



**AD HOC QUERY ON 2019.72 Legislation acts on Organizing and Facilitation of Unauthorised Crossing of State Border and Assisting in Unauthorised Stay in the Territory of the State**

**Requested by Ludmila Touskova on 17 July 2019**

**Compilation produced on 8 August 2019**

**Responses from EMN NCP Austria, EMN NCP Croatia, EMN NCP Czech Republic, EMN NCP Estonia, EMN NCP France, EMN NCP Germany, EMN NCP Lithuania, EMN NCP Luxembourg, EMN NCP Netherlands, EMN NCP Slovakia, EMN NCP Spain (11 in Total)**

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**1. Background information**

With this ad-hoc query, we would like to obtain more information about legislation on following criminal acts in other EU Member States:

- a) Organizing and Facilitation of Unauthorized Crossing of State Border,
- b) Assisting in Unauthorized Stay in the Territory of the State.

The replies of this AHQ will be used as an input for reflections as regards possible amendment of the Criminal Code concerning these criminal acts in the Czech Republic.

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**2. Questions**

**1. Does your Member State's Criminal Code provides a definition of above-mentioned criminal acts?**


Please bear in mind that the precise title of the concrete criminal act is not crucial, decisive is the material rule incorporated in the provision.

**2. If the answer to the first question is YES - can you provide us with wording of these criminal acts, including possible sentence/penalty?**

We would very much appreciate your responses by **14 August 2019**.

**3. Responses**

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		Wider Dissemination <sup>2</sup>	
	EMN NCP Austria	Yes	1. Yes. --- Source: Ministry of the Interior

<sup>1</sup> If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

<sup>2</sup> A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."


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			<p><b>2. Art. 114 Aliens Police Act 2005 - Smuggling of Persons</b> Legislative status taken into account: 31.07.2019</p> <ol style="list-style-type: none"><li>1. Any person who facilitates the unlawful entry or transit of an alien in/through a member state of the European Union or a neighbouring country of Austria with the intent to enrich oneself or a third person unlawfully, is to be sentenced by the court to imprisonment of up to two years.</li><li>2. Anyone who has already been convicted of smuggling within the meaning of para 1 within the last five years, is to be sentenced to imprisonment of up to three years. A conviction by a foreign court in proceedings in accordance with the principles of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms is also deemed as such.</li><li>3. Anyone who commits the offence according to para 1<ol style="list-style-type: none"><li>1. commercially (Art. 70 Criminal Code),</li><li>2. with regard to at least three aliens or</li><li>3. in a way that places the alien in a state of torture for a longer time, especially during transportation</li></ol>is to be sentenced by the court to imprisonment of six months to five years.</li><li>4. Anyone who commits the offence under para 1 as a member of a criminal organisation or in such a way that the life of the alien, to whom the offence relates, is endangered, is to be sentenced by the court to imprisonment of one to ten years.</li><li>5. Aliens, whose unlawful entry or transit is facilitated by the offence, are not to be punished as involved in the offence (Art. 12 Criminal Code). Their return or deportation may wait, if and as long as this is necessary to hear them about the facts of the case.</li><li>6. In the event of imminent danger, the bodies of the public security service are authorised to provisionally secure objects carried by the perpetrator or means of transport or containers used to commit the offence, in order to secure confiscation (Art. 19a Criminal Code), forfeiture (Art. 20 to 20c Criminal Code) or requisition (Art. 26 Criminal Code). The loading of the means of transport may be handed over to the holder of the registration licence or his/her representative. The court shall be informed immediately of the measures taken.</li><li>7. Para 1 to 4 shall apply to offences committed abroad, irrespective of the criminal laws of the place of the offence, if Austrian interests have been violated by it.</li></ol> <p><b>Art. 115 Aliens Police Act 2005 – Remunerated assistance to unauthorised residence</b> Legislative status taken into account: 31.07.2019</p>
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			<p>1. Any person, who with the intent of unlawfully enriching himself or a third party by paying a remuneration not of minor value, facilitates the unauthorised residence of an alien in the territory of a Member State of the European Union is to be sentenced by the court to imprisonment of up to one year or a fine of up to 360 daily rates.</p> <p><b>2. Anyone who commits the offence commercially or in relation to a larger number of aliens is to be sentenced by the court to imprisonment of up to three years.</b></p> <p>3. The alien, who benefited or was to benefit from the assistance according to para 1, is not to be punished as involved in the offence.</p> <p>4. The proceeding concerning the offence referred to in para 1 shall be the responsibility of the courts of first instance.</p> <p>---</p> <p>Source: Ministry of the Interior</p>
	<p>EMN NCP Croatia</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. The Criminal Code defines criminal acts, as follows:</p> <p>Unlawful Entry into, Movement or Residence in the Republic of Croatia, another EU Member State or Signatory of the Schengen Agreement Article 326 (1) Whoever enables or assists out of gain another person to illegally enter, move or reside in the Republic of Croatia or another EU Member State or Signatory of the Schengen Agreement shall be punished by imprisonment from one to eight years. (2) If during the commission of the criminal offence referred to in paragraph 1 of this Article the life or limb of a person illegally entering, moving or residing in the Republic of Croatia or another EU Member State or Signatory of the Schengen Agreement is endangered, or the said person is treated in an inhumane or degrading manner, or the offence is committed by a public official in the performance of his or her official duties,</p>


