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Facilitator or victim? On punishment for facilitating illegal border crossings during the Polish–Belarusian humanitarian border crisis

Pomocnik czy ofiara? O karaniu za ułatwianie nielegalnego przekraczania granicy podczas polsko-białoruskiego humanitarnego kryzysu granicznego

Abstract: Punishing perpetrators for facilitating illegal border crossings or illegal stays is one of the priorities of the European Union's migration policy. The author decided to take a look at the practice of such criminal proceedings before Podlasie courts (a region bordering Belarus). In this case, does it truly involve organising an illegal procedure – especially when it comes to family members or co-workers? The purpose of this article, therefore, is to examine the criminal case files of those convicted of organising illegal border crossings – individuals whose behaviour consisted solely of picking up migrants who were already in Poland. Law enforcement authorities charged such people, mainly foreigners, with aiding and abetting the organisation of illegal border crossing. The author addresses the question of whether such behaviour fulfils the elements of the crime specified in Article 264 (3) of the Criminal Code, and what scope of freedom the actors have when deciding on the charges and convictions.

Keywords: facilitation, illegal border crossings, discretion, criminal liability, family members

Abstrakt: Karanie za ułatwianie nielegalnego przekraczania granicy lub nielegalnego pobytu jest jednym z priorytetów polityki migracyjnej Unii Europejskiej. Autorka postanowiła przyjrzeć się praktyce prowadzenia postępowań karnych przed podlaskimi sądami (region graniczący z Białorusią) przeciwko organizatorom nielegalnego przekroczenia granicy. Czy w tym przypadku rzeczywiście mamy do czynienia z organizowaniem nielegalnego procederu, zwłaszcza gdy są to członkowie rodziny lub współpracownicy? Celem niniejszego artykułu jest zatem omówienie wyników analizy akt spraw karnych osób skazanych za organizowanie nielegalnego

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przekraczania granicy – osób, których zachowanie polegało wyłącznie na odbieraniu migrantów przebywających już w Polsce. Organy ścigania postawiły takim osobom, głównie cudzoziemcom, zarzut pomocnictwa w organizowaniu nielegalnego przekraczania granicy. Autorka pragnie udzielić odpowiedzi na pytanie, czy zachowanie takich osób wypełnia znamiona przestępstwa określonego w art. 264 § 3 k.k. oraz jaki jest zakres swobody podmiotów podejmujących decyzje o przedstawieniu zarzutów i skazaniu.

Słowa kluczowe: ułatwianie, nielegalne przekraczanie granicy, uznaniowość, odpowiedzialność karna, członkowie rodziny

Introduction

In the 20th and 21st centuries, states have reinforced the trend of criminalisation in the area of immigration. International and regional bodies such as the United Nations and the European Union have mandated the criminalisation of certain immigration violations. Global trends have also been used to prevent economic migrants from abusing the asylum system (Aliverti 2013: 118). European institutions indicate that most irregular migrants travelling to the EU used the services of smugglers (EUROPOL 2016).[1] Therefore, punishing facilitators has become a priority of the European Union's migration policy (Arrouche, Fallone, Vosyliute 2021: 3; Carrera 2021: 8; European Commission 2021: 17–19; Garcia 2023: 198). International law and European law provide the basis for establishing "immigration offences" in the national laws of individual countries. Some immigration offences are intended to deter people from violating immigration laws in order to ensure the smooth and effective operation of the immigration control system (Aliverti 2013: 119). They are also used to implement current state policy that is not always in accordance with the *ratio legis* of these laws, and sometimes not in accordance with the principles of criminal responsibility.

In Poland, the issue of liability for immigration offences has resounded loudly since the 2021 Polish–Belarusian border crisis. The Border Guard consistently reports violations of criminal law constituting immigration offences committed mainly by foreigners – in particular, third-country nationals, but also EU citizens. Practically every day there is information about the number of third-country nationals "trying to illegally enter the territory of Poland" as well as "couriers"[2] transporting those who managed to cross the Polish–Belarusian border. As indicated by the Border

[1] Similar estimates have also been made in the past. See e.g. the Migration Policy Institute (Securing Borders: The Intended, Unintended, and Perverse Consequences 2014) or the Global Initiative against Transnational Organized Crime (Smuggled Futures: The Dangerous Path of the Migrant From Africa to Europe 2014), according to which more than 80% of irregular migrants from Africa reach the EU with the help of smugglers and criminal groups.

[2] The Border Guard uses the term "couriers" to describe people who come to the border area to pick up people who have crossed the border with Belarus and transport them into Polish territory (Dobuszyńska 2024; Grzech 2024).

Guard itself, such couriers are charged with aiding and abetting the organisation of illegal border crossings, and administrative proceedings are initiated to oblige them to return to their country of origin and to ban them from entering Schengen countries for 5 to 10 years (Na granicy 2023; Szczepańska 2023a; Szczepańska 2023b; Szwed 2023). According to Border Guard statistics, there has been an increase in the number of acts qualified under Article 264(3) of the Criminal Code (hereinafter "PCC"; Journal of Laws of 2022, item 1138), i.e. organising the crossing of the border of the Republic of Poland in violation of the law. In 2019 there were 193 suspects, whilst there were 135 in 2020, 390 in 2021 and 664 in 2022. Thus, between 2019 and 2022 the number of persons suspected by the Border Guard of violating Article 264(3) more than tripled. Compared with the total number of suspects in Poland, these numbers are insignificant, however, because the Border Guard reported 4,821 suspects in 2022 and the police reported 317,077.

Starting in 2021, the migration crisis, or rather the humanitarian crisis (Kubal 2021; Balicki 2022: 84–85; Grześkowiak 2022), was also experienced by Poland. This had to do with the development of the eastern border route leading through Belarus to Western European countries (Frontex 2021: 28). In its aftermath, a state of emergency was introduced in parts of Podlaskie and Lubelskie provinces, which resulted not only in changes in legislation, but also in limited knowledge of migrants' situation in the Polish–Belarusian borderland (Perkowska, Adamczyk, Jomma 2024: 182). Since then, it can be said that the deterrence policy (Hathaway 1992; Gammeltoft-Hansen, Tan 2017) towards non-European immigrants which has been in place since 2015 has taken a major turn (Klaus 2020: 86, 302–303; Klaus, Szulecka 2022: 11; Perkowska, Gutauskas 2023: 128) and the government has introduced collective expulsion implemented through pushbacks (Górczyńska, Czarnota 2022: 8; Klaus et al. 2021: 14; Bieńkowska 2023: 180). The government chose the route of issuing administrative decisions to expel foreign citizens of third countries who cross the Polish–Belarusian border, although theoretically it might have been tempted to charge them with a crime or at least a misdemeanour for crossing the Polish border in violation of the law. In contrast, the authorities took a different attitude towards those who come to the border area to pick up migrants. These individuals, regardless of their citizenship, face criminal charges for arranging for others to cross the Polish border in violation of the law. The border services' pushback causes those crossing irregularly, whether they could be classified as refugees or not, to choose to hide in the woods and then use the services of the couriers. This clearly leads to the development of smuggling networks at the border because the goal of the migrants is to cross the border unnoticed and get to the West without coming into any contact with the Polish authorities (Grześkowiak 2023).

Under Polish law, since 2004 crossing the border of the Republic of Poland in breach of the law constitutes a misdemeanour under Article 49a of the Misdemeanours Code, punishable by a fine of up to PLN 5,000, because the legislature decided to decriminalise illegal border crossings (Perkowska 2013: 506; Klaus, Woźniakowska-Fajst 2015: 195). However, crossing the country's border in violation

of the law with the use of deceit, violence or threats or in cooperation with other persons is already a criminal offence under Article 264(2) PCC and punishable by up to 3 years' imprisonment. Article 264(3) PCC criminalises the organisation of a border crossing by other persons in violation of the law, which is punishable by imprisonment of 6 months to 8 years.

I decided to look into the practice of criminal prosecutions in Podlasie courts (a region bordering Belarus) against people who pick up migrants from the border region. Is this truly a case of organising an illegal process? The purpose of this article is to examine the criminal files of those convicted of organising illegal border crossings. This behaviour consisted solely of picking up migrants who already were on Polish territory. Law enforcement authorities charged such persons, mainly foreigners, with aiding and abetting the organisation of an illegal border crossing. I wish to verify whether such behaviour fulfils the prerequisites of the crime specified in Article 264(3) PCC, as well as the acts of international and European law that this provision implements. Therefore, the analysis of criminal case files will be preceded by an analysis of the statutory elements of the crime in question: organising the crossing of the state border in violation of the provisions of Article 264(3) PCC.

