Studia Iuridica 100
ISSN 0137-4346; e-ISSN 2544-3135

https://doi.org/10.31338/2544-3135.si.2024-100.19

Włodzimierz Wróbel
Jagiellonian University, Poland
e-mail: w.wrobel@uj.edu.pl
ORCID: 0000-0001-6636-8738

CRIMINALISATION OF IMMIGRATION LAW

Abstract

The study deals with a new phenomenon in criminal and immigration law referred to as crimmigration. It involves the use in immigration law of instruments borrowed from criminal law, such as detention, banishment, procedures used in criminal law and the powers of police authorities, in order to combat illegal immigration. The commission of a criminal offence becomes a premise for deportation of persons who are even legally present in the country. On the other hand, new types of offences criminalising illegal border crossing and illegal residence are introduced into the criminal law area. Criminalisation of illegal immigration intersects with the tendency to protect victims of the crime of human trafficking and human smuggling. It must also take into account international treaties providing international protection to refugees from areas of armed conflict, persecution and humanitarian crises, often resulting from climate change. Paradoxically, the tightening of criminal law instruments to combat human trafficking worsens the situation of victims of this crime. The article also analyses Polish regulations in this area, indicating that they correspond to the phenomenon of crimmigration and presenting the possibilities of interpreting the relevant provisions in a way that guarantees observance of the principles of humanitarianism towards immigrants.

KEYWORDS

crimmigration, criminal law, immigration law, immigrants, human trafficking

SŁOWA KLUCZOWE

crimmigration, prawo karne, prawo imigracyjne, imigranci, handel ludźmi

Immigration is becoming one of the most significant social problems. In recent decades, classic manifestations of immigration for work purposes have been joined by mass waves of immigration originating in armed conflicts and climate change or natural disasters. In many European countries, immigration phenomena have their roots in the colonial past.

Change of residence is a constant cultural phenomenon that has accompanied humanity since the beginning. With the strengthening of state structures, the movement of populations has been subject to increasing controls and restrictions. Today, the exclusive competence of state authorities to decide who can cross borders is seen as a clear manifestation and attribute of sovereignty[1]. Only those with a state document (passport, identity card, visa) can cross the border. Only the state authority can abolish border controls (in a systemic way – by concluding agreements with other states – as in the case of the Schengen Agreement, or on a one-off basis) but can also reintroduce them at any time.

The state border is a normative creation, although it has its designator in reality, being a perpendicular plane delimited in the terrain separating two sovereign normative orders. Being one of the features of sovereignty, the state border becomes an object of protection, a place for controlling the movement of persons and things. The state considers it an essential element of its sovereignty to have the right to decide who may cross its borders and, in particular, who may enter its territory. The border is also a cultural phenomenon – a state of a kind of testing of rights and freedoms. For it is widely accepted here that public authorities have the right to control persons and their property, to check their identity and to search them, including in a manner that intrudes into the sphere of intimacy.

The state regulates and organises how the border is crossed. It sometimes uses physical barriers to prevent movement across the border. The rationing of border crossing (e.g. the introduction of special border crossings) presupposes a legal prohibition on entering the territory of the state outside the scope of rationing. The existence of such a ban, which is immanently linked to the existence of the border as a normative entity, in turn generates the need to introduce a criminal sanction for its violation, i.e. for crossing the state border illegally.

Besides, border control is only one manifestation of the state's exclusive competence to decide who may reside in its territory. Controls at the state border may be abolished or reduced, but such control of legality of residence in the territory

[1] Cf. T. Gardocka, Ł. Majewski, *Wydalenie niepożądanego cudzoziemca*, (in:) T. Gardocka, J. Sobczak (eds), *Uchodźcy w Polsce i Europie. Stan prawny i rzeczywistość,* Toruń 2010, pp. 179 ff.

may be carried out far from the borders, forcibly removing persons who do not have the consent of the state to reside in its territory[2].

Citizenship becomes the limitation of this competence and citizenship receives special constitutional protection. One aspect of this protection is the freedom of movement within the territory of the Republic, the right to leave that territory freely and the prohibition on expelling one's own citizens or imposing a ban on their return to the country (Article 52(1)-4 of the Polish Constitution). The Polish Constitution also expressly establishes the prohibition of extradition of a Polish citizen (Article 55(1)). The status of being a foreigner does not enjoy such strong protection. In particular, a foreigner can be expelled from Poland and can be prohibited from crossing the Polish border. In this aspect, the Constitution only states that foreigners may exercise the right of asylum in the Republic of Poland (on the principles set out in the Act) and apply for refugees the status 'in accordance with international agreements binding the Republic of Poland'.

Thus, while in the case of a Polish citizen, their right to reside in the territory of Poland has constitutional guarantees, in the case of a foreigner, even if he or she has obtained a permit to enter and reside in Poland, these rights are relative in nature and their permanence is protected by the general principles applicable in a state governed by the rule of law, including in particular the principle of protection of confidence in the actions of public authorities.

This constitutional context differentiating between the status of citizens and foreigners means that the power of the state to control borders and close them against the latter is taken for granted. And the introduction of specific restrictions and policies aimed at combating illegal immigration and controlling the stay in the country of those who do not have a valid permission of public authorities to do so is taken as equally obvious. The immigration crises at the southern borders of the European Union and at the border between Mexico and the USA have led to criminal law becoming one of the instruments of immigration policy. The literature has begun to refer to this phenomenon as 'crimmigration[3]. This has occurred on two levels. On the one hand, immigration law has started to use measures characteristic of criminal law, the most prominent of which is deprivation of liberty in closed reception centres or forced readmission of legally residing foreigners if they have committed a criminal act, and on the other hand by introducing severe penalties for behaviour consisting in crossing the border

[2] It is noteworthy that 471,000 people were turned back from the EU border in 2018 (of this group, 49% at the Spanish border, 15% at the French border, 11% at the Polish border). In the same year, more than 600,000 non-EU nationals were apprehended inside the territories of Union countries for readmission. Control activities are therefore more intensive in terms of controlling illegal stay than border control itself.

[3] B.L. Garrett, *Corporate Crimmigration*, 'University of Illinois Law Review', 2021, No. 2, pp. 359 ff.; C.C.G. Hernandez, *Creating Crimmigration*, 'Brigham Young University Law Review' 2013, No. 6, pp. 1457 ff.; *ibid*., *Deconstructing Crimmigration,* 'UC Davis Law Review' 2018, No. 1(52), pp. 197 ff.

in violation of the law, illegal stay or providing assistance to immigrants[4]. Also with the help of severe sanctions, non-state actors operating transport companies were forced to take measures to make sure that they do not offer their services to persons who do not have a permission to cross the border.