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			<p>the perpetrator shall be punished by imprisonment from three to twelve years.</p> <p>Committing a Criminal Offence as a Member of a Criminal Association Article 329</p> <p>(1) Whoever, knowing about the aim of a criminal association or its criminal activities, commits a criminal offence as a member of such an association or incites another to commit a criminal offence as a member of such an association shall be punished by:</p> <p>3. imprisonment from three to twelve years in the case of a criminal offence for which a maximum penalty of eight years is prescribed;</p> <p>4. imprisonment from three to fifteen years in the case of a criminal offence for which a maximum penalty of ten or twelve years is prescribed;</p> <p>(2) Whoever, knowing about the goal of a criminal association or its criminal activity, assists another to commit a criminal offence as a member of such an association shall be punished by imprisonment prescribed in paragraph 1 of this Article or his or her punishment may be mitigated .</p> <p>(3) If the perpetrator referred to in paragraph 1 or 2 of this Article substantially contributes to the discovery of a criminal association, his or her punishment may be mitigated.</p> <p>The Law on Foreigners also defines such acts as misdemeanors, as follows:</p> <p>Prohibition to assist a foreigner Article 43</p> <p>(1) It is prohibited to assist and attempt to assist a foreigner in illegal crossing of the state border, in transit across the state territory if the alien entered the Republic of Croatia illegally, and in his illegal stay.</p> <p>Article 225</p> <p>(3) The punishment of imprisonment in the duration of up to 60 days and a fine in the amount of HRK 23,000.00 for each foreigner provided assistance shall be imposed on a natural person who assisted</p>
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			<p>or attempted to assist the foreigner in the illegal crossing, transit and illegal stay in the Republic of Croatia (Article 43).</p> <p>(4) A fine in the amount of HRK 50,000.00 shall be issued against a legal person in the case referred to in paragraphs 2 and 3 of this Article, and a fine in the amount of HRK 23,000.00 against the responsible person in the legal person, for each foreigner provided transport or assistance.</p> <p>(5) In the case of misdemeanors referred to in paragraphs 3 and 4 of this Article, the protective measure of seizure of items and the protective measure of prohibition to perform the activity may also be issued.</p>
	<p>EMN NCP Czech Republic</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. The current wording in the Criminal Code of above-mentioned criminal acts in the Czech Republic is as follows:  <b>Section 340 of Act No. 40/2009 Coll., Criminal Code</b>  <b><i>Organizing and Facilitation of Unauthorized Crossing of State Border</i></b>  (1) Whoever organizes for another unauthorized crossing of a state border or whoever facilitates or enables another to cross a state border without authorization or facilitates or assists another after crossing a state border in transportation through the territory of the Czech Republic or whoever organizes such transportation, will be sentenced to imprisonment for up to two years or to prohibition of certain activity.  (2) An offender will be sentenced to imprisonment for six months to five years, to confiscation of assets or to a pecuniary penalty, if he  a) commits the act referred to in sub-section (1) as a member of an organized group,  b) exposes another person to inhumane or humiliating treatment by such an act,  c) commits such an act for payment,  d) commits such an act repeatedly, or  e) commits such an act with the intention to conceal or facilitate commission of another criminal act.  (3) An offender will be sentenced to imprisonment for two to eight years or to confiscation of assets, if</p>