1. Aim, scope and methods of the analysis

I have long been puzzled by what law enforcement authorities and the judiciary understand by the term "organising". What behaviours do the authorities consider to fulfil the hallmark of organising, and how does this relate to the well-established jurisprudence and the doctrine discussed above?

The study involves 47 criminal case files in the District Court of Bialystok, Sokółka and Hajnówka. These three courts were chosen because their jurisdiction covers the territory of Poland near its border with Belarus. The files of criminal cases in which a person was convicted on the basis of the legal classification of Article 264(3) PCC between 2015 and 2022 were selected for analysis, which was focussed particularly on cases from 2021–2023, i.e. during the humanitarian crisis on the Polish–Belarusian border. Cases completed before this period were also analysed to verify whether the rules for qualifying the behaviour of perpetrators under Article 264(3) PCC had changed. This analysis revealed 69 perpetrators of acts under Article 264(3) PCC, citizens of the following countries: Azerbaijan, Belarus, Georgia, Germany, Iraq, Libya, Lithuania, Latvia, Moldova, Palestine, Poland, Russia, Romania, Sri Lanka, Syria, Tajikistan, Turkey and Ukraine. Another four perpetrators of the act under Article 264(2) PCC, who were citizens of Vietnam, were also reported. The largest numbers of convictions were for citizens of Ukraine (18), Syria (8), Georgia (8), Belarus (7), Iraq (5) and Germany (4).

Table 1. Legal qualification of the cases under study

Legal qualification	Number of cases
Article 264(3) PCC	6
Article 18(3) in conjunction with Article 264(3) PCC	33
Article 13(1) in conjunction with Article 18(3) and Article 264(3) PCC	5
Article 264(2) PCC	1
Article 18(3) in conjunction with 264(3) PCC and Article 223(1) in conjunction with 157(2) PCC	1
Article 18(3) in conjunction with 264(3) PCC and Article 177(2); 178b PCC	1

Source: Own elaboration.

Among the 47 cases analysed, there were 6 with charges for organising an illegal border crossing, as well as 38 cases in which perpetrators were charged with aiding and abetting the organisation of an illegal border crossing or attempted aiding and abetting (5 cases). In one case, in addition to the charge of aiding and abetting, there was also a charge of causing a fatal road accident. In another, the additional charge was an assault on a public official and causing slight bodily harm.

Another method used in the research was an in-depth interview with two Border Guard officers on duty at the Polish–Belarusian border. The interview was conducted in spring 2023, also during the Belarusian border crisis.

2. A few remarks on discretion in criminal cases

In analysing criminal case files, I also want to look at discretion in migration-related cases, specifically those which involve organising the crossing of a state border in violation of the law. Research on the power of discretion in migration-related cases in Poland is currently being undertaken by Witold Klaus and Monika Szulecka (2021a, 2021b). The authors start from the assumption that preventing unauthorised residence on Polish territory is one aspect of migration control in Poland. Based on empirical research involving court files related to this offence, they analysed the role and consequences of discretion in judicial decisions sanctioning behaviours identified as for-profit support of foreigners' stay in Poland in breach of the law (Klaus, Szulecka 2021b: 73).

It is in the daily discretionary behaviour of police officers, lawyers, judges and others that the legal system takes shape and gets things done. The abstract and often terse statements of the legislature are given form and purpose in the choices that legal actors make about the reach and meaning of their conception of the law. Decision-making is a pervasive feature of human activity, with consequences which are sometimes trivial or banal, sometimes drastic or dramatic (Hawkins 1986: 163).

Discretion in the criminal justice system can be seen on at least three levels and is implemented by three different types of actors. The first type is the police officers, who decide which person should be stopped or arrested. The second type includes prosecutors, who decide which cases should be pursued further and eventually brought to court. The third type relates to judges, who decide not only whether to convict, but also about the severity of the punishment (Bushway, Forst 2013: 201; van der Woude, van der Leun 2017: 29–30; Klaus, Szulecka 2021b: 75).

According to Pierre Bourdieu (1990: 87–88) the regulatory measures of the law are reinterpreted and redefined by the agents responsible for implementing them. According to the actors' dispositions and interests, they can use their manoeuvrability differently, ranging from strictly implementing to exempting or even transgressing the law. However, when it comes to immigration policies, a large part of the differential management of illegality depends on the temporal aspect of the law. The practice depends on legal disposition and administrative rules, but they cannot be understood outside of the time frame in which they are implemented (Spire 2020: 94). Therefore, actors are often concerned with the making of policy, or taking decisions about how to decide particular case types. Thus, decisions are not taken individually, but as part of a pre-established policy of deciding certain types of cases in a certain way (Hawkins 1986: 1171). In general, Keith Hawkins (1992) considers the heart of the discretionary process to be policymaking, which involves deciding on the goals and meaning of the law and how these ideas are to be shaped into strategies that enable their implementation. It is policy that shapes discretion and influences decisions taken in individual cases.

The same author points out that decisions taken earlier in the process or the way information, assessments or recommendations were made by others are important to the discretion of individual actors (Hawkins 1986: 1189). The judge takes into account the satisfaction of the entire criminal justice system, which includes all those involved in the case and extends to the society (Tata 2007: 439–441). This in no way undermines the idea of judicial independence. However, the presence (or absence) of various actors and the roles they play before and during the trial leave a mark on every judicial decision. The impact on the sentencing process becomes clearer if we think of the process as a pragmatic endeavour, and the judge as a craftsman who sees his job as rather boring and repetitive (Tata 2007: 427–428) and who is part of a broader social organisation (Klaus, Szulecka 2021b: 76).

Decisions are taken by largely invisible actors: officials and lawyers whose main concerns are related to handling and managing the stream of cases seen in interactional and organisational contexts (Hawkins 1986: 1164). Throughout the process of law enforcement and justice, discretion is of paramount importance. The various actors in this process in Poland, at the time of the humanitarian crisis on the Polish–Belarusian border, are not free from the influence of the state policy in the matter. This is due to the organisation of law enforcement agencies. The law enforcement agencies are the least apolitical and report to the Minister of Internal Affairs and Administration (the same minister who issued the border

ordinance which legalised the pushbacks [Ordinance of the Minister of Internal Affairs and Administration 2020]) through the prosecutor's office, which reports to the Minister of Justice, who is also the General Prosecutor. This undoubtedly sets the course for the decisions taken by the actors, greatly reduces discretion in migration matters and makes decisions an automatic process, sometimes different to before the crisis.

3. Statutory elements of the crime under Article 264 (3) of the Polish Criminal Code

Under Polish law, according to Article 264(3) PCC,[3] it is a crime to organise for others a border crossing in violation of the law; the act is punishable by imprisonment from 6 months to 8 years.

When defining the statutory elements of the offence, the legislature used the verb "to organise", which means to perform a sequence of actions aimed at making a certain event possible (The Great Dictionary n.d.) or planning and coordinating the various stages of an action (PWN Dictionary n.d.). Sticking to the linguistic meaning, the Court of Appeals in Krakow stated that organising a border crossing therefore means taking any actions that allow other people to cross the border of the Republic of Poland – typical preparatory and auxiliary activities for this act (Judgment of the Court of Appeals in Krakow II AKa 183/20). Alexander Herzog (2021: 1132) points out that organising constitutes arranging, preparing and determining the means of crossing. It is a very broad concept and includes all forms of facilitating the crossing of a state border. Janusz Wojciechowski (1997: 462) and Michał Kalitowski (2006: 801) point out that it refers to organised activity that is not one-off, but repetitiveSimilarly, Dagmara Gruszecka (2014: 963–965) points out that "by organising should be understood all ways and types of facilitating the crossing of the border, its preparation or arrangement". She further states that this crime is the domain of activity of smugglers of foreigners (Banasik 2017: 11; Judgment of the Court of Appeals in Krakow II AKa 183/20). On the other hand, Aneta Michalska-Warias (2024) understands organising as taking any action intended to enable others to cross the border of the Republic of Poland (Piórkowska-Flieger 2016: 781), which was also confirmed by the Supreme Court (Supreme Court Decision of 22 November 2016, IV KK 362/16).