The literature emphasises that this passed border control onto private actors who are at the same time not obliged to respect the convention that guarantees international protection to refugees[5]. It is pointed out that these very arrangements are one of the main reasons for pushing migrants into the zone of illegal and dangerous transport by often criminal groups involved in human smuggling and charging migrants for their services at rates far above those of official transport companies.

These issues relating to criminalisation of immigration law will be discussed further in the article.

The history of the saturation of immigration law with criminal law on both sides of the Atlantic is similar, although it shows important differences in certain issues[6].

In the US in particular, laws regulating migration have clearly racist roots: the first acts on these issues in 1790 stipulated that only 'free and white men' could be naturalised. The criminalisation of crossing the US border was introduced as early as the 1920s, treating it as a federal crime. At the same time, a system of administrative deportations began to develop, premised on criminal records. The fact that a person had been convicted of a specific crime (initially a re-crossing of the border in spite of a previous ban on entering the USA) became an autonomous ground for deportation even for persons who were legally present in the USA or who, having crossed the border illegally, had obtained such legalisation of their stay[7]. Deportations were and are also carried out after the execution of a sentence for a crime committed in the United States. This type of criminal policy has been exacerbated, including in recent decades and regardless of whether Democrats or Republicans have been in power. This tightening on the one hand involved

[4] R.E. Rosenbloom, *Beyond Severity: A New View of Crimmigration*, 'Immigration and National Law Review' 2019, No. 40, pp. 673 ff.

[5] An airline may not allow a person without a valid visa from a European Union country to board an aircraft, under threat of severe sanctions, including withdrawal of the concession, but at the same time it is in no way obliged to accept and process applications for international protection, which is what public officials of these countries are obliged to do if a refugee arrives at the border of the European Union.

[6] S. Hauptman, *The Criminalisation of Immigration*: *the Post 9/11 Moral Panic*, El Paso 2013, pp. 125 ff.; K.M. McKanders, *Unforgiving of Those Who Trespass Against U.S.: State Laws Criminalizing Immigration Status*, 'Immigration and National Law Review' 2011, No. 32, pp. 267 ff.; E. Guild, *The Criminalisation of Migration in the Law of the European Union: Challenging the Preventive Paradigm,* (in:) G.L. Gatta, V. Mitsilegas, S. Zirulia (eds), *Controlling Immigration Though Criminal Law. European and Comparative Perspective on 'Crimmigration'*, Hart 2021.

[7] Y. Vazquez, *Crimmigration: the Missing Piece of Criminal Justice Reform*, 'University of Richmond Law Review' 2017, Vol. 51(4), pp. 1093 ff.

expanding the catalogue of offences for which a conviction led to deportation, and on the other using increasingly effective administrative mechanisms to identify those subject to deportation and to enforce this measure. Even immigrants who had been residing legally in the US for a long time were covered by this measure. The changes that the Tump administration introduced, particularly concerning the separation of children from their parents among immigrants illegally crossing the border from Mexico, were in fact introduced on top of a mechanism that had already been in place and familiarised public opinion with the steps taken against immigrants.

It is emphasised that in the procedure for adjudication of deportation by the special division of the immigration judiciary, the standard of proof is significantly lowered. The catalogue of offences for which a conviction justifies deportation is very broad: It includes, inter alia, drug possession offences or immigration law offences. It should be borne in mind that, since the Trump administration, these immigration offences (illegal border crossings, unlawful entry into the USA despite a previous ban on such entry) have become the largest group of offences in the statistics of criminal prosecutions in absolute terms. The prison population is also the largest group of people serving sentences for these crimes. The criminalisation of immigration law is thus becoming a self-perpetuating mechanism, while deportation is becoming a second punishment reminiscent of the long-abandoned punishment of banishment, particularly for long-term legal residents. The use of criminal law instruments also manifests itself in the shifting of competences for combating illegal immigration to bodies classically involved in the fight against crime (the police)

Deportation from the US can be based on any crime committed within 5 or 10 years after arrival in the US[8]. For more serious offences (e.g. drug trafficking) this grace period does not apply. For drug offences, even convictions in another country are taken into account. It should be noted that it is immigration-related offences that may justify deportation, thus creating a closed circle. Although at the same time it should be remembered that the first illegal border crossing in the USA does not constitute a crime. Only a violation of the prohibition on entering the USA and crossing the border illegally again is treated as a criminal act, the commission of which in turn justifies deportation. As already mentioned, during the Trump administration, criminal illegal crossing cases accounted for the majority of all criminal prosecutions in the US, and if one returns to the US after being deported on grounds of having committed a criminal act, one faces a very severe penalty of 20 years‘ imprisonment[9]. Mass trials are carried out in cases of illegal migration, with hearings lasting a few minutes each and often involving dozens of defendants pleading guilty.

[8] § 237(a) (2) INA (US Code Tile 8 Aliens And Nationality).

[9] Cf. A. Das, *No Justice in The Shadows. How America Criminalizes Immigrants*, New York 2020, pp. 14 ff.

In doing so, it should be borne in mind that illegal crossing of the US borders, even with the intention to seek asylum, constitutes a crime. The phenomenon of criminalisation of immigration law in the US and the very low standard of safeguards seems to have its origin in part in the fact that for many years the US Supreme Court considered immigration law to be within the competence of the states, as a field of police law.

A similar mechanism of immigration law tightening can also be observed in the USA as a result of legislative efforts to protect alleged victims of cross-border crime, particularly human trafficking. Specifically, using legislation designed to prevent children and women from being abducted and brought to the US, most often for the purpose of sexual exploitation, general provisions were introduced restricting the ability of these categories of persons to immigrate to the US, based, as it were, on a presumption of the purpose of their coming to the US. In other words, the type of immigration that could generate profits from the crime of human trafficking was excluded.

In European Union countries, the use of criminal law instruments in immigration policy is also widespread. Illegal border crossings are criminalised, as is aiding and abetting illegal residence. A specific criminal law instrument involves criminalisation of the crime of human trafficking, having its origin in the so-called Palermo Protocol[10]. The Treaty on the Functioning of the European Union already assumes that the Union is committed to preventing and curbing illegal immigration, in particular through an effective return policy, while respecting fundamental rights (Article 79). To this end, the European Parliament and the Council may adopt measures on illegal immigration and illegal residence, including removal and repatriation of illegal residents; and combating human trafficking, in particular women and children. It is now possible to point to a whole package of EU legislation that directly addresses illegal immigration. This package consists of, inter alia: Council Directive 2002/90/EC defining the offence of facilitating unauthorised entry, transit and residence[11]; Framework Decision 2002/946/JHA establishing criminal sanctions for such conduct[12]; Directive 2011/36/EU on preventing and combating human trafficking and protecting its victims[13]; Council Directive 2004/81/EC providing for the granting of a residence permit to victims of human trafficking or smuggling who cooperate with the competent authorities[14], the Commission's EU Action Plan 2021-2025 to Combat Smuggling of

[10] UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, 15 November 2000.