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			<p>he</p> <ul style="list-style-type: none"><li>a) commits the act referred to in sub-section (1) as a member of an organized group an for payment,</li><li>b) exposes another person to risk of death by such an act,</li><li>c) causes grievous bodily harm by such an act,</li><li>d) gains for himself or for another substantial profit by such an act,</li><li>e) commits such an act with a weapon, or</li><li>f) commits such an act in a state of national peril or a state of war.</li></ul> <p>(4) An offender will be sentenced to imprisonment for five to twelve years, eventually in parallel to this sentence also to confiscation of assets, if he</p> <ul style="list-style-type: none"><li>a) causes death by the act referred to in sub-section (1),</li><li>b) causes grievous bodily harm of at least two persons by such an act,</li><li>c) gains for himself or for another extensive profit by such an act,</li><li>d) commits such an act as a soldier in a state of national peril or a state of war.</li></ul> <p>(5) Preparation is criminal.</p> <p><b>Section 341 of Act No. 40/2009 Coll., Criminal Code</b> <b><i>Assisting in Unauthorized Stay in the Territory of the Czech Republic</i></b></p> <p>(1) Whoever assists another person in unauthorized stay in the territory of the Czech Republic with the intention to gain material or other profit, will be sentenced to imprisonment for up to one year or to prohibition of certain activity.</p> <p>(2) An offender will be sentenced to imprisonment for up to three years, if he</p> <ul style="list-style-type: none"><li>a) organizes the act referred to in sub-section (1),</li><li>b) commits such an act as a member of an organized group,</li><li>c) commits such an act repeatedly, or</li><li>d) commits such an act with the intention to conceal or facilitate commission of another criminal act.</li></ul> <p>(3) An offender will be sentenced to imprisonment for six months to five years, to confiscation of assets or to a pecuniary penalty, if he</p> <ul style="list-style-type: none"><li>a) gains for himself or for another substantial profit by the act referred to in sub-section (1), or</li><li>b) commits such an act in a state of national peril or a state of war.</li></ul> <p>(4) An offender will be sentenced to imprisonment for two to eight years, eventually in parallel to this sentence also to confiscation of assets, if he</p> <ul style="list-style-type: none"><li>a) gains for himself or for another extensive profit by the act referred to in sub-section (1), or</li></ul>
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			b) commits such an act as a soldier in a state of national peril or a state of war.
	EMN NCP Estonia	Yes	1. Yes.
	EMN NCP France	Yes	<p>1. Yes.</p> <p>As defined in article L. 622-1 of the Code of entry and stay of foreign nationals and the right to asylum (Code de l'entrée et du séjour des étrangers et du droit d'asile, CESEDA), the action of facilitating unauthorised entry, movement or stay encompasses any person, regardless of his/her nationality, residing in France or in another Schengen state, who facilitates or attempts to facilitate, directly or indirectly, the unauthorized entry, movement or stay of a third-country national in France, in another Schengen state, or in a state party to the Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against transnational organised crime, signed in Palermo on 12 December 2000.</p> <p>In practical terms, these provisions target, first and foremost, smugglers and intermediaries, but also any person who for example hosts or employs a third country national without a residence permit, or hides him/her from control operations. The offence implies that the irregular situation of the third country national concerned was known.</p> <p>However, no criminal prosecution may be initiated if the help consists in counselling or offering legal, linguistic or social assistance, without any compensation. The same applies for assistance provided for strictly humanitarian purposes.</p> <p>No criminal prosecution may be initiated in cases where the assistance is provided by family members, as listed in article L. 622-4 of the CESEDA: the spouse, parents, children, brothers and sisters of the third country national and of his/her spouse (except in case of polygamy).</p>