[3] This provision has been in force since the enactment of the 1997 Criminal Code, but it was modified in 2004 and 2022, according to the legislature, in order to align the provisions of Polish criminal law with the requirements of the 2002 Package and the "Protocol against the smuggling of migrants by land, sea and air, supplementing the United Nations Convention Against Transnational Organized Crime", adopted by the United Nations General Assembly on 15 November 2000 (J.o.L. of 2005 No. 18, item 162).

The problem is determining when the organisation of an illegal border crossing occurs. The doctrine points out that organising includes activities that are undertaken prior to the execution of a border crossing in violation of the law. Article 264(3) PCC criminalises activities of organisation, which boil down to the prior creation of conditions that make such a border crossing possible (Ćwiąkalski 2017: 596). This is an example of criminalising behaviour that traditionally falls under the area of foregrounding the violation of a legal good. It is therefore necessary to agree with the ruling of the Court of Appeals in Lublin, which stated that

> [t]he use in Article 264 of the Criminal Code of the signifier "organising the transgression" shifts responsibility to a moment much earlier than the transgression itself, or more precisely, already to the stage of preparation. Accordingly, the commission of the crime will be the perpetrator's undertaking of actions having the conditions for illegal border crossing by at least two persons. (Judgment of the Court of Appeals in Lublin II AKa 250/08, Gruszecka 2021: 1132)

Doctrine and jurisprudence indicate that organising the crossing of the border in violation of the law will be to establish appropriate contact with people who want to illegally cross the border, putting them together in groups, arranging transportation (Kalitowski 2006: 801), making efforts to learn how the border is to be protected and the topography of the area where the border crossing is to take place, transporting people to the proximity of the border, instructing people on how they are to cross the border (Judgment of the Court of Appeals in Krakow II AKa 183/20), drawing up a map of the route, organising means of transportation, collecting a fee from candidates for illegal border crossing, harbouring persons who are to be illegally carried across the border, arranging for them to have the appropriate documents or providing them with false documents, acquiring items to facilitate the border crossing (Judgment of the Court of Appeals in Krakow II AKa 183/20), engaging persons to undertake the border crossing in a place not intended for it and bribing Border Guard personnel (Kalitowski 2006: 801). Mainly following Supreme Court Judgment WK 23/04, it is pointed out that this behaviour need not be reduced to efforts to ensure the physical crossing of the border itself, and may also consist of efforts to provide places of safekeeping for persons illegally crossing the border (Herzog 2023: 1720).

Aneta Michalska-Warias (2018: 241–242; 2024) points out that activity amounting to providing places of safekeeping or means of transport for illegal border crossers may constitute either aiding and abetting in the offences under Article 264 (2–3) PCC, a misdemeanour under Article 49a of the Code of Misdemeanours (J.o.L. of 2022, item 2151) or an offence under Article 264a(1) PCC. For an act to qualify under Article 264 (3) PCC, it is necessary to establish that the perpetrator organised the illegal border crossing itself, and not only certain elements indirectly related to it. As can be seen from the opinions of scholars and jurisprudence presented herein, facilitation is an element of organising, and organising itself consists of activities that facilitate illegal border crossing.

Similarly, Alexander Herzog (2023) points out that aiding and abetting in the commission of this crime (Article 18(3) in conjunction with Article 264(3) PCC) is applicable to those who provide a means of transport to a place of safekeeping for others after they have illegally crossed the border, if this is the result of a promise made before or during the commission of this crime, in line with a judgment of the Supreme Court (WK 23/04). From the point of view of this provision, an important element is the moment when the agreement between the helper and the perpetrator (organiser) occurs. Here, the Supreme Court opted to assume that the agreement, or basically the promise, must occur before or during the commission of the crime. At the same time, the Supreme Court did not indicate in the ruling in question whether it refers to the moment of committing the crime of organising the unlawful crossing of the border or the moment of the unlawful crossing itself. Nevertheless, assuming that it is only a matter of aiding and abetting in organising the crossing of the state border in violation of the law, the moment at which organising begins may sometimes be extremely difficult to determine, since, as indicated above, organising itself may consist of many individual acts. Such doubts, however, do not arise from the assumption that aiding and abetting can be done in the course of organising a border crossing, which from a procedural point of view is easier to determine. The question arises, however, whether the moment when the border is illegally crossed by those for whom it is organised should be taken into account. Do arrangements made between an organiser and a person providing transportation after an unlawful border crossing fulfil the prerequisites indicated by the Supreme Court? The Supreme Court's *de facto* ruling does not provide an answer to this question. Moreover, it would be necessary to determine what the organiser actually did. Regarding the situation on the Polish–Belarusian border, does an organiser who orders foreigners to be picked up from the border region only organise an illegal crossing of the Polish–Belarusian border and transport to the destination in Poland? Or do they also organise a further illegal crossing of the border of the Republic of Poland and, for example, Germany? It is important to determine the moment of promise and criminal liability of such a courier.

Jacek Postulski (2005: 98–99) criticises Supreme Court ruling WK 23/04, indicating that providing the main organiser of an illegal border crossing with a means of transport for transporting persons to a place of safekeeping after crossing the border does not constitute aiding and abetting. He points out that if organising a border crossing is also considered to include providing appropriate transportation, then the actions of a "helper" within the meaning of the Supreme Court's judgment of 25 January 2005 falls under the criminal prohibition of Article 264(3) PCC and a perpetrator providing a vehicle for the illegal transfer of people across the border is a co-organiser. In his opinion, in such a situation we are dealing with a complementary accomplice, implemented at the end of the actions of the perpetrator who is the main organiser of the crime.

Doubts about the Supreme Court's judgment were also raised by the Court of Appeals in Krakow (II AKa 183/20), stating that if the perpetrator's activity comes

down to only providing places of safekeeping or means of transport for persons illegally crossing the border of the Republic of Poland, then the perpetrator's actions – depending on the specifics – constitute either aiding and abetting the offences stipulated in Articles 264(2–3) PCC, a misdemeanour under Article 49a of the Code of Misdemeanours or the offence specified in Article 264a(1) PCC. In order for an act to qualify under Article 264(3) PCC, it is necessary to establish that the perpetrator organised the illegal border crossing itself, and not only certain elements indirectly related to it.

For criminal liability due to organising an illegal border crossing, the act must be committed intentionally and with direct intent (Ćwiąkalski 2017: 599; Herzog 2020: 1720; Michalska-Warias 2024). Thus, an individual's behaviour amounting to facilitating an illegal border crossing committed with intentional guilt but an alternative intent does not fulfil the statutory elements of Article 264(3) PCC.

As of 1 October 2023, section 4 of Article 264 PCC is in force, which extends the criminalisation of organising others' illegal border crossing to countries other than the Republic of Poland if an obligation to prosecute such an act results from an international agreement ratified by the Republic of Poland. According to the Explanatory Memorandum to the Law Amending the Penal Code (J.o.L. of 2022, item 2600), the amendment is

> due to the necessity of full and correct implementation into the Polish legal order of the Protocol against Smuggling of Migrants […]. The addition of section 4 in the proposed wording will result in the expansion of the scope of criminalisation to behaviours consisting in organising other persons to cross the borders of other countries against the law as well. The inability to hold perpetrators of the crime of organising the smuggling of migrants across a border other than the border of Poland criminally liable under the Criminal Code means that Poland has improperly implemented the Palermo Protocol. (Explanatory 2022: 83)

However, the scope of criminalisation is broader than that which results from the said Protocol. This is because the latter indicates as a condition for criminalisation the action of an organiser of migrant smuggling in order to obtain, directly or indirectly, a financial or other material benefit. In the provision in question, acting for financial or personal gain is not among the elements of the act, unlike in Article 264a(1) PCC, for example (Herzog 2023). Thus, the legislature has implemented the provisions too broadly and inconsistently with international law, once again potentially extending criminal liability to those who provide humanitarian aid and to family members of migrants (Perkowska 2023: 35).

Organising an illegal border crossing in both sections 3 and 4 of Article 264 PCC is punishable by imprisonment from 6 months to 8 years.[4] On the one hand, the upper limit of this penalty is quite high, and when the legislature increased it

[4] The threat of a sentence of up to 8 years in prison is one of the harshest in Europe. In addition to Poland, such a penalty is still prescribed in Spain and Cyprus. A harsher penalty of up to 10 years' imprisonment is only applied in Bulgaria, France, Greece and Ireland. The remaining EU Member States hand down lighter penalties (European Commission 2017: 28).

in 2004 the intention was to shape the decisions made in the process of applying the law (Krajewski 2023: 47). On the other hand, the upper limit of the penalty provides the possibility to apply other regulations from the PCC, which allow fines or the restriction of liberty to be applied instead of imprisonment. However, if a perpetrator commits an act under Article 264(3–4) PCC in order to obtain a financial benefit or if they obtained a financial benefit from the commission of the act, the court may impose a fine on the perpetrator in addition to a prison sentence. Moreover, if the perpetrator is sentenced to a term of imprisonment not exceeding 1 year, the court may conditionally suspend the execution of this sentence.

