (Shemesh 2016).

It can be said that the assumptions of a change in migration routes were confirmed, as in 2017 and 2018 a significant proportion of irregular migrants came to Italy from where they wanted to continue their journey to other Member States.

As Collett states in this context, the idea of a return coupled with widespread resettlement is simple and clear. But the politicians perceive the EU-Turkey agreement through "lenses of the last six months", focusing more on Schengen than a long period of five years or more. The complex and constantly changing dynamics of migration flows, together with well-documented constraints on existing protection capacities in a wide range of countries (not only in Greece and Turkey), suggest that the next crisis for the European Union will not be far away (Collett 2016).

Based on the EU's stated objective of combating irregular migration and human smuggling, the most up-to-date action at EU level is the launch of the European Border and Coast Guard Agency (Frontex), officially launched on 6 October 2016. The Agency's activities and tasks are expanding significantly. Significant is especially so-called rapid deployment reserve of 1,500 border guards and a technical equipment reserve. Dimitris Avramopoulos, Commissioner for Migration, Internal Affairs and Citizenship, commented that the external border of one Member State is now the external border of all Member States, both legally and operationally. The Prime Minister of the Slovak Republic Róbert Fico also expressed a positive opinion, according to which it is a tangible outcome of a joint commitment agreed in the Bratislava Roadmap, but also a practical demonstration of unity between Member States. The Agency aims to fulfil the missing link in strengthening Europe's external borders and help to fulfil Europe's commitment to restore the normal functioning of the Schengen area and to abolish temporary controls at internal borders (European Commission 2016).

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<sup>5</sup> It should be added that at the end of 2019 a number of political leaders, including the Turkish President, considered the readmission agreement with Turkey to be outdated and inoperative.

In this respect, it should be added that Frontex uses the so-called 'border management' for its external border control activities, the European Border Surveillance System (EUROSUR) in cooperation with Member States' national coordination centres (Jorrit and Vermeulen 2015).

In view of the fact that one of the key solutions to the current migration crisis linked to the large number of incoming irregular migrants should be to resolve the riots in Syria and the Middle East, the EU Council has adopted an EU strategy for Syria. According to the EU Council, 13.5 million Syrians, including 6.3 million displaced persons, currently need humanitarian aid in Syria alone. 1.5 million people live in siege conditions and another 5 million Syrian refugees are located in neighbouring countries and the wider region. According to the EU Council, the Syrian regime has the primary responsibility for protecting the population, and therefore calls on the regime and its allies, especially Russia, to make every effort to ensure a complete cessation of violence, end siege and full and sustainable humanitarian access throughout the country. The EU underlines that under the current regime it is not possible to achieve a lasting peace in Syria. In particular, according to this strategy, the Council of the EU advocates ending the war through a genuine political transformation, in accordance with UNSCR no. 2245, which were adopted by the parties to the conflict under the auspices of the UN Special Envoy for Syria and the support of key international and regional actors. In this sense, the EU strongly supports the efforts of the UN Special Envoy and the resumption of talks in Geneva. Furthermore, under this strategy, the EU will continue to support the Syrian opposition and in particular the Supreme Negotiating Committee as the opposition delegation in the UN-mediated talks in Geneva. Other objectives of the EU Council's stabilization of the situation in Syria include:

- saving lives by addressing the humanitarian needs of the most vulnerable Syrians across the country in a timely, effective, efficient and principled manner,
- the promotion of democracy, human rights and freedom of expression by the Syrian civil society organizations,
- promoting responsibility for war crimes in order to facilitate the process of national reconciliation and fairness in the transitional period,
- promoting the resilience of the Syrian population and Syrian society by providing education, job creation, supporting civilian local government structures in opposition-controlled areas, etc. (Council of the European Union 2017b).

Last but not least, it should be stressed that the fight against irregular migration and human smuggling requires a series of long-term, thought-out and follow-up measures involving representatives of the Member States together with the institutions of the European Union. It can also be assumed and hoped that if a similar number of irregular migrants arrive to the European Union as in 2015, the European Union institutions and political leaders will be better prepared and willing to participate in the protection of the external borders. However, the ideal solution would be to prevent such a situation by a series of preventive solutions, such as resolving the riots in the countries of origin of the migrants and eliminating the reasons for their emigration. Several authors consider climate change as one of the reasons for the departure of a large number of migrants from their countries of origin, and this is undoubtedly an issue that needs to be addressed intensively.

### Measures of the Slovak Republic against irregular migration

Although considerably fewer immigrants arrive in the Slovak Republic and the Slovak Republic is perceived rather as a transit country, we would like to say that there is no doubt that taking effective measures against irregular migration as well as cooperation with the European Union authorities is essential in this regard. As mentioned in the paper above, if the Slovak Republic did not take measures against irregular migration, it could also become a more attractive destination in addition to increasing illegal crossings across the national territory. In this context, it is necessary to compare the number of irregular migrants to the European Union and the Slovak Republic in the period under review. This report can be seen in Table 2 and Table 3.