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			<p>2. The action of facilitating unauthorised entry, movement and residence is punishable by imprisonment of five years and a fine of 30 000 euros (article L. 622-1 of the CESEDA). Sentences may be up to ten years of imprisonment and a fine of 750 000 euros in the case of aggravating circumstances, including offences committed by an organized group or under circumstances exposing third country nationals to an immediate risk of death or injuries that could lead to mutilation or permanent disability; offences that submitted third country nationals to living conditions, transport, employment or housing conditions that violate the dignity of the human being; offences committed by using an accreditation or an identification card giving access to restricted area of an airport or a port; offences leading to separate foreign minors from their family or traditional environment (art. L. 622-5 of the CESEDA).</p> <p>Additional penalties may be applied: refusing entry or stay, confiscation of assets, in particular confiscation of any object that was used in or intended for use in committing the offence (for example, a vehicle or a place of residence), suspension of the driver's licence or of the permit to operate transport services, prohibition of the professional or the social activity related to the offence, or entry ban.</p> <p>Legal entity may also be prosecuted.</p>
	EMN NCP Germany	Yes	1. Yes.
	EMN NCP Lithuania	Yes	<p>1. Yes.</p> <p>2. Please find the translation of Article 292 from the Chapter XLII "Crimes and misdemeanours against government order" of the Criminal Code of the Republic of Lithuania: *</p>


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			<p><b>Article 292. Unlawful Transportation of Persons across the State Border</b></p> <p>1. A person who unlawfully <i>transports across the state border</i> of the Republic of Lithuania an alien not having a permanent place of residence in the Republic of Lithuania <b>or transports or conceals in the territory</b> of the Republic of Lithuania such an alien who has illegally crossed the state border of the Republic of Lithuania shall be punished by a fine or by arrest or by a custodial sentence for a term of up to six years.</p> <p>2. A person who commits the acts provided for in paragraph 1 of this Article for <b>mercenary reasons or where this poses a threat to human life</b>, shall be punished by a custodial sentence for a term of up to eight years.</p> <p>3. A person who <b>organises</b> the acts provided for in paragraph 1 of this Article shall be punished by a custodial sentence for a term of four up to ten years.</p> <p>4. A legal entity shall also be held liable for the acts provided for in this Article.</p> <p>*</p> <p>Wording of related articles 291 and 292(1): "<b>291. Illegal Crossing of the State Border</b>" and "<b>Article 292(1). Employment of Third-Country Nationals Illegally Staying in the Republic of Lithuania</b>" of the Criminal Code (same Chapter XLII) in English can be found via this link: <a href="https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/28b18041843311e89188e16a6495e98c?jfwid=-td2hf5dv1">https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/28b18041843311e89188e16a6495e98c?jfwid=-td2hf5dv1</a></p>
	<p>EMN NCP Luxembourg</p>	<p>Yes</p>	<p>1. Yes. Articles 382-4 to 382-5 of the Luxembourg Penal Code sanction the organizing and facilitation of unauthorized crossing of State Border, and the assisting in unauthorized stay in the territory of the State. Article 382-4 covers not only illegal entry but also irregular stay in Luxembourg. Article 382-5 establishes the aggravated circumstances.</p> <p>2. Article 382-4: Any person who, through direct or indirect assistance, has knowingly facilitated or attempted to facilitate the unlawful entry, irregular transit or, for profit, the illegal stay of a third-country national on or through the territory of Luxembourg, the territory a Member State of the European Union or a State Party to the Convention signed in Schengen on 19 June 1990, or the territory of a</p>