[11] OJ L 328, 5.12.2002, p. 17.

[12] OJ L 203, 1.8.2002, p. 1.

[13] OJ L 101, 15.4.2011, p. 1.

[14] OJ L 261, 8.06.2004, p. 19.

Migrants[15], Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals[16] or 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[17]. In the context of this discussion, it is worth noting that the regulations adopted require Member States to introduce "appropriate sanctions" against any person who "intentionally assists a person who is not a national of a Member State to enter, or transit through, the territory of a Member State in breach of the laws on the entry or transit of aliens" and against any person who, "for financial gain, intentionally assists a person who is not a national of a Member State to reside in the territory of a Member State in breach of the provisions on the residence of aliens", whereby the sanctions are to be effective, proportionate and dissuasive[18].

However, while criminal measures against illegal immigration are being tightened, some related dangers these measures bring have been noted too. These include on the one hand some dangers striking humanitarian NGOs and on the other dangers of misuse of measures relating to the detention of immigrants and other forms of violation of their fundamental rights in connection with the implementation of an effective EU readmission policy[19]. There is a danger in this perspective that humanitarian NGOs are treated as criminal organisations. This is evidenced by the Greek example of the Emergency Response Centre International. Their intention to help refugees was attributed to them. Additionally, money laundering (accepting money from private donors) was alleged[20]. The trial of 24 activists of this organisation started earlier this year raising a protest from the UN Commissioner for Human Rights[21]. Some of those arrested were held for

[15] COM/2021/591 final.

[16] OJ L 348, 24.12.2008, p. 98.

[17] OJ L 168, 30.6.2009, p. 24.

[18] Council Directive 2002/90/EC, Article 1(1) and (2).

[19] See in particular: European Parliament resolution of 5 July 2018 on guidelines for Member States to prevent the criminalisation of humanitarian aid (2018/2769(RSP)) (*OJ C 118, 8.4.2020, p. 130–132)*; Analysis of the European Parliament's Bureau of Analysis 'Proposed Return Directive (Recast). Substitute impact assessment' PE 631.727 – February 2019; Communication from the Commission – Commission guidelines on the implementation of EU legislation on the definition and prevention of the facilitation of unauthorised entry, transit and residence (OJ C 323, 1.10.2020, p. 1).

[20] Observatory of the Refugee and Migration Crisis in the Aegean, *Observatory News Bulletin: On the Arrest of Members of the NGO Emergency Response Center International (E.R.C.I.)*, last updated 18 December 2018, https://refugeeobservatory.aegean.gr/en/observatory-news-bulletin-arrest-members-ngo-emergency-response-center-international-erci-updated (accessed 04.01.2024).

[21] UN Office of the High Commissioner for Human Rights, *Trial of Human Rights Defenders in Greece for Helping Migrants,* 13 January 2023, https://www.ohchr.org/en/press-releases/2023/01/trial-human-rights-defenders-greece-helping-migrants (accessed 04.01.2024).

more than 100 days in pre-trial detention[22]. So, as it turns out, the issue of legality of humanitarian aid is not just a Polish problem. This has led to humanitarian organisations ceasing their operations.

The question arises here as to how the state should respond to behaviour that constitutes a breach of the rules. The simplest answer is that the border should be protected first and foremost by physical means, including the use of coercive measures against persons who attempt to cross it illegally. Similarly, the state should react when an illegal border crossing has already taken place. The state should therefore have at its disposal means for readmission, including the use of direct coercive measures. The situation is different for persons who have entered the country legally, but whose stay has become illegal from a certain point in time (e.g. due to expiry of their visa or due to behaviour justifying the withdrawal of their residence permit). Also in such a situation, in order to respect the prohibition of a foreigner's stay in the given national territory without a valid permit, it is necessary to take certain sanctioning measures to ensure the effectiveness and efficiency of the prohibition measures.

The application of administrative measures does not seem to raise problems (while respecting all principles related to the protection of dignity and other subjective rights and freedoms of foreigners, which have a constitutional and treaty basis). However, in the perspective of the constitutional principle of proportionality, reaching for repressive measures is no longer so obvious. In my opinion, it is right to emphasise that migration is a natural phenomenon and there is no natural basis for criminalisation in crossing the state border – it is not an intrinsically immoral act[23]. The question arises as to the unlawfulness of acts that involve illegal border crossing or an illegal stay and the point of penalizing them. This is because enforcing a penalty would in fact have to mean prolonging the stay of the person concerned on the territory of that country[24]. On the other hand, the mere fact of staying in a given country without a valid permit constitutes only a violation of certain administrative regulations and therefore deserves at most an administrative sanction (as an offence). The same is true in the case of illegal border crossing, although there may seem to be a certain similarity between this act and infringement of home inviolability. However, there is a fundamental difference between the two. Infringement of the home is an invasion of an individual's

[22] A. Lamche, *Refugee Mission Volunteer is Branded 'Spy'. Diver Taking Part in Refugee Rescues is Accused of 'Baseless' Crimes*, 'Islington Tribune', 13 January 2023, https://www.islingtontribune.co.uk/article/refugee-mission-volunteer-is-branded-spy (accessed 04.01.2024).

[23] A. Das, 2020, *op. cit*., Chapter 2 (5).

[24] This very circumstance constituted a decisive argument for the CJEU in Case C-329/11 (discussed later in this article) to consider that the introduction of a criminalisation of an immigrant for illegal residence constitutes an infringement of EU law, in particular the Readmission Directive 2008/115, as it delays its effective application.

privacy. The reprehensibility of such behaviour is rooted in a sense of harm – it is not without reason that this offence has an inferential character.

The source of social harm of the crime of illegal border crossing can be perceived differently. It seems to be mainly public safety and security of citizens. Uncontrolled movement of persons may mean the appearance of members of criminal groups or terrorists on the territory of the state. It can also undermine the economic interests of the state when it is combined with the smuggling of goods. A particular justification for criminalising illegal border crossings is to prevent the presence on the territory of the state of persons who do not have the permission of relevant authorities. Indeed, the presence of such persons may disrupt the organisation of social life, priorities of access to certain goods or the functioning of public services. It may also generate social conflicts based on cultural differences. Ultimately, it may threaten the system of governance when large groups appear within a given society who, either culturally or politically, do not identify with that society and their new place of residence, sometimes even declaring greater loyalty to the abandoned homeland and its culture[25].