Organising an illegal border crossing may be a manifestation of the activities of an organised criminal group (Perkowska 2021). According to the current legislation, under Article 64(2) PCC, the court is required to impose a prison sentence ranging from the lower limit of the statutory threat increased by half to the upper limit of the statutory threat increased by half, i.e. currently up to 12 years.

4. Law enforcement officers' and judges' understanding of organising unauthorised entry

An analysis of the qualification of perpetrators' behaviour revealed that only eight perpetrators in five cases were charged and convicted on the basis of Article 264(3) PCC alone; in all these cases the perpetrators acted before 2021, i.e. before the crisis on the Polish–Belarusian border. Their behaviour consisted of a perpetrator driving a passenger car to transport migrants from the Lublin area to Finland, or perpetrators acting jointly and in concert to arrange for four Vietnamese nationals to illegally cross the border from Lithuania into Poland and transporting them across the border (case 1). The perpetrators' actions also consisted of commissioning two other persons to transport "illegal migrants from Latvia to Poland and then to Germany", offering them remuneration for doing so (case 2), a Belarusian organiser transporting money to a Polish organiser for "the participation of Poles in organising the crossing of the border of the Republic of Poland against the law" (case 3) and transporting from Lithuania to Poland Vietnamese nationals who did not have documents authorising them to cross the border (case 4). Qualifying such behaviour under Article 264(3) PCC is a practice of the Polish judiciary, confirmed in studies conducted on the period 2004–2013, in which it was established that the behaviour of foreigners in organising other illegal border crossings consisted in the following examples: transporting people in a concealed vehicle, driving them across the border in a place not intended for crossing the border, driving foreigners to a hotel near the Polish–German border and having another person organise transport to Germany or simply driving foreigners across the border

in a passenger car (without concealment) or transporting foreigners in a dinghy across a river border (Perkowska 2017: 213).

The seven perpetrators were convicted on the grounds of the legal classification of Article 13(1) in conjunction with 18(3) and 264(3) PCC. Such legal qualification was adopted by the court for situations in which the perpetrators were stopped for inspection by the authorities in the border area and indicated that they were traveling to a place marked on a map to pick up foreigners, after which the authorities at the location found individuals who had crossed the Polish border in violation of the law. Due to the fact that the perpetrators did not achieve their goal of picking up the foreigners, they were charged with attempting to assist the undetermined organisers of an illegal border crossing. The indictment usually contained such a description of the charged act:

> [the accused,] acting jointly and in concert with other as yet undetermined persons, attempted to provide assistance in organising the crossing of the state border illegally from the Republic of Belarus to the Republic of Poland by foreigners in this way, that he, as a driver, came to the vicinity of the area of the state border, near the place of illegal border crossing, in order to pick up and transport to an undetermined place citizens (of a third country) who had previously crossed the state border in violation of the law, but he did not achieve the intended purpose because he was detained by officers. (e.g. III K 397/22 2022; III K 583/22 2022; III K 311/22 2022)

The legal qualification of the prosecution adopted in these cases is based on the assumption that the perpetrators only attempted to carry out the act, and in fact only attempted to aid and abet and not to organise the crossing of the border in violation of the law. Thus, law enforcement authorities have assumed and the courts have confirmed that if a perpetrator comes to the vicinity of the state border (as a driver, as detailed in several cases) with the purpose of picking up those who have crossed the border, then they are not fulfilling the premise of organising an illegal border crossing. It is clear from the practice of the courts that providing a means of transport does not constitute organising a crossing of the border in violation of the law, but only assisting in its organisation. Such a position is contrary to the case law discussed above, but perhaps evidentiary issues were behind it, and what will follow later in the article.

Here we come to the construction of the legal qualification adopted in the indictments, as well as the convictions upheld against the largest number of perpetrators in the cases under analysis, Article 18(3) in conjunction with 264(3) PCC, i.e. aiding and abetting in organising the crossing of the state border in violation of the law. In the cases in question, 55 out of 72 perpetrators were charged with this crime. According to the wording of the indictments, the behaviour of the perpetrators consisted of

> providing assistance to undetermined organisers of the crossing of the border from the Republic of Belarus to the Republic of Poland against the law by [*here the number is indicated*] foreigners, in such a way that he arrived in a passenger car of the make of

> [*here the make of the vehicle and registration number are indicated*] in the border area of the Republic of Poland with the intention of picking up and transporting inland [here the *number is indicated* …] citizens [here the *nationality is indicated*] who had illegally crossed the border of the Republic of Poland. (e.g. III K 485/22 2022; III K 576/22 2022; III K 279/22 2022; III K 500/22 2022; III K 33/22 2022; III K 72/22 2022)

The following *modus operandi* thus emerges from criminal case files. The perpetrator, usually via a text message on a mobile phone, receives the location data of people who have crossed the border. They then arrive to pick up these people near the Polish–Belarusian border, take them to their car and drive away from the Polish–Belarusian border. Subsequently, the vehicle is stopped by Border Guard or police officers, and following the discovery of persons in the vehicle who have crossed the border in an undetermined place in violation of the law, the driver is arrested and criminal proceedings are initiated against them. It is worth considering at this point the charge of aiding and abetting the organisation of a border crossing in violation of the law.

As can be seen from the wording of all the indictments containing this legal qualification, the perpetrator aids and abets "undetermined organisers of crossing the border from the Republic of Belarus to the Republic of Poland in violation of the law". In none of the cases was there any information about at least the exclusion for separate proceedings of the case of the "organiser" whom the perpetrator was alleged to have assisted. However, from the evidence in the files, it is possible to establish the relevant circumstances in this regard, which could prove the existence of such an organiser or the lack thereof. An excerpt from the order of the District Court in Białystok (case 5) refusing to apply pretrial detention to the suspect may be quoted here:

> It is not known what kind of persons the perpetrator could be referring to, whom he could induce to give certain testimonies, because it is not known what kind of persons he could be referring to. The prosecutor is only planning to establish the persons whom the perpetrator may have helped, so it is possible that there were no such persons at all. (III K 961/22 2022)

This passage of the court's order is very significant in the context of the cases under review. And although it relates to only one of the cases, it indicates that the court itself has doubts as to whether there are in fact individuals who could be charged with organising an illegal border crossing under Article 264(3) PCC – or perhaps it does not so much doubt whether such persons actually exist, but rather it doubts whether the prosecuting authorities are even trying to establish their existence.

In 18 cases (21 perpetrators), there may indeed have been an organiser who was in contact with the perpetrator and who was commissioned, for a fee, to pick up persons who had crossed the border illegally. This fact was confirmed by the perpetrators or the foreigners themselves, who were interviewed as witnesses (which was rare in the cases under analysis). The amount of remuneration varied; if

there was such information in the case files, the most common amount given was €100 for one person, although there were also amounts of €1,000 for transporting two to four people. Due to the fact that few perpetrators admitted guilt – or even if they did, they refused to testify – it is difficult to determine in all cases whether and how they contacted the people they were supposed to pick up. The perpetrators, if they admitted guilt, indicated that through colleagues they had received the contact details of previously unknown persons, who indicated to them the location and date for picking up foreigners by sending a "pin" on a map. Rarely did the perpetrators contact the foreigners directly.