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			<p>State Party to the Protocol against the Smuggling of Migrants by Land, Sea and Air, additional to the United Nations Convention against Transnational Organized Crime, signed in Palermo on 12 December 2000, shall be sentenced to imprisonment of three to five years and a fine of from 10,000 to 50,000 euros or one of these penalties only.</p> <p>Article 382-5: The offense provided for in article 382-4 shall be sentenced to imprisonment of five to ten years and a fine of from 50,000 up to 100,000 euros in the following cases:</p> <p>1 ° when it was committed by a person who has authority over the victim or by a person who has abused the authority or facilities conferred by his functions;</p> <p>2 ° when it was committed by an officer or a public officer, a depositary or a law enforcement officer acting in the performance of his duties;</p> <p>3 ° when it was committed against a minor;</p> <p>4 ° when it has been committed by abusing the particularly vulnerable situation in which a person finds himself because of her/his illegal or precarious administrative situation, her/his precarious social situation, a state of pregnancy, a sickness, an infirmity or a physical or mental disability, so that the person has no real and acceptable choice other than to submit to the abuse;</p> <p>5 ° when it was committed by making direct or indirect use of fraud, violence, threats or any form of coercion;</p> <p>6 ° where the life of the victim has been endangered deliberately or by gross negligence;</p> <p>7 ° where the offense has caused an illness that appears to be incurable, a permanent physical or mental disability, the complete loss of an organ or of the use of an organ, or a serious mutilation;</p> <p>8 ° when the activity concerned is a usual activity;</p> <p>9 ° when it constitutes an act of participation in the principal or subsidiary activity of an association, whether or not the offender is an author.</p>
	<p>EMN NCP Netherlands</p>	<p>Yes</p>	<p>1. Yes, with regard to 'Organizing and Facilitation of Unauthorized Crossing of State Border' the Dutch state provides for a certain understanding in Article 197a of the Dutch Code of Criminal Procedure.</p>