Irregular migration to the EU						
	2013	2014	2015	2016	2017	2018
All borders	<b>107</b> <b>365</b>	<b>282 933</b>	<b>1822 177</b>	<b>511 731</b>	<b>204</b> <b>719</b>	<b>150</b> <b>114</b>

Table 2 - Irregular migration to the European Union from 2013 to 2018

Source: Own customization according to: Frontex, 2017, p. 47 and Frontex 2019, p. 42

Irregular migration in the Slovak Republic						
	2013	2014	2015	2016	2017	2018
Unauthorized crossing of the Slovak state border	398	240	<b>222</b>	<b>208</b>	<b>248</b>	<b>348</b>
Unauthorized residence in the Slovak Republic	693	1064	<b>2313</b>	<b>1962</b>	<b>2458</b>	<b>2471</b>

Table 3 - Irregular migration in the Slovak Republic from 2013 to 2018

Source: Own customization according to: Bureau of Border and Foreign Police of the Presidium of the Police Force. Statistical survey of legal and irregular migration in the Slovak Republic in 2013, 2015, 2018. p. 32-42

One of the basic and key measures against irregular migration is legal sanction or criminal repression. In the case of minor offenses, the legal order of the Slovak Republic identifies and classifies such offenses as regular offenses; in the case of more serious offenses such offenses may fulfil the merits of one of the criminal offenses listed in the Criminal Code, as amended. In particular, the Slovak Republic penalizes human smuggling, which is, however, not a subject of our research with regard to the focus of our contribution.

In proceedings related to irregular migration, which the Slovak Republic qualifies as an offense, it is necessary to proceed from Act No. 404/2011 Coll. on the Residence of Aliens and on Amendments to Certain Acts, as amended (hereinafter referred to as the “Aliens Residence Act”).<sup>6</sup> The Aliens Residence Act regulates offenses and other administrative offenses in the area of border control and residence, the maximum amount of the fine imposed

<sup>6</sup> According to § 2 par. 2 of Act no. 404/2011 Coll. on the Residence of Aliens and on Amendments to Certain Acts, as amended, an alien is anyone who is not a citizen of the Slovak Republic.

on police units in the case of an offense depends on the seriousness of the offense as well as whether it is a third country national or Union citizen or a family member of the Union citizen.

In this context, the legislature qualifies offenses and administrative offenses in the area of border control and in the area of residence of a migrant in the territory of the Slovak Republic. The first case concerns, for example, the unauthorized crossing of an external border by a third-country national, or if a national deliberately avoids or refuses to undergo a border check when crossing an external border, he/she commits an offense under § 116 par. 1 of the Act, for which it is possible to impose a fine pursuant to § 116 par. 6 a) of the Act, up to 800 EUR. A higher fine may be imposed on a third-country national if, at the border control, a third-country national pursuant to § 116 par. 1 c) of the Act on the Residence of Aliens, shall submit a foreign travel document, other document authorizing the crossing of the external border or a visa other than its own, in accordance with Section 116 par. 6 b) of the Act on the Residence of Aliens up to 1600 euros. The legislator imposes a lesser fine on a citizen of the Union or his/her family member.

In the field of residence of a foreigner, the legislature qualifies, for example, a case where a third-country national commits an offense in the field of residence if he/she has an unauthorized residence in the territory of the Slovak Republic pursuant to § 118 par. 1 a) of the Act on the Residence of Aliens, or violates one of the obligations specified in § 118 par. 1 b) and c) of the Act on the Residence of Aliens. In this case, the maximum fine according to § 118 par.1 a) of the Act on the Residence of Aliens is 1600 EUR. An equally high fine of up to EUR 1600 may be imposed pursuant to § 118 par.1 a) to anyone who under § 118 par. 4 (d) provides false, incomplete or misleading data when submitting an application for verification of the invitation or produces false or altered or other person documents.

It should be emphasized that § 118 par. 1 of the Act on the Residence of Aliens under § 118 par. 5 of the Aliens Residence Act does not apply to an alien who has applied for asylum after he/she has applied without delay to the police department and has demonstrated sufficient reason for his/her illegal stay and to an alien who has applied for assisted voluntary return to his country of origin. As in the first case, the legislature also imposes a more lenient penalty on the citizen of the Union or on his/her national.

In the case of more serious proceedings, such an act may fill the merits of one of the criminal offenses. It should be stressed that two cases of criminal repression of an irregular migrant can be referred to in this context, but in no case is the act of illegal crossing the border itself criminal. On the contrary, the legislature expresses its intention to prosecute in particular those who assist or exceed the limits by helping an irregular migrant to remain in the Slovak Republic. For the purpose of the paper, we deal only with criminal sanctions for irregular migrants, not human smugglers.<sup>7</sup>

**The first case of irregular migration as a crime** is the so-called forcible crossing of the border and unauthorized crossing of the border. According to § 354 par. 1 of the Criminal Code, who crosses the state border using violence or threat of immediate violence will be punished by imprisonment for three to eight years. If a person crosses the state border

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<sup>7</sup> Act no. 300/2005 Coll. Criminal Code, as amended.

according to § 354 par. 1 of the Criminal Code or by organizing such an act in a more serious manner, with at least two persons, shall be punished according to § 354 par. 2 of the Criminal Code by imprisonment for seven to twelve years. The person shall be punished more severely if, pursuant to § 354 par. 3 of the Criminal Code crosses the state border by using violence or threat of imminent violence, causing serious injury or death, or in a crisis situation. In this case, the offender will be punished by imprisonment for twelve to twenty years. The person shall be punished most strictly according to § 354 par. 4 of the Criminal Code, for twenty to twenty-five years, if he/she commits the offense referred to in paragraph 1 and causes severe personal injury or death of several persons or as a soldier in a crisis situation.