The perpetrators often used Whatsapp or Telegram. One of the perpetrators had a registered contact for the ordering party as "illegal migrants", which clearly indicates that he knew what kind of business he would be participating in. A key piece of evidence in these cases was the "visual inspection" of the perpetrators' cell phones, which was used to establish the transmission of the location from which the perpetrator picked up or was supposed to pick up foreigners (the place was usually located in the border zone). On the basis of the visual inspection, it was also stated that the perpetrator contacted various phone numbers. However, there was no information in the files about the content of text messages sent by and to the perpetrator. Most of the perpetrators were foreigners, so the messages were transmitted in foreign languages and no translations of the messages were provided in the files. The key evidence on which the indictment was based was a screenshot of the perpetrator's phone with the location from which he picked-up the foreigners. In only a few of the cases reviewed were the contents of the messages from the perpetrators' phones downloaded and translated. Significantly, none of the cases included information on law enforcement's determination of the moment when the organiser ordered the foreigners to be picked up. Determining this moment is crucial in light of Supreme Court ruling WK 23/04, which indicates that aiding and abetting the crime of organising others to cross the border of the Republic of Poland in violation of the law may consist in providing a means of transporting persons after illegally crossing the border, provided that "this is the result of a promise made before or during the commission of this crime". The question of when the agreement and the "promise" of the transportation service were made is completely ignored in the case files. Law enforcement agencies cling to the evidence of a screenshot with the location of foreigners, and most often build an indictment on this basis. In a small number of cases there is additional evidence, such as the testimony of foreigners (those most often were immediately returned to the border line) or the suspect's confession and agreement to make use of plea bargaining. A confession of guilt may not constitute key evidence in the case (Grzegorczyk, Tylman 2014: 483; Zgryzek 2021: 394).

The existence of an organiser ordering foreigners to be picked up from the border area may also be evidenced by the fact that some of those convicted were drivers providing services, such as taxis, Bolt, Uber, etc. Law enforcement authorities in such cases determined that the perpetrator received a "pin" from an

undetermined organiser showing where to pick up the foreigners. In two cases, law enforcement authorities analysed the perpetrators' mobiles in more detail and were able to determine, based on the locations of the mobile network logins, that the perpetrators (who live in central Poland) had come to the border area several times in the past few weeks, which may be evidence of repeated provision of the transportation service. Nevertheless, the perpetrator could just have been carrying out a service ordered through an app, unaware that they were participating in an organised activity. Also, they may have received the order from family members, or from the migrant foreigners themselves. This, too, has been overlooked in the cases, as was the content of the information provided.

According to an interview conducted with Border Guard officers on duty at the border with Belarus, it appears that illegal crossings at Poland's eastern border were previously mainly organised through organised crime groups (Klaus, Woźniakowska-Fajst 2015: 212–213; Laskowska 2017: 285–289; Perkowska 2021: 58). In contrast, this has taken other forms in times of crisis. At the beginning of the migration crisis in 2021, "people who came to pick up migrants who managed to successfully cross the border were most often family members who were in diasporas located in the territory of the European Union, or acquaintances" (Officer 1). These were people who had residence permits in Germany, Sweden, France, Belgium or the Netherlands and had family, friends or professional relationships with those who crossed the border from Belarus. In contrast, in the second phase of the crisis, from 2022 onwards, "couriers bringing in migrants are people with some kind of residence title in Poland", with a very high proportion of citizens of Ukraine, Georgia and Belarus. The courier "does not have any previous relationship with these people, this is done by sending internet data […] in the form of a so-called pin, location" (Officer 2). According to Border Guard officials, the main organisers of the procedure are individuals residing in Iraq, Syria, Turkey or Canada or individuals residing in Poland. The Border Guard has identified about 30 main organisers who arrange border crossings for a fee. In this time of crisis, there were no individuals undertaking to cross the Polish border on their own. According to the officer, at this point "this is simply impossible without the help of the Belarusian state and without cooperation with Russia and their services" (Officer 1).

Various aspects of the problem of family members' involvement in migrant smuggling has been studied and discussed in the social sciences. Much of the research deals with the family finding a migrant smuggler and raising funds to pay for their service, as well as the expectation of the family's financial situation being improved through emigration (Koser 2004; 2008; 2011; Boyd 1989, Herman 2006, Triandafyllidou 2022). The theme of direct involvement in the process of migrant smuggling – family members, relatives or friends picking up migrants from the border zone – also appears in discussions on illegal migration (Herman 2006: 111–212; van den Leun, Ilies 2016: 194, 121; Liempt 2022: 309). UN documents emphasise that the framework of criminal liability for migrant smuggling defined in the Protocol Against Smuggling of Migrants deliberately assumes that

perpetrators act for financial gain, in order to exclude from its scope support provided on humanitarian grounds or on the basis of family ties (Carrera et al. 2016: 61–62; UNODC 2017: XI; Carrera et al. 2018: 108; Mitsilegas 2019: 70; Perkowska 2023: 32–33). Hence, cases involving family members who came to the border to pick up relatives during the humanitarian crisis on the Polish–Belarusian border will be analysed further.

In the course of analysing criminal case files, three cases were found in which family members came to the vicinity of the Polish–Belarusian border to pick up family members who had crossed the border without the proper documents or other authorisation. In the first case (case 6), two German citizens of Turkish nationality (AA and AB) and one Turkish citizen (AC), all living permanently in Germany, came to the border area to pick up the brother of AA. They came in three cars to a village about 5 km from the Polish–Belarusian border to pick up AD. As they testified, a total of 13 people came out of the forest; according to the findings of the Border Guard, they comprised 12 Iraqi citizens and one Turkish citizen with the same name as the perpetrator, AA. AA took his brother in his car, whilst AB and AC took the other 12 people, including three children. They were stopped by the Border Guard. The perpetrators confessed that they had picked up the migrants to take them to Germany and that they were not to receive any remuneration, but did so out of pity from seeing the families with children. The Border Guard determined from a "visual inspection" of AD's phone that he had contacted users with phone numbers that matched those of the three perpetrators (AA, AB and AC). Significantly, there is no information in the file about the translation of possible messages from the phones of the accused perpetrators and AD. The contents of these messages were not secured. The Border Guard only drafted an official memo, which included the note that

> due to the prevailing state of emergency in the area of part of the Podlaskie province and the activities related to the immediate return of illegal immigrants to the border line and the language barrier, it was not possible to carry out all procedural activities with the above-mentioned foreigners. After inspection, the phone was returned to AD and immediately returned to the state border. (III K 661/22 2022)

It therefore follows that the Border Guard was unable to read the messages on AD's phone on the spot, and was also unable to communicate with AD due to the language barrier. The evidence in this case was the testimony of Border Patrol officers, the testimony of the suspects and the visual inspection of their mobile phones. Documentation of the visual inspection consisted only of photos of the phone screens, with no translation of the messages. The minutes of the perpetrators' testimonies show that they admitted going to the border area and picking up AD and the other migrants. On the other hand, they did not admit to helping the organiser organise the other people's illegal crossing of the border; their testimonies do not contain any information on this subject. The police and Border Guard focussed on obtaining a confession that the perpetrators had come

to the border area to pick up the migrants and that they planned to take them to Germany. Thus, the charge of aiding and abetting the organisation of a border crossing by other persons appears to have been erroneous. The indictment defined the charge as follows:

> acting jointly and in concert, they provided assistance to as yet undetermined persons in organising the crossing of the state border illegally from the Republic of Belarus to the Republic of Poland to 12 citizens of Iraq and 1 citizen of Turkey, in such a way that they provided a means of transportation allowing them to be transported from the vicinity of the state border into the interior of the country or into the territory of the European Union that is, an offence under Article 18(3) PCC in conjunction with Article 264(3) PCC. (III K 661/22 2022).

In the second case (case 7), the situation was very similar. Two accused Iraqi citizens, AE and AF, holding a temporary residence permit in Germany, arrived at the border region to pick up AF's brother, who had come to Poland from Belarus without authorisation, along with his family: his wife and three children, aged 10, 7 and 3. According to the defendants' testimony, AF received a message from his brother that he had entered Poland, but they had lost one of their children and needed help. The charge brought against them by law enforcement officers was very similar to the first case. Neither of the perpetrators confessed to the charge against them.

In both cases the law enforcement authorities did not have any evidence that the perpetrators AA, AB, AC, AE and AF had contacted an "undetermined" organiser with whom they had arranged to provide a means of transportation to the migrants, and there is no information about this in the case file. Law enforcement authorities considered the testimony of the three perpetrators, admitting the purpose of their trip to Poland and their intention to pick up at least AD and AF's brother from the border region and take him to Germany, to be sufficient evidence in the case. Moreover, they considered the photos of AD's phone screen, showing that he had contacted AA, AB and AC, sufficient evidence. As in the case of AE and AF, the main evidence was photos of AF's phone screen, particularly a photo of a location sent on a map, indicating the family's location. The contents of the sent messages were not secured or translated into Polish. The perpetrators did not admit to contacting any third party who could have organised the migrant smuggling, and law enforcement authorities did not establish such contact. Moreover, it is not clear from the examination of the perpetrators' phones whether law enforcement established the time at which the contact with the defendants occurred. Did the contact occur before the migrants crossed the border, or was it after? The fact that the perpetrators (AA, AB and AC) arrived in three separate cars may indicate that they knew there would be more migrants to pick up, but law enforcement did not establish this. Any unremovable doubts, according to Article 5(2) of the Criminal Procedure Code, should be resolved in favour of the suspect.