In Poland, crossing the state border in violation of the law generally constitutes a misdemeanour under Article 49a of the Misdemeanours Code[26], while additionally both attempting[27] and aiding and abetting such behaviour are punishable (also as misdemeanours). It is only the qualified form of illegal border crossing using violence, threats, deception or in cooperation with other persons that constitutes an offence under Article 264(2) of the Penal Code[28], punishable by imprisonment of up to 3 years. The subject of particular controversy under Article 264(1) of the Penal Code is the realisation of the constitutive elements of the offence in the case of illegal border crossing in cooperation with other (at least two) persons[29]. This is because it is very common, especially in the Belarusian border area, for smaller or larger groups to cross the border. In this case, cooperation must mean an agreement on the crossing of the border and the joint implementation of the elements of such an act (possibly incitement or aiding and

[25] It should be noted that illegal border crossing during the communist period was itself a separate crime motivated by ideological considerations. Controlling the movement of one's own citizens across the border as well was part of the totalitarian system of the state. The border was therefore also protected from its own citizens – sometimes also by means such as firearms.

[26] Act of 20 May 1971 Misdeameanors Code, Dz. U. (Journal of Laws) of 1971 No. 12 item 114, as amended.

[27] In the context of an attempt, it should be remembered that pursuant to Article 3(2) of the Misdemeanours Code, if the act was committed outside the territory of Poland, an offence is punishable only if a specific provision so provides. There is no such provision in relation to an attempt to cross the border of Poland if the conduct in question was committed on the territory of another country.

[28] Act of 6 June 1997 Penal Code, Dz. U. (Journal of Laws) of 1997 No. 88 item 553, as amended.

[29] Cf. M. Czeredys-Wójtowicz, M. Śliwiński, D. Gałek, *Odpowiedzialność karna za nielegalne przekroczenie granicy państwowej*, 'Iustitia' 2022, No. 1(47), pp. 21 ff.

abetting). It should be borne in mind that an attempt to cross an illegal border would be punishable provided that crossing the border in cooperation with other persons at the place where the act was committed would also be punishable[30]. It is about cooperation in crossing the border line and not about possible overcoming obstacles already located on the territory of Poland[31]. The state border is not marked by contractual security devices (a fence in front of the Belarusian border or gates at an airport or a barrier at a border crossing).

It should also be emphasised that complicity in an unlawful border crossing does not simply mean carrying out such an act together with other persons or in the company of other persons[32]. There must be a certain interdependence between the co-operating persons, if only psychological (psychological facilitation, mutual motivation for specific behaviour). Moreover, it may be assumed that the criminality of the act of illegal border crossing in cooperation with other persons, which justifies the introduction of criminal liability, has its source precisely in the fact of mutual interaction of persons, which may break mental barriers and facilitate such behaviour.

Also, the mere "illegal stay" of a foreigner on the territory of Poland does not constitute an act punishable as a crime. On the other hand, such residence may in various aspects meet the the elements of an offence. Pursuant to Article 465(1)(1) of the Act on Foreigners, whoever stays on the territory of the Republic of Poland without having a legal title to do so shall be liable to a fine. The same provision, in its subsequent paragraphs, recognises as an offence a number of behaviours of a foreigner concerning their status on the territory of Poland[33]. Moreover, pursu-

[30] It should be noted that the offence of illegal border crossing does not fall within the catalogue of offences excluded from the application of the principle of double criminality. In such a situation, both the attempt of this crime and the acts of incitement or aiding and abetting, if they occurred outside the territory of Poland, would have to be punished also in the place where they were committed. For obvious reasons, the Penal Code of the Republic of Belarus does not protect the Polish state border. Even if there is also a type of crime of illegal border crossing in the Belarusian Penal Code – it is about protecting Belarusian interests and the Belarusian border and not the Polish one. Thus, in view of the legal good, despite the formally similar presentation of this criminal act, there is no identity in terms of unlawfulness, and therefore the condition of double criminality is not met (leaving aside the alleged consent of the Belarusian authorities to the crossing of the Belarusian border by immigrants outside the formal border crossing points with Poland).

[31] Thus, cooperation in the breach of a protective barrier erected at the Belarusian border does not constitute the fulfilment of the elements of Article 264(2) of the Penal Code, as the barrier is already on the territory of Poland. Thus, cooperation in the crossing of the barrier is irrelevant with regard to the fulfilment of the elements of this offence.

[32] Cf. D. Brodowski, *Modal Znamię przemocy, podstępu i współdziałanie na przykładzie art. 264 § 2 Kodeks karnego,* 'CzPKiNP' 2022, Nos 1-2, pp. 99 ff.

[33] Such an offence is committed by anyone who:

"2) upon request of the competent authorities, fails to produce a valid document entitling him/her to stay within the territory of the Republic of Poland, if required, 3) upon request of the competent authorities fails to demonstrate the financial resources or a document certifying that he/

ant to Article 120(1) of the Act of 20 April 2004 on employment promotion and labour market institutions[34] a foreigner who illegally performs work commits an offence punishable by a fine[35].

On the other hand, it is an offence to enable or facilitate another person's stay in the territory of Poland in violation of the law in order to obtain a pecuniary or personal benefit (Article 264a(1) of the Penal Code). The status of this offence is even more problematic than the offence of illegal border crossing. Since the stay itself can only be treated in terms of an administrative offence, it is difficult to consider the acts of aiding and abetting as punishable behaviour. In fact, criminalisation of aiding and abetting illegal stay can only be a form of substitute criminalisation as it is impossible to target immigrants themselves with sanctions. Actions that create the conditions for and encourage illegal crossing, which, especially when it occurs on a mass scale, may lead to disruption of public order. In this perspective, criminalisation of aiding and abetting illegal residence would be a crime of abstract danger, at the far frontier of protecting the state border from illegal crossing. At the same time, this would have to mean that in the case of assistance given to persons who have crossed the border legally, but whose stay has subsequently become illegal, there would be no component of criminality.