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			<p>2. A. Regarding 'Organizing and Facilitation of Unauthorized Crossing of State Border' the Dutch Code of Criminal Procedure provides the following:</p> <ol style="list-style-type: none"><li>1. Any person who provides assistance to another person to obtain entry to the Netherlands or to transit the Netherlands, another member state of the European Union, Iceland, Norway or any state which has acceded to the Protocol against the Smuggling of Migrants by Land, Sea and Air concluded in New York on 15 November 2000 supplementing the Convention against Transnational Organised Crime concluded in New York on 15 November 2000, or provides that person with opportunity, means or information enabling him to do so, while he knows or has serious reason to suspect that such entry or transit is unlawful, shall be guilty of the smuggling of human beings and shall be liable to a term of imprisonment not exceeding four years or a fine of the fifth category.</li><li>2. Any person who in pursuit of gain provides assistance to another person to acquire residence in the Netherlands or another member state of the European Union, Iceland, Norway or any state which has acceded to the Protocol referred to in subsection (1), or provides that person with opportunity, means or information enabling him to do so, while he knows or has serious reason to suspect that said residence is unlawful, shall be liable to a term of imprisonment not exceeding four years or a fine of the fifth category.</li><li>3. If any of the offences defined in subsections (1) and (2) is committed in the performance of any office or practice of any profession, a term of imprisonment not exceeding six years or a fine of the fifth category shall be imposed and the court may order disqualification of the person concerned from holding that office or practicing that profession and publication of its judgment.</li><li>4. If any of the offences defined in subsections (1) and (2) is committed by a person who makes a profession or habit of it or by several persons in concert, a term of imprisonment not exceeding eight years or a fine of the fifth category shall be imposed.</li><li>5. If any of the offences defined in subsections (1) and (2) results in grievous bodily harm or is likely to endanger the life of another person, a term of imprisonment not exceeding twelve years or a fine of the fifth category shall be imposed.</li><li>6. If any of the offences defined in subsections (1) and (2) results in death, a term of imprisonment not exceeding fifteen years or a fine of the fifth category shall be imposed.</li><li>7. In the application of this section, the Netherlands shall also be understood to mean the public bodies Bonaire, St. Eustatius and Saba.</li></ol> <p>B. With regard to 'Assisting in Unauthorized Stay in the Territory of the State':</p>
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			<p>Illegal stay and assisting in Unauthorized Stay in the Territory of the State are not punishable. In 2013, a bill was submitted to criminalize the illegal stay of adult foreign nationals as a violation. With this, the government wanted to prevent and combat the illegal coming to and staying in the Netherlands. The proposal did not make humanitarian aid to illegal immigrants punishable. However, the bill was withdrawn in 2014.</p> <p>However, the Criminal Code (197b Penal Code) stipulates that providing employment to illegally staying foreigners is punishable. In addition, allowances (such as rent and healthcare allowances) can be refused due to the fact that a family member is not lawfully staying in the Netherlands.</p>
	<p>EMN NCP Slovakia</p>	<p>Yes</p>	<p>1. Yes.</p> <p>2. We provide both English and Slovak version of the wording of the crime of smuggling as regulated in the Criminal Code of the Slovak Republic.</p> <p>Smuggling Section 355</p> <p>(1) Any person who organises illegal crossing of the State Border of the Slovak Republic, or a transfer through its territory, for a person who is neither a citizen of the Slovak Republic nor a person with permanent residence in the territory of the Slovak Republic, or who enables such activity or aids and abets it, shall be liable to a term of imprisonment of one year to five years.</p> <p>(2) Any person who, with the intention of obtaining financial or other material benefit for himself or another either directly or indirectly, for a person who is neither a citizen of the Slovak Republic nor a person with permanent residence in the territory of the Slovak Republic,</p> <p>a) organises illegal crossing of the State Border of the Slovak Republic, or a transfer through its territory, or who enables such activity or aids and abets it, or</p> <p>b) for the purpose referred to in letter a), manufactures, procures, provides or has in his possession a forged passport or a forged identity card,</p> <p>shall be liable to a term of imprisonment of three to eight years.</p>