The photos of the perpetrators' phone screen (without translations of their

contents) and the testimonies of the officers and the defendants themselves were again considered sufficient evidence. Evidentiary deficiencies did not prevent the court from issuing a conviction. As described above in most of the cases reviewed, the legitimacy of the charges is in doubt, especially as the evidence secured in the case itself is highly questionable. According to the views of the doctrine as well as the established case law, "for the adoption of aiding and abetting, it is necessary, confirmed by the evidence of a particular case, to convince the court that there was an individually designated person in relation to whose actions the actions specified in the disposition of the provision of Article 18(3) PCC were undertaken by the helper". Thus, the hallmarks of aiding and abetting include identifying the direct performer, i.e. the subject of the facilitator's actions. According to the Supreme Court, "aiding and abetting is the facilitation of the commission of a criminal act (*cum dolo directo* or *cum dolo eventuali*) to another person, i.e. a specific person, but not necessarily individualised in the given proceedings as to identity" (II KK 184/05 2005; Kardas 2012: 463; Sakowicz 2017: 467). In addition, when analysing the subjective side of aiding and abetting, it is characterised by the intention for another person to commit a criminal act, which means that, as stated by the Supreme Court, the giver of aid must want another person to commit a crime, or, foreseeing the possibility of such an act by another person, agree to it (II KK 184/05 2005). The provider of assistance must understand that by taking certain actions, they are thereby facilitating another person's commission of a criminal act. They should also understand that they are doing so with respect to a specific, characterised in the relevant provision of the special part of the prohibited act and with respect to the individually designated person of the direct performer (Rw 317/82 1982; II KK 184/05 2005).

Thus, in order to bring a charge of aiding and abetting the crime of organising an illegal border crossing, law enforcement authorities must have evidence that there is a designated person to whom the perpetrator provided assistance (the main organiser). Moreover, it must be shown in the evidence that the perpetrator was aware that they were providing assistance to such an organiser, or at least accepted such an eventuality. No such evidence was found in the cases under review. At most, it could be assumed that the perpetrators provided assistance to a criminal act, or rather the misdemeanour of illegal border crossing.

In the third case, the facts were similar to the previous ones. An Iraqi citizen, AG, living permanently with his family in Germany, came to the vicinity of the Belarusian border because he had received a text message from his sister stating that she was in Poland with her husband and three children. The perpetrator was stopped by the Border Guard on the Bialowieza-Hajnówka road. According to the indictment, the perpetrator

> provided assistance in organising the crossing of the state border from the Republic of Belarus to the Republic of Poland, contrary to regulations, to five persons of Iraqi nationality, in that he provided a means of transportation allowing them to be transported from the border zone region into the interior of the country or into the

> European Union, by arriving as a driver in a passenger car of the make […] to the area of the border of the Polish state, where he picked up five foreigners of Iraqi nationality who had crossed the borders of the Republic of Belarus into the Republic of Poland against the law and then transported them inland to Poland. (VII K 137/22 2022)

AG admitted that he had come to pick up his sister and her family the day after receiving a message from her. He stated that he knew they had illegally crossed the border, and that he was aware that a carrier she had paid to deliver them to Germany was to come for his sister. AG pleaded guilty to the charge and furthermore agreed to voluntarily surrender to a sentence.

What distinguishes the approach of the prosecuting authorities in this case from the previous two is that, in constructing the charge, the prosecutors did not indicate that AG had provided assistance to an undetermined organiser. From the wording of the charge, it appears that AG assisted in organising the unlawful crossing of the state border of five people by providing a means of transportation. This raises the question of who the potential organiser could be, since the charge is for aiding and abetting the organisation of an illegal border crossing, not for aiding and abetting the border crossing itself. There is no information in the file about the existence or suspected existence of an organiser, although the defendant himself admitted that he knew his sister had used a "carrier". When questioned as a witness, she admitted that she had used the services of a "smuggler", who was supposed to help them reach Germany. However, the law enforcement authorities did not base the charge on the existence of an organiser. Thus, the charge of aiding and abetting organisation is questionable. Because it was not established that AG had provided assistance to the organiser, there is again no confirmation in the evidence contained in the case file that there was an individually designated person whose actions the helper assisted. Again, the law enforcement authorities had no evidence to show that AG had intended to assist any organiser nor, foreseeing the possibility of such assistance, had agreed to do so.

This case in fact does not differ from the two previous, but the text of the charge is different in terms of the existence of an organiser. More importantly, the court's decision was different: the District Court hearing the case decided to discontinue the proceedings in the case due to the negligible social harm of the act in accordance with Article 17 (1)(3) of the Code of Criminal Procedure. This decision was upheld by the Regional Court. Admittedly, it stated that the Court found that

> there is no doubt that the accused provided assistance in organising the crossing of the state border from the Republic of Belarus to the Republic of Poland, contrary to regulations, to five persons of Iraqi nationality, in that he provided a means of transportation allowing them to be transported […] by which he fulfilled the elements of Article 18(3) in connection with Article 264(3) PCC. (VII K 137/22 2022)

However, at the same time, it stated that

> the degree of social harmfulness of an act is that immutable feature of an act which allows to distinguish trivial from serious acts and to criminalise only those that actually and realistically harm specific goods of an individual or society. (VII K 137/22 2022)

The court consequently considered AG's behaviour as acting from humanitarian motives, pointing out that

> he provided assistance to members of his immediate family, did not derive any material benefit from it, did not cause any harm and was guided by a reflex of the heart, normally understood as caring for loved ones who are in an extremely difficult situation. […] Thus, juxtaposing the gravity of the provisions violated by the accused with the category of crimes against public order, it should be considered that his action to protect the life and health of persons, i.e. legal goods located high, if not at the very top of the hierarchy from the point of view of the value of legal goods subject to criminal law protection, deserves neither condemnation nor criminal penalisation. (VII K 137/22 2022)

In a similar vein, the appeals court to which the prosecution appealed pointed out that AG had not provided assistance to random foreigners nor received any remuneration, and was driven by "an internal need to help members of his closest family". At the same time, as the evidence gathered in the case shows, providing assistance to these foreigners was necessary for the health and life of the children traveling with them.[5] But the court also stated that

> it cannot be assumed that the defendant's conscious fulfilment of the elements of the subjective side of the act under Article 18(3) in connection with Article 264(3) PCC was due to the ease of deciding to commit the crime or the lack of moral brakes. On the contrary, AG's motives for acting were considered noble and selfless. The above was reasonably considered to make the social harmfulness of the act negligible. (VII K 137/22 2022)

This case was the only one among those analysed that did not result in a conviction, although the defendant's *modus operandi* did not differ in any way from that of the others, especially those who came to the border area to pick up family members. However, the judges' understanding of facilitating the organisation of unauthorised entry was similar. Also, in this case the court found that "there is no doubt that the accused assisted in the organisation of the unauthorised crossing of the state border […] by which he exhausted the elements of Article 18(3) in connection with Article 264(3) PCC". And although this case contains a justification of the judgment – the only one that does – it unfortunately does not address the fulfilment of the elements of aiding and abetting the organisation of an illegal border crossing, but focusses primarily on the issue of the social harm of the act, which is an immutable feature of the crime. It also focusses on AG's motive, which, according to the court, was the desire to help immediate family members.

[5] They were hospitalised.

Conclusion

The issue of criminal responsibility for immigration offences became especially relevant in 2021 in the context of the humanitarian crisis on the Polish–Belarusian border. Poland began using pushbacks and collective expulsion in response to "illegal" border crossers with Belarus (Klaus et at. 2021: 14; Górczyńska, Czarnota 2022: 8; Bieńkowska 2023: 180). It responded with administrative and criminal law measures against those who tried to "help" them get into Poland or further into Western Europe. The reaction of law enforcement and the judiciary in terms of responsibility for organising border crossings in violation of the law is the subject of this research.