It is worth emphasising, however, that in the case of persons crossing the border without authorisation (including at a place not intended for that purpose), the use of the qualification 'illegal border crossing' is, from a legal perspective, an abuse. Indeed, the international refugee protection regime provides that a person without a formal permit to enter the country may submit an application for

---

she is able to obtain such funds in accordance with the law in order to cover: the maintenance costs during the foreigner's stay within the territory of the Republic of Poland, his/her return travel to the country of origin or residence, transit through the territory of the Republic of Poland through a third country that will grant him/her a permit to enter that territory, 4) evades the obligation to replace or return a residence card, a Polish travel document for a foreigner, a Polish identity document for a foreigner or a permit for tolerated stay, 5) fails to submit a notification of loss of a residence card, a Polish travel document for a foreigner, a Polish identity document for a foreigner or a permit for tolerated stay within three days of the loss thereof, 6) fails to fulfil the obligation to leave the territory of the Republic of Poland within the period specified in a decision on imposing the return obligation on a foreigner or in a decision to extend the deadline for voluntary return, 7) fails to fulfil the obligation to report at specified intervals to the authority indicated in a decision to extend the deadline for voluntary return, 8) leaves the place of residence designated in the decision to extend the deadline for voluntary return, 9) has entered the territory of the Republic of Poland on the basis of a local border traffic permit and: resides outside the border zone within which the holder of the permit is authorised to stay, or has not left the territory of the Republic of Poland after the residence period specified in the permit has passed.

[34] Consolidated text, Dz. U. (Journal of Laws) of 2023, item 735.

[35] According to Article 2(1)(14) of this Act, a foreigner performs work illegally if: he does not have a valid visa or other document entitling him to stay in the territory of Poland (e.g. a residence card), his basis of stay excludes the performance of work (e.g. it is a visa issued for tourist purposes), he does not have an appropriate work permit, or if he is not exempted under specific provisions from the obligation to have a work permit.

international protection. In a situation where it is not possible to submit such an application at an official border crossing point, such an application may be submitted to the authorities after having crossed the border elsewhere. The right to international protection also entitles such a person, in specific situations, to cross the state border despite not having a specific permit – precisely in order to submit an application for international protection[36]. In such a case, however, this crossing of the state border cannot be considered unlawful behaviour. This also applies to persons who provide assistance to refugees. The stay of an applicant for international protection cannot be treated as illegal either, whereby provision of assistance for such a stay does not constitute fulfilment of elements of a crime.

Only in a situation where a given person does not have a motive to apply for international protection and refugee status, or where he/she treats the submission of an application for such assistance in an obviously instrumental manner (knowing that he/she is not entitled to such protection), can an illegal border crossing be considered to have taken place. On the other hand, in the case of even instrumental submission of an application for international protection, the stay of such a person in Poland until the application is examined cannot be treated as illegal. During this procedure, the person has the right to stay in Poland – and the conditions of this stay are set by the public authorities. Breach of these conditions (e.g. leaving the detention centre) does not make the stay of such a person in Poland illegal – the provision speaks of a stay "on the territory of the Republic of Poland in breach of the regulations"[37]. Such a person, during the examination of an application for international protection, is staying on the territory of Poland legally, but breaches the obligation imposed on them on that territory to remain in a detention centre. The situation would be similar in the case of a foreigner residing legally in Poland, who would not comply with the criminal measure of prohibition to leave a specific place imposed on them.

It is additionally worth emphasising that helping with transporting persons across the territory of Poland to a third country does not constitute the fulfilment of the offence of providing assistance in illegal stay. If such assistance was promised earlier, even before the illegal crossing of the border, the criminal liability for providing (mental) assistance to the offence under Article 264(2) of the Penal Code may come into play, provided, of course, that the illegal crossing of the border was of a qualified nature, as described in this provision. Crossing the border between Poland and a third country, provided that the crossing of the border was carried out in "cooperation with other persons" or by means of "violence, threat or deception" may also constitute criminal assistance. At the same time, mere assistance given to immigrants who have crossed the Polish border in violation of the law, consisting in their transport to a third country, does not constitute the

[36] See more in M. Grześkowiak, *Transpozycja zasady non-refoulement do polskiego systemu ochrony uchodźców*, 'Studia Iuridica' 2018, No. 76, pp. 199 ff.

[37] Article 264a of the Penal Code.

fulfilment of the elements of assistance in illegal stay in the territory of Poland, provided that the aforementioned qualified elements of Article 264(1) of the Penal Code are not fulfilled.

On the other hand, any activity aiming at satisfying the needs of an immigrant illegally present on the territory of Poland is not "facilitation of stay". Not every contact with such an immigrant or entering into certain social or economic relations with them constitutes "facilitation" of stay as such[38]. In the perspective of the elements of the offence under Article 264(2) of the Penal Code, it is therefore about the comprehensive permanent satisfaction of needs (housing, food, sanitation). Thus, helping an immigrant to move to another country is certainly not "facilitation of residence".

For obvious reasons, humanitarian aid given to an immigrant[39] does not constitute fulfilment of elements of the offence of "facilitating residence" either. This also applies to the case of the transfer of such assistance beyond the physical barrier which is intended to prevent the movement of immigrants into the territory of Poland. In particular, the transfer of assistance in kind in this case does not imply the movement of specific goods beyond the national border. Indeed, the physical barriers stand on the territory of Poland, and the stay of the immigrants in front of these barriers is of a temporary nature and cannot be described as 'residence' within the meaning of Article 264(2) of the Penal Code. The essence of humanitarian aid in such a case does not boil down to the perpetuation of the state of residence of immigrants in front of protective barriers, but only to the satisfaction of the basic life needs[40].

---

[38] Although many authors point out that the general criminalisation of 'providing assistance' to an illegal immigrant was intended to have a deterrent effect on any contact with immigrants: "Contact with foreigners is supposed to be risky and may end in criminal charges" (statement by the Council of Europe Commissioner for Human Rights quoted in V. Mitsilegas, *The Criminalization of Migration in the Law of the European Union. Challenging the Preventive Paradigm,* (in:) G.L. Gatta, V. Mitsilegas, S. Zirulia (eds), *Controlling Immigration Though Criminal Law. European and Comparative Perspective on 'Crimmigration'*, Hart 2021, Chapter 3. As a result, those who argue that it is EU law that has led to humanitarian aid being treated as a criminal act, although in countries particularly confronted with mass immigration this has been met with an unequivocally negative reaction from the courts (cf. the Italian or French court ruling. The French Constitutional Council introduced the source of the right to provide humanitarian aid on national territory from the principle of fraternity, which must be confronted with the protection of public order. Interestingly, however, they do not extend humanitarian aid to assistance in the illegal border crossing itself, narrowing it down exclusively to assistance given to immigrants already within the French Republic. The fraternity thus ends at the national border (Constitutional Council Decision No 2018/717-718 QPC of 6 July 2018).

[39] More extensively in A. Barczak, W. Wróbel, *Udzielanie pomocy humanitarnej jako zachowanie (pierwotnie) legalne*, 'Iustitia' 2022, No.1(47), pp. 14 ff.