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			<p>(3) The offender shall be liable to a term of imprisonment of seven to ten years if he commits the offence referred to in paragraphs 1 or 2,</p> <ul style="list-style-type: none"><li>a) and obtains larger benefit for himself or another through its commission,</li><li>b) by a reason of specific motivation,</li><li>c) in a manner that may pose a danger to lives and health of facilitated persons, or constitutes inhuman or degrading treatment or abuse of facilitated persons, or</li><li>d) acting in a more serious manner.</li></ul> <p>(4) The offender shall be liable to a term of imprisonment of ten to fifteen years if he commits the offence referred to in paragraphs 1 or 2,</p> <ul style="list-style-type: none"><li>a) and causes grievous bodily harm or death through its commission,</li><li>b) and obtains substantial benefit for himself or another through its commission, or</li><li>c) as a member of a dangerous grouping.</li></ul> <p>(5) The offender shall be liable to a term of imprisonment of twelve to twenty years if he commits the offence referred to in paragraphs 1 or 2,</p> <ul style="list-style-type: none"><li>a) and causes grievous bodily harm or death to several persons through its commission,</li><li>b) and obtains large-scale benefit through its commission, or</li><li>c) under a crisis situation.</li></ul> <p>Section 356</p> <p>Any person who, with the intention of obtaining financial or other material benefit for himself or another either directly or indirectly, enables or helps a person, who is neither a citizen of the Slovak Republic or of another EU Member State or a national of the Contracting Party to the EEA Agreement nor a person with permanent residence in these territories to stay or get an illegal job in the territory of the Slovak Republic or in another EU Member State or the Contracting Party to the EEA Agreement shall be liable to a term of imprisonment of two to eight years.</p> <p>Prevádzachstvo</p> <p>§ 355</p> <p>(1) Kto pre osobu, ktorá nie je štátnym občanom Slovenskej republiky alebo osobou s trvalým pobytom na území Slovenskej republiky, organizuje nedovolené prekročenie štátnej hranice Slovenskej republiky alebo prechod cez jej územie, alebo také konanie umožní, alebo v ňom pomáha, potrestá sa odňatím slobody na jeden rok až päť rokov.</p>
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			<p>(2) Kto v úmysle získať pre seba alebo iného priamo či nepriamo finančnú výhodu alebo inú materiálnu výhodu pre osobu, ktorá nie je štátnym občanom Slovenskej republiky alebo osobou s trvalým pobytom na území Slovenskej republiky,</p> <p>a) organizuje nedovolené prekročenie štátnej hranice Slovenskej republiky alebo prechod cez jej územie, alebo také konanie umožní, alebo v ňom pomáha, alebo</p> <p>b) na účel podľa písmena a) vyrobí, zaobstará, poskytne alebo drží falošný cestovný doklad alebo falošný doklad totožnosti,</p> <p>potrestá sa odňatím slobody na tri roky až osem rokov.</p> <p>(3) Odňatím slobody na sedem rokov až desať rokov sa páchatel' potrestá, ak spácha čin uvedený v odseku 1 alebo 2</p> <p>a) a získa ním pre seba alebo iného väčší prospech,</p> <p>b) z osobitného motívu,</p> <p>c) spôsobom, ktorý môže ohroziť životy a zdravie prevádzaných osôb alebo znamená neľudské zaobchádzanie alebo ponižujúce zaobchádzanie, alebo zneužívanie prevádzaných osôb, alebo</p> <p>d) závažnejším spôsobom konania.</p> <p>(4) Odňatím slobody na desať rokov až pätnásť rokov sa páchatel' potrestá, ak spácha čin uvedený v odseku 1 alebo 2</p> <p>a) a spôsobí ním ťažkú ujmu na zdraví alebo smrť,</p> <p>b) a získa ním pre seba alebo iného značný prospech, alebo</p> <p>c) ako člen nebezpečného zoskupenia.</p> <p>(5) Odňatím slobody na dvanásť rokov až dvadsať rokov sa páchatel' potrestá, ak spácha čin uvedený v odseku 1 alebo 2</p> <p>a) a spôsobí ním ťažkú ujmu na zdraví viacerým osobám alebo smrť viacerých osôb,</p> <p>b) a získa ním prospech veľkého rozsahu, alebo</p> <p>c) za krízovej situácie.</p> <p>§ 356</p> <p>Kto v úmysle získať pre seba, alebo iného priamo či nepriamo finančnú výhodu, alebo inú materiálnu výhodu osobe, ktorá nie je občanom Slovenskej republiky alebo občanom iného členského štátu Európskej únie alebo občanom zmluvného štátu Dohody o Európskom hospodárskom priestore, alebo nemá trvalý pobyt na ich území, umožní, alebo pomáha zotrvať, alebo sa nedovolené zamestnať na území Slovenskej republiky, iného členského štátu Európskej únie alebo zmluvného</p>
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			štátu Dohody o Európskom hospodárskom priestore, potrestá sa odňatím slobody na dva roky až osem rokov.
	EMN NCP Spain	Yes	<p>1. Yes</p> <p>2. 1. Intentionally assisting a third country national to enter or transit through the Spanish territory in breach of the law: fine or three months to one year imprisonment. No punishment if only for humanitarian reasons. If it is done for profit, punishment is in the highest half of the range mentioned above. Aggravating circumstances, increasing punishment to 4 to 8 years imprisonment, are: If committed by a criminal organization. Extra aggravation for the chiefs of the organization. If life of migrants is put at risk or there is risk of serious injuries. If committed by an authority or a civil servant: additionally they lose their job and won't be able to apply again for any public job for 6 to 12 years.</p> <p>2. Intentionally and for profit assisting a third country national to stay in Spain in breach of the law: fine or three months to one year imprisonment. In both cases, for legal persons: fine.</p>

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