The research, although I am aware that it is not total or representative, allows one to cautiously draw the first conclusions about the application of Article 264(3) PCC during the humanitarian crisis on the Polish–Belarusian border. The use of the case study method on the files of criminal cases concluded with a final verdict (in courts with jurisdiction over the border area) allowed for an in-depth analysis and discussion of what behaviour and circumstances law enforcement agencies and the judiciary considered to merit criminal sanctions with regard to the provision in question, or aiding and abetting in this crime. In only one of the cases under analysis did the court decide to discontinue the proceedings due to the lack of social harm from the act. From the point of view of Poland's policy on foreigners trying to cross the border through Belarus, it was important to analyse the discretion of the actors involved in prosecuting those involved in organising unlawful border crossings. Particularly relevant to the decision-making process, was the time span in which they were implemented (Spire 2020: 94). It was important to verify whether decisions were taken individually but within the framework of a preconceived policy for resolving certain types of cases in a certain way (Hawkins 1986: 1171) and the policy of deterrence set by the state. In the case of law enforcement agencies, which are uniformed groups tasked with executing orders or official instructions, it is even natural to adopt a specific policy for dealing with certain cases. This should not be the case with the judiciary.

The impact of the deterrence policy is evidenced by the fact that in the cases involving couriers, the legal qualification of Article 18(3) in connection with Article 264(3) PCC – i.e. aiding and abetting the organising of a border the crossing in violation of the law – was adopted, whilst the perpetrators were charged with aiding and abetting an undefined organiser. Of course, from the point of view of criminal liability, there is no requirement that the relevant organisers be identified and held criminally responsible, but in some cases there are doubts as to whether law enforcement agencies in general took steps to identify the organiser. This was especially true in one case, in which the district court refused to apply pretrial detention to the suspects, stating that "[t]he prosecutor is only planning to establish the persons whom the perpetrator may have assisted, so it is possible that there were no such persons at all". Another important area was the evidence

on which the perpetrator was prosecuted and found guilty. None of the cases included information about law enforcement officers' determination of the timing of the organiser's order to pick up the foreigners, which is crucial in light of Supreme Court ruling WK 23/04, which states that aiding and abetting a crime under Article 264(3) PCC can consist of providing a means to transport people after they have illegally crossed the border, provided that "this is the result of a promise made before or during the commission of that crime". The question of when the agreement and the "promise" of the transportation service was made is completely ignored in the case files. In addition, when alleging aiding and abetting a crime under Article 264(3) PCC, law enforcement authorities must have evidence to prove that there is a designated person whom the perpetrator assists; in some of the cases reviewed, no such evidence was found. Moreover, the cases that resulted in convictions, in my opinion, lacked an analysis of the perpetrators' guilt. The court did not focus on whether the perpetrator fulfilled the elements of guilt, and if so, what was the direct or alternative intent. In these cases, the intent of the perpetrator was not established at all. There is a lack of evidence that would confirm the perpetrator's intent. All this gives the impression of automated law enforcement and justice (Tata 2007: 427–428).

An analysis of the criminal case files also leads to the conclusion that judges, especially in cases in which the perpetrator signed a guilty plea, do not analyse whether the perpetrator actually fulfilled the elements of the act they were charged with, whether guilt can be attributed to them or whether their rights during the criminal proceedings were violated, for example, by being obliged through an administrative decision to leave the territory of Poland – not to mention whether they were aware of the consequences of voluntarily surrendering to punishment. In such cases, the discretion of judges is greatly influenced by decisions taken earlier in the process (Hawkins 1986: 1189), especially by the prosecutors. After all, a confession is not the most important evidence in a case (Grzegorczyk, Tylman 2014: 483). Additionally, judges must take into account the satisfaction of the entire criminal justice system (Tata 2007: 439–441). The use of the institution of guilty plea is *de facto* only the confirmation of the sentence by the court at the session, what makes such cases invisible for the society (Aliverti 2013: 135–136).

All these doubts resound most clearly in the cases involving defendants who came to pick up their family members (siblings) in the border region. In two cases it seems that neither the law enforcement authorities nor the court took into account the fact that this was assistance given to a family member. Moreover, it had no evidence to prove that the defendant had come into contact with anyone organising an illegal crossing of the border. The court imposed the same penalties as with other perpetrators, without taking into account the motives of the perpetrators as mitigating factors, if not abolishing criminal responsibility. This confirms the automatism of the justice system in such cases. Only in one of the cases, despite the filing of a motion for voluntary surrender to punishment, did the judge decide to discontinue the proceedings due to the lack of social harm

from the act, considering the behaviour of a brother who came to pick up his sister and her family as acting from humanitarian motives.

The research results lead to the conclusion that criminal proceedings during the humanitarian crisis in cases of organising a border crossing in violation of the law or aiding and abetting this act is not free from factors influencing the discretion of law enforcement agencies and the judiciary. According to the author, the most influential factor is the state policy towards foreigners coming through Belarus.

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References

Aliverti A. (2013). *Crimes of Mobility. Criminal Law and the Regulation of Migration*. London: Routledge.

Aljehani A. (2015). 'The legal definition of the smuggling of migrants in light of the provisions of the migrant smuggling protocol.' *The Journal of Criminal Law* 79(2), pp. 122–137. https://doi.org/10.1177/0022018315576734

Arrouche K., Fallone A., and Vosyliute L. (2021). *Between Politics and Inconvenient Evidence. Assessing the Renewed EU Action Plan against Migrant Smuggling*. Brussels: CEPS.

Balicki J. (2022). 'Migration crisis on the Polish-Belarusian Border (2021–2022). From a humanitarian and human rights perspective.' *Studia Europejskie* 2, pp. 75–87. https://doi.org/10.33067/SE.2.2022.5

Banasik K. (2010). 'Podanie wyroku do publicznej wiadomości' [Publication of the judgment]. *Państwo i Prawo* 8, pp. 83–95.

Banasik K. (2017). 'Penalizacja bezprawnego przekroczenia granicy państwowej' [Criminalisation of unlawful crossing of the state border]. *Studia Prawnicze. Rozprawy i Materiały* 1(20), pp. 3–14.

Bieńkowska M. (2023). *'Between humanitarianism and security – the events at the Polish-Belarusian border'*. In J. S. Methi and B. Nikiforova (eds.) *Borderology*

Spatial Perspective, Theoretical and Practical. Routledge, pp. 177–187. https://doi.org/10.1007/978-3-031-29720-5_14

Bourdieu P. (1990). 'Droit et passe-droit' [Prawo i uprawnienia]. *Actes de la Recherche en Sciences Sociales: L'économie de la Maison* 81–82, pp. 86–96.

Boyd M. (1989). 'Family and personal networks in international migration: Recent developments and new agendas.' *International Migration Review* 23, pp. 638–672. https://doi.org/10.2307/2546433

Bushway S.D. and Forst B. (2013). 'Studying discretion in the processes that generate criminal justice sanctions.' *Justice Quarterly* 30(2), pp. 199–222. http://doi.org/10.1080/07418825.2012.682604

Carrera C., Guild E., Aliverti A., Allsopp J., Manieri M.G., Levoy M., Gutheil M., and Heetman A. (2016). *Fit for Purpose? The Facilitation Directive and the Criminalisation of Humanitarian Assistance to Irregular Migrants*. Brussels: Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affair. Available online: https://www.europarl.europa.eu/RegData/etudes/STUD/2016/536490/IPOL_STU(2016)536490_EN.pdf [18.12.2023].

Carrera C., Vosyliute L., Smialowski S., Allsopp J., and Sanchez G. (2018). *Fit for Purpose? The Facilitation Directive and the Criminalisation of Humanitarian Assistance to Irregular Migrants: 2018 Update. Study*. Brussels: Policy Department for Citizens' Rights and Constitutional Affairs Directorate General for Internal Policies of the Union. Available online: https://www.europarl.europa.eu/RegData/etudes/STUD/2018/608838/IPOL_STU(2018)608838_EN.pdf [15.11.2023].

Carrera S. (2021). *Walling off Responsibility? The Pushbacks at the EU's External Borders with Belarus*. Brussels: CEPS.

Ćwiąkalski Z. (2017). *'Rozdział XXXII. Przestępstwa przeciwko porządkowi publicznemu'* [Chapter XXXII. Crimes against public order]. In W. Wróbel and A. Zoll (eds.) *Kodeks karny. Część szczególna. Tom II. Część II. Komentarz do art. art. 212—277d* [Criminal Code. Special part. Volume II. Part II. Commentary to Articles 212—277d]. Warszawa: Wolters Kluwer, pp. 482–610.