[40] It should be noted that only a few EU Member States have chosen to introduce explicitly a non-criminalisation clause for humanitarian assistance as an exception to the general principle of criminalising the provision of assistance to unauthorised entry, transit and residence within the European Union (see Commission Staff Working Document. REFIT. Evaluation of the EU

Criminalisation of human trafficking is one of the instruments used to prevent illegal immigration. This is reminiscent of the former US measure mentioned already, which excluded the possibility of granting residence in the US to women and children. It would seem that the reason for criminalising such behaviour is obvious, just as the harm to those who are victims of this practice is obvious. However, it should be borne in mind that the same laws that oblige that human trafficking be criminalised create the possibility of criminalisation. Indeed, the offence of trafficking can take two forms. One of them can be described as the proper offence of human trafficking. It boils down to behaviour consisting, inter alia, in transporting (or arranging transport for) and transferring to another country of persons who are subject to specific exploitation as a result of the use of violence, threats, dependence, exploitation of error or critical position, even with the consent of those persons. In this aspect, however, performing acts treated as human trafficking presupposes a certain degree of cooperation by the trafficked persons. This in turn leads to the conclusion that victims of human trafficking often formally become at the same time perpetrators of the crime of illegal border crossing in cooperation with other persons. However, there is a form of organising the illegal crossing of the border and their stay in the country in violation of the law, which does not really fall within the scope of this treaty crime. Rather, it is then the smuggling of people. Even if the organisers derive a financial benefit from their actions, there does not have to be a situation of exploitation (even if by deception) between them and the immigrants in every case. Indeed, these are situations where we are in fact dealing with a service paid for by equal partners. Those organising the transport of immigrants are paid just like any other transport company. It is just that they operate outside the boundaries of the law. Their service is reduced solely to transporting and smuggling across the border. In such a case, if we speak of human trafficking, it is only by exploiting the critical situation of those who, having no legal means of reaching the European Union, will use illegal transport. Perhaps even in such a situation, it could be assumed that there is economic exploitation of those benefiting from such services. The status of trafficked persons is different from that of those who have actually been smuggled into the European Union. The victims of trafficking may not even be victims, but are rather those who are complicit in the illegal border crossing, with what is being smuggled being themselves.

Such smuggling does not constitute a separate offence under Polish law, but is sanctioned under Article 264(3) of the Penal Code. Immigrants, by necessarily collaborating in the illegal crossing of the border with the smugglers, then fulfil the elements of the offence under Article 264(1) of the Penal Code. It must, however, be established in each case under what circumstances an agreement on

---

legal framework against facilitation of unauthorised entry, transit and residence: the Facilitators Package (Directive 2002/90/EC and Framework Decision 2002/946/JHA), Brussels, 22.3.2017, SWD(2017) 117 final.

cooperation in illegal border crossing was concluded. This is because very often the decision to leave the country and take the risk of illegal immigration stems from the critical situation in which the person finds himself. And it does not have to be only a situation of imminent threat to life or health, but also a critical situation of an economic nature – lack of means to live, a wish to secure a living for oneself or one's relatives or extreme poverty. In doing so, it is unacceptable to apply criteria that assume a different range of needs and standard of living for those who decide to immigrate compared to the way in which critical economic circumstances are defined in relation to their own nationals.

The crime of human trafficking is one in which illegal immigrants become victims of perpetrators, i.e. traffickers who organise, inter alia, the illegal crossing of a border. The relationship between the perpetrators of trafficking and the victims of this crime is characterised by exploitation and abuse, whether of critical position or helplessness. Traffickers exploit the state of migrants' helplessness, intimidation or errors. In doing so, it should be emphasised that not every organised illegal border crossing amounts to human trafficking. Even if the organisers derive a financial benefit from their actions, there does not necessarily have to be an exploitative situation (even if by deception) between them and the migrants in every case. In such a situation, the term human smuggling rather than human trafficking should be used.

The problem regarding human smuggling and trafficking is that it should in fact be linked to cross-border organised crime, so that humanitarian aid and assistance provided to family members (next of kin) are excluded from the scope of criminalisation. Meanwhile, it should be noted that, in addition to humanitarian aid, it is problematic from the perspective of the principles of criminal responsibility to extend the scope of criminalisation also to next of kin providing assistance to migrants' residence or border crossing. This assistance is often motivated by the desire for family reunification. This is a motive so strong that it is difficult to imagine that state law would be able, even with sanctions, to exclude this type of action. It is reminiscent of the exclusion of punishment of next of kin in the case of criminal acts against the administration of justice. It does not make a significant difference whether someone is helping a loved one to avoid criminal liability or to avoid deportation or cruel living conditions and sometimes persecution in the country of origin. There is no doubt in my mind that in such a situation, given the provision of Article 1(3) of the Penal Code, i.e. the principle of fault, criminal liability of the next of kin will be excluded due to the impossibility of attributing fault to them. This applies in particular to the type of offence of aiding and abetting illegal residence for the purpose of personal gain. It is, moreover, characteristic that this attainment of personal benefit is an original idea of the Polish legislator, as such criminalisation is not required by the Palermo Protocol.

It is interesting to note that the Palermo Protocol, in Article 5, clearly indicates that immigrants should not be subject to criminal liability for offences related to

trafficking (smuggling) in human beings, they will be the victims of the commission of these crimes, although at the same time the same Protocol declares the autonomy of States Parties in the introduction of criminal provisions for immigration-related offences that are not trafficking (smuggling). There are differences of opinion among commentators on the Protocol as to whether immigrants can be held criminally liable for simply crossing the border illegally or staying in the country without proper authorisation. This is particularly the case for immigrants smuggling other immigrants. The Legislative Guide for the Implementation of the Protocol indicates that the obligation to criminalise under the Protocol applies to those who organise smuggling within organised criminal groups and not to the immigrants themselves, even if the commission of the offence depends on the illegal crossing of the border or the illegal stay of the latter. The mere illegal crossing of a border may be considered a crime in some countries, but it is not a manifestation of organised crime. It is also worth noting the position of the Canadian Supreme Court, which dealt with the question of the scope of criminalisation under the Protocol. This scope does not include mutual assistance provided by refugees themselves, family assistance and the objective of family reunification and humanitarian aid.

Also Directive 2011/36/EU declares – albeit in a less emphatic manner – that victims of human trafficking are not punished for the mere illegal crossing of the border and illegal stay[41]. A more categorical statement was made by the CJEU in a completely different context, indicating that criminalisation of migrants for the crime of illegal border crossing or illegal stay is contrary to the aims that the EU Return Directive is supposed to pursue. In the case of El Dridi v Italy, an immigrant was convicted of being in Italian territory without authorisation. The CJEU stated that a criminal sanction cannot be introduced when an immigrant has not left the territory despite an order to return. Rather, the State should enforce this order, as punishment leads to a delay in enforcement and is therefore contrary to the purpose of the Return Directive 2008/115/EC. In this rather perverse way, the CJEU considered that the introduction of criminal liability of immigrants themselves for the act of illegal stay or illegal crossing of the border is contrary to EU law[42].