**The the second case of irregular migration as a criminal activity** can be described as unauthorized border crossing. Pursuant to § 357 of the Criminal Code, a person who violates international flight regulations by penetrating by air into the territory of the Slovak Republic shall be punished by imprisonment for six months to three years.

According to the current legislation, it is therefore possible to criminally prosecute irregular migrants only in cases of violence or threat of immediate violence, or when crossing the state border through airspace.

Naturally, criminal repression is not the only response of the Slovak authorities to irregular migration. In this context, other key measures need to be mentioned.

In this sense, the Slovak Republic adopted the policy documents “Migration Policy of the Slovak Republic with a view to 2020 and the National Integrated Border Management Strategy for 2019 to 2020. In these documents, the Government of the Slovak Republic stresses out negative phenomena such as human smuggling, illegal employment or human trafficking.

In this context, we identify with the categorization of possible measures by Mrlianová et. al. (2011). Mrlianová categorizes the measures into the phase before the alien's entry into the territory of the Slovak Republic, phase at the entry of an alien to the territory of the Slovak Republic and the phase of stay of an alien in the territory of the Slovak Republic. An overview of examples of measures can be seen in Table 4.

The phase before the alien's entry into the territory of the Slovak Republic	Phase at the entry of an alien to the territory of the Slovak Republic	Phase of stay of an alien in the territory of the Slovak Republic
Information campaigns and awareness-raising activities in the third country	Strengthening police cooperation	Detection of fraudulent cases of residence in the Slovak Republic, eg. special-purpose marriages
Measures in the countries of origin of migrants	Identification and registration of false and falsified documents at the border	Inland control measures
Legislative measures	Legislative measures	Legislative measures
Detection and investigation of irregular migration offenses	Border checks, border surveillance	Detection and investigation of illegal employment crimes

Table 4 - Categorized examples of measures against irregular migration in the Slovak Republic

Source: Own customization according to: Mrlianová et al., 2011, p. 26-42

Chabreček (2016) emphasizes the cooperation of the border authorities of the Slovak Republic and Ukraine and states that it is carried out at three levels - the highest, regional and local.

Therefore, irregular migration in the SR can be intervened with measures of a preventive or repressive nature. Part of the measures are implemented both with the aim of repression and prevention of irregular migration and human smuggling. In addition to criminal sanctions and legislative measures, key measures against irregular migration and human smuggling in Slovakia include the conclusion of readmission agreements and the return of irregular migrants to their countries of origin, the strengthening of police cooperation, effective border controls and border surveillance, especially on the Ukrainian border.

### **Conclusion**

The response of the European Union and Slovak authorities to irregular migration seems to be effective at present with regard to significantly fewer irregular migrants coming to the European union than in 2015. In this context, however, it should be noted that the extent of irregular migration is not only affected by direct measures aimed at eliminating it, but also by other directly and indirectly acting push and pull factors.

One of the fundamental measures against irregular migration is effective control of the external borders, without which internal borders and the Schengen area would be endangered. For this reason, temporary controls at internal borders are being reintroduced, which in practice is felt in particular by citizens of the European Union who have become accustomed to the comfort of one of the four freedoms - the free movement of persons. This is a measure on the importance of which the institutions of the European Union agree with most of the political representatives of the Member States.

In view of the objective of the work, the measures taken directly in the countries of origin, as well as the strengthening of the powers and competences of Frontex, may be included among the most effective measures taken at European Union level.

The Slovak Republic is also involved in actions at European Union level, for example through cooperation with Frontex in controlling external borders and sending representatives to risk areas. At national level, the control and surveillance of the external border with Ukraine and the punishment of irregular migration, both repressive and preventive, are particularly crucial.

Despite the apparent effort to eliminate irregular migration, we believe that it will not be possible to stop it completely. In the coming period, the European Union will undoubtedly meet other migratory waves and their challenges. According to several authors, a large number of migrants from Africa and the Middle East can be expected to emigrate in the future. One of the reasons is climate change, which will contribute to emigration mainly in the medium and long term. As a result of climate change, conditions are increasingly less conducive to life and, according to scientific estimates, climate change can contribute to the migration of over 140 million people from Africa.

Emphasizing that the issue of irregular migration and human smuggling is only one part of the issue of managing migration flows and migration policy is crucial. In addition to

the conclusions of solutions and measures against irregular migration and human smuggling, a comprehensive and well-designed migration policy requires a response to other problems such as integration of foreigners or management of legal migration.

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