Victims of human trafficking cannot at the same time be perpetrators of the crime of illegal border crossing in cooperation with other persons. Leaving aside

[41] Article 8: Non-prosecution or non-application of penalties to victims Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities that they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.

[42] Case C-61/11 PPU, *Hassen El Dridi, alias Soufi Karim*, ECLI:EU:C:2011:205. A similar decision was reached in C-329/11, *Alexandre Achughbabian v Préfet du Val-de-Marne*, ECLI:EU:C:2011:807.

the inadmissibility of combining the procedural roles of the victim and the perpetrator of the same offence, it must be considered that the introduction of the prohibited act type of trafficking in human beings must have meant a normative exaggeration that the victims of this offence cannot be ascribed guilt due to the assumed situation of exploitation in the realisation of the elements of the offence of trafficking in human beings. Such an interpretation also makes it possible to meet the already mentioned requirements of the Court of Justice of the EU to ensure the effectiveness of the Readmission Regulation. Indeed, it should be borne in mind that victims of human trafficking do not automatically enjoy refugee status and international protection. They may therefore be subject to readmission procedures.

It is worth emphasising in this context that the main international instrument against trafficking in human beings, the Palermo Protocol, focuses in principle on the perpetrators of this crime and not on its victims. There is no mention of specific guarantees for victims – in terms of their treatment, right to asylum or protection from expulsion. There is only a small mention of the possibility of providing temporary residence rights for the duration of criminal proceedings against perpetrators of trafficking. At the same time, this situation makes the anti-trafficking instruments contained in the Protocol ineffective. It is obvious that a victim of human trafficking, due to the fear of deportation, will not be willing to report the fact of committing such a crime to law enforcement authorities or to testify against their perpetrators. The state itself thus pushes victims of trafficking into an illegal grey area, only reinforcing their degree of dependence on traffickers.

Commentators on EU immigration policy stress that the introduction of criminalisation of human trafficking was in fact a way of limiting the influx of migrants. It is also stressed that, as a result of the adoption of the Palermo Protocol and the introduction of international instruments to combat human trafficking, it has perversely and paradoxically worsened the situation of migrants, i.e. victims of trafficking, and made border crossing even more dangerous for them[43]. The criminalisation of illegal border crossing and stay may in effect lead to the stigmatisation of an entire group as dangerous persons. It is also worth bearing in mind that very often migrants, being objects or victims of trafficking, enter a shadow zone after being trafficked illegally across the border – they cannot be visible to the public authorities of a country, which necessarily draws them into the danger space of organised crime or other social dysfunctions.

Another consequence of the Palermo Protocol also involves the creation of a normative basis for the privatisation of border control. The destination countries, which are better organised in terms of transport and are richer, oblige their own transport companies to carry out checks on immigrants on the territory of

[43] See V. Mitsilegas, 2021, *op. cit*., Chapter 3.

the foreign country by applying their restrictive immigration laws, which in fact leads to the privatisation of this control and pushes immigrants out of official and safe transport channels. This is because refugees and economic migrants cannot, as a rule, show that they have the right documents to enter the destination country. These documents should be issued by the country they wish to flee, e.g. because of political persecution. Moreover, private transport corporations are not entitled to receive applications for international assistance. Thus, by privatising border control, the state is in effect exempting itself from compulsory refugee procedures guaranteed by international treaties. This is all the more so because, most often, international protection instruments cannot be used in the place from which one wants to come – they only appear at the border.

As highlighted earlier, illegal border crossing is a characteristic way of carrying out another crime – human trafficking and slavery. The state of slavery is often conditioned by physical and geographical remoteness from the place of permanent residence and natural social and cultural (linguistic) environment. It is this state of remoteness which makes it impossible to realistically return from this state and break out of a relationship of dependency that limits individual freedom, that leads to a state of enslavement and objectification. This objectification and state of dependence also means the relocation of the individuals concerned to a place where they themselves are unable to protect their own interests. The dynamic characteristic of human trafficking (transport, delivery, transfer) directly suggests a change of location that excludes the simple breaking of a dependency relationship. In this perspective, the illegal crossing of the border makes the possibility of return considerably more difficult, especially when the disclosure of this illegal crossing can realistically entail detention in a centre and thus deprivation of liberty. Paradoxically, the policy of a state protecting its borders and controlling the stay of persons on its territory may increase the volume of victims of the crime of human trafficking from the perpetrators of this crime. Illegally crossing more borders becomes a means of dependency increasing the degree of objectification of these victims.

Saturation of immigration law with procedures and measures characteristic of criminal law is a completely different issue[44]. The system is created for immigrants crossing the borders illegally and based mainly on detention centres, where they are basically housed as in prisons. This makes the real punishment for crossing the border illegally, but at the same time for being a victim of the crime of human trafficking, a disguised prison sentence, consisting in fact of a forced stay in a detention centre. Indeed, these centres are the main instrument for dealing with the wave of immigration, also to the extent that it is necessary to carry out administrative actions related to the possible protection granted to refugees. Para-

[44] A.R. Ackerman, M. Sacks, R. Furman, *The New Penology Revisited: the Criminalisation of Immigration as a Pacification Strategy,* 'Justice Policy Journal' 2014, No. 1(11), pp. 3 ff.

doxically, therefore, the protection of victims of the crime of trafficking turns into a quasi-punishment applied under immigration law, which is subject to a process of criminalisation.

Illegal border crossing by an immigrant does not constitute a crime, but only a misdemeanour. This also applies to leaving the territory of the Republic of Poland in a place not intended for this purpose or without the appropriate authorisation (this is the case with the internal borders of the Schengen Agreement countries). The criminalisation of immigration law, however, makes the mere illegal crossing of the border an implicit premise for detention of an immigrant, once apprehended, in a closed, guarded centre, which is a form of deprivation of liberty, albeit not called a punishment. This is an unambiguous use of criminal law measures to combat illegal immigration. It should be emphasised here that the guarantee instrument, characteristic of criminal law, is not preserved in this case. Thus, the guilt of the immigrant for the act of illegally crossing the border is not proven. The fact that under criminal liability, e.g. as a victim of human trafficking, such an illegal border crossing could not be treated as a crime is irrelevant. Immigration law also does not know the institution of a statute of limitations for the act of illegal border crossing[45].

It is also argued that the decision on readmission of an immigrant is in fact similar to the punishment of banishment (expulsion outside the territory), which is still provided for in some penal codes (e.g. the Czech Penal Code – although in practice this punishment does not function in the Czech Republic). In essence, the administrative measure of readmission of a person who has illegally entered the territory of the country and the penalty of expulsion linked to the commission of the criminal act of illegally crossing the border can be very similar. However, it is predominantly administrative in nature, related to enforcing the effectiveness of the administrative norms prohibiting the crossing of the state border by foreigners without the appropriate authorisation. Readmission would, however, change its nature if it were used as an administrative measure imposed on aliens legally present in the country who have committed a crime or a misdemeanour, which may constitute a premise in itself for declaring their stay illegal and expelling them from the country (readmission). This is the systemic solution adopted in the USA. In such a case, indeed, readmission becomes an additional punishment for the commission of a crime by a foreigner and its application would raise fundamental constitutional problems, due to the procedure for the application of readmission (administrative courts, administrative procedure devoid of the guarantee elements of the criminal procedure). Such a punishment of "banishment" also

[45] It should be noted, however, that the crossing of the border by a foreigner under the procedure for readmission of a foreigner to Poland, as the first country in which they submitted an application for international protection, does not have the character of an "illegal border crossing". Therefore, it cannot constitute a premise for the application of detention in a guarded centre.

raises reservations in the perspective of the constitutional principle of equality. This is because it cannot be imposed on its own citizens.

It is also out of the question to treat it as a specific protective measure – as this would have to lead to the acknowledgement that it is possible to apply administrative instruments leading to the removal of a foreigner from the territory of a given country at any time, regardless of the nature of the committed act and the actual degree of danger related to the person concerned. This contradicts the essence of protective measures and also the inclusion of the foreigner in the constitutional protection of their fundamental rights and freedoms. On the basis of the idea of the rule of law, it cannot be assumed that a foreigner, by the very fact of lacking citizenship, may be covered by the presumption of "danger", which could justify the application of readmission (deportation) in every case of violation of the law by a foreigner in a given country, especially when their stay is legal.

The permissibility of the measure of deportation of a foreigner legally residing on the territory of a country, if they have committed some crime in that country, is based on the profound assumption that this foreigner does not enjoy full constitutional rights and in principle remains under control at all times – it is therefore permissible at all times to check and assess the degree of danger that may be associated with the presence of the foreigner. Indeed, even their legal stay is treated as conditional – revocable at any time in the event that they violate the country's legal order. The foreigner's status is therefore permanently insecure, and they may in a sense be subject to constant scrutiny and verification of the possible degree of threat that is associated even with their legal residence, this threat being a very under-defined category as it is not clear what goods and values the foreigner is supposed to threaten. Sometimes when listening to politicians, one gets the impression that they openly state that the threat is the "otherness" itself, expressed in foreign customs and traditions, and the discomfort of confronting this otherness.

REFERENCES

Ackerman A.R., Sacks M., Furman R., *The New Penology Revisited: the Criminalisation of Immigration as a Pacification Strategy,* 'Justice Policy Journal' 2014, No. 1(11)

Barczak A., Wróbel W., *Udzielanie pomocy humanitarnej jako zachowanie (pierwotnie) legalne*, 'Iustitia' 2022, No.1(47)

Brodowski D., *Modal Znamię przemocy, podstępu i współdziałanie na przykładzie art. 264 § 2 Kodeks karnego*, 'CzPKiNP' 2022, Nos 1-2

Czeredys-Wójtowicz M., Śliwiński M., Gałek D., *Odpowiedzialność karna za nielegalne przekroczenie granicy państwowej*, 'Iustitia' 2022, No. 1(47)

Das A., *No Justice in The Shadows. How America Criminalizes Immigrants*, New York 2020

Gardocka T., Majewski Ł., *Wydalenie niepożądanego cudzoziemca*, (in:) T. Gardocka, J. Sobczak (eds), *Uchodźcy w Polsce i Europie. Stan prawny i rzeczywistość,* Toruń 2010

Garrett B.L., *Corporate Crimmigration*, 'University of Illinois Law Review', 2021, No. 2

Grześkowiak M., *Transpozycja zasady non-refoulement do polskiego systemu ochrony uchodźców*, 'Studia Iuridica' 2018, No. 76

Guild E., *The Criminalisation of Migration in the Law of the European Union: Challenging the Preventive Paradigm,* (in:) G.L. Gatta, V. Mitsilegas, S. Zirulia (eds), *Controlling Immigration Though Criminal Law. European and Comparative Perspective on 'Crimmigration'*, Hart 2021

Hauptman S., *The Criminalisation of Immigration*: *the Post 9/11 Moral Panic*, El Paso 2013

Hernandez C.C.G., *Creating Crimmigration*, 'Brigham Young University Law Review' 2013

Hernandez C.C.G., *Deconstructing Crimmigration,* 'UC Davis Law Review' 2018, No. 1(52)

Lamche A., *Refugee Mission Volunteer is Branded 'Spy'. Diver Taking Part in Refugee Rescues is Accused of 'Baseless' Crimes*, 'Islington Tribune', 13 January 2023, https://www.islingtontribune.co.uk/article/refugee-mission-volunteer-is-branded-spy (accessed 04.01.2024)

McKanders K.M., *Unforgiving of Those Who Trespass Against U.S.*: *State Laws Criminalizing Immigration Status*, 'Immigration and National Law Review' 2011, No. 32

Mitsilegas V., *The Criminalization of Migration in the Law of the European Union. Challenging the Preventive Paradigm,* (in:) G.L. Gatta, V. Mitsilegas, S. Zirulia (eds), *Controlling Immigration Though Criminal Law. European and Comparative Perspective on 'Crimmigration'*, Hart 2021

Observatory of the Refugee and Migration Crisis in the Aegean, *Observatory News Bulletin: On the Arrest of Members of the NGO Emergency Response Center International (E.R.C.I.)*, last updated 18 December 2018, https://refugeeobservatory.aegean.gr/en/observatory-news-bulletin-arrest-members-ngo-emergency-response-center-international-erci-updated (accessed 04.01.2024)

Rosenbloom R.E., *Beyond Severity: A New View of Crimmigration*, 'Immigration and National Law Review' 2019, No. 40

UN Office of the High Commissioner for Human Rights, *Trial of human rights defenders in Greece for helping migrants,* 13 January 2023, https://www.ohchr.org/en/press-releases/2023/01/trial-human-rights-defenders-greece-helping-migrants (accessed 04.01.2024)

Vazquez Y., *Crimmigration: the Missing Piece of Criminal Justice Reform*, 'University of Richmond Law Review' 2017, Vol. 51(4)