Daniluk P. (2008). 'Środek karny podania wyroku do publicznej wiadomości w kodeksie karnym' [Penal measure of making a sentence public in the Criminal Code]. In J. Jakubowska-Hara, C. Nowak, and J. Skupiński (eds.) *Reforma prawa karnego. Propozycje i komentarze. Księga pamiątkowa Profesor Barbary Kunickiej-Michalskiej* [Criminal law reform. Proposals and commentaries. Memorial book to Professor Barbara Kunicka-Michalska]. Warszawa: Scholar, pp. 38–50.

Durczak-Żochowska S. (2009). 'Udostępnienie treści wyroku nakazowego' [Publication of the content of the prescriptive judgment]. *Prokuratura i Prawo* 2, pp. 40–53.

European Commission, Directorate-General for Migration and Home Affairs (2014). *Evaluation and Impact Assessment Study on a Proposal for a Revision of the EU Legal Framework Related to the Facilitation of Irregular Migration (Migrant Smuggling)*. Luxembourg: Publications Office of the European Union. Available online: https://op.europa.eu/en/publication-detail/-/publication/70b45f3d-3426-11e7-9412-01aa75ed71a1 [28.08.2024].

Frontex (2022). *Risk Analysis for 2022/2023*. Warsaw: Frontex. https://doi.org/10.2819/097884

Gammeltoft-Hansen T. and Tan N.F. (2017). 'The end of the deterrence paradigm? Future directions for global refugee policy.' *Journal on Migration and Human Security* 5(1), pp. 28–56. https://doi.org/10.1177/233150241700500103

Garcia-Espana E. (2023). 'Criminal prosecution and punishment of migrants in Spain: A border criminology perspective'. *Bialystok Legal Studies* 28(1), pp. 197–212. https://doi.org/10.15290/bsp.2023.28.01.11

Górczyńska M. and Czarnota K. (2022). *Gdzie Prawo nie sięga. Raport Helsińskiej Fundacji Praw Człowieka z monitoringu sytuacji na polsko-białoruskiej granicy* [The Lawless Zone – 12 months of the Polish-Belarusian border crisis]. Warszawa: Helsińska Fundacja Praw Człowieka. Available online: https://hfhr.pl/publikacje/raport-gdzie-prawo-nie-siega-11-miesiecy-kryzysu-humanitarnego-na-polsko-bialoruskim [12.02.204].

Gruszecka D. (2014). *'Rozdział XXXII. Przestępstwa przeciwko porządkowi publicznemu'* [Chapter XXXII. Crimes against public order]. In J. Giezek (ed.) *Kodeks karny. Część szczególna. Komentarz* [Penal Code. Special part. Commentary]. Warszawa: C.H. Beck, pp. 934–1023.

Gruszecka D. (2021). *'Rozdział XXXII. Przestępstwa przeciwko porządkowi publicznemu'* [Chapter XXXII. Crimes against public order]. In J. Giezek (ed.) *Kodeks karny. Część szczególna. Komentarz* [Penal Code. Special part. Commentary]. Warszawa: C.H. Beck, pp. 1022–1142.

Grzegorczyk T. and Tylman J. (2014). *Polskie postępowanie karne* [Polish criminal proceedings]. Warszawa: Wolters Kluwer.

Grześkowiak M. (2022). The "Guardian of the treaties" is no more? The European Commission and the 2021 humanitarian crisis on Poland–Belarus border.' *Refugee Survey Quarterly* 42(1), pp. 81–102. https://doi.org/10.1093/rsq/hdac025

Hathaway J.C. (1992). 'The emerging politics of non-entrée.' *Refugees* 91, pp. 40–41.

Hawkins K. (1986). 'On legal decision-making.' *Washington and Lee Law Review* 43(4), pp. 1161–1242.

Hawkins K. (1992). *'The use of legal discretion: Perspectives from law and social science.'* In K. Hawkins (ed.) *The Uses of Discretion*. Oxford: Oxford University Press, pp. 11–46. https://doi.org/10.1093/oso/9780198257622.003.0001

Herman E. (2006). 'Migration as a family business: The role of personal networks in the mobility phase of migration.' *International Migration* 44(4), pp. 191–230. https://doi.org/10.1111/j.1468-2435.2006.00384.x

Herzog A. (2020). *'Rozdział XXXII. Przestępstwa przeciwko porządkowi publicznemu'* [Chapter XXXII. Crimes against public order]. In R. Stefański (ed.) *Kodeks karny. Komentarz* [Penal Code. Commentary]. Warszawa: C.H. Beck, pp. 1690–1722.

Herzog A. (2023). *'Rozdział XXXII. Przestępstwa przeciwko porządkowi publicznemu'* [Chapter XXXII. Crimes against public order]. In R. Stefański (ed.) *Kodeks karny. Komentarz* [Penal Code. Commentary]. Warszawa: C.H. Beck, pp. 1740–1774.

Kalitowski O.M. (2006). *'Rozdział XXXII. Przestępstwa przeciwko porządkowi publicznemu'* [Chapter XXXII. Crimes against public order]. In O. Górniok (ed.) *Kodeks karny. Komentarz* [Penal Code. Commentary]. Warszawa: Wolters Kluwer, pp. 796–819.

Kardas P. (2016). *'Rozdział II. Formy popełnienia przestępstwa'* [Chapter II. Forms of committing a crime]. In W. Wróbel and A. Zoll (eds.) *Kodeks karny. Część ogólna. Tom I. Cześć I. Komentarz do art. 1–52* [Criminal Code. General part. Volume I. Part I. Commentary to articles 1–52]. Warszawa: Wolters Kluwer, pp. 268–528.

Klaus W. (2020). *'How does crimmigration unfold in Poland? Between securitisation introduced to Polish migration policy by its europeanisation and Polish xenophobia.'* In R. Koulish and M.A.H. van der Woude (eds.) *Crimmigrant Nations: Resurgent Nationalism and the Closing of Borders*. New York: Fordham University Press, pp. 298–314. https://doi.org/10.2307/j.ctvxrpzhz.16

Klaus W. (ed.), Czarnota K., Dąbrowska A., Fiałkowska K., Karwan-Jastrzębska J., Kosowicz A., Mandelt M., Mazur J., Mikulska-Jolles A., and Wesołowski F. (2021). *Kryzys humanitarny na pograniczu polsko-białoruskim. Raport Grupy Granica* [Humanitarian crisis in the Polish-Belarusian border region. Border Group Report]. Warszawa: Grupa Granica.

Klaus W. and Szulecka M. (2021b). 'The judiciary power of discretion in sanctioning the facilitation of unauthorised stay in Poland.' *International Journal for Crime, Justice and Social Democracy* 10(3), pp. 72–86. https://doi.org/10.5204/ijcjsd.2042

Klaus W. and Szulecka M. (2022). 'Departing or being deported? Poland's approach towards humanitarian migrants.' *Journal of Refugee Studies* 36(1), pp. 1–22. https://doi.org/10.1093/jrs/feac063

Klaus W. and Woźniakowska-Fajst D. (2015). 'Przestępstwo nielegalnego przekroczenia granicy w ujęciu historycznym, teoretycznym i praktycznym' [The crime of illegal border crossing in historical, theoretical and practical terms]. *Archiwum Kryminologii* 37, pp. 191–222. https://doi.org/10.7420/AK2015F

Koser K. (2008). 'Why migrant smuggling pays?.' *International Migration* 46(2), pp. 3–26. https://doi.org/10.1111/j.1468-2435.2008.00442.x

Koser K. (2011). *'Why take the risk? Explaining migrant smuggling.'* In T. Modood and J. Salt (eds.) *Global Migration, Ethnicity and Britishness*. New York: Palgrave Macmillan, pp. 65–83.

Krajewski K. (2023). 'O wpływie ustawodawstwa karnego na politykę karną' [Impact of penal law on penal policy]. *Archiwum Kryminologii* 41(2), pp. 41–80. https://doi.org/10.7420/AK2019N

Laskowska K. (2017). *'Granica państwa jako miejsce popełniania przestępstw przez zorganizowane grupy przestępcze z udziałem cudzoziemców'* [State border as a place of perpetration of crimes by organized criminal groups with foreigners] In W. Klaus, K. Laskowska, and I. Rzeplińska (eds.) *Przestępczość cudzoziemców. Aspekty prawne, kryminologiczne i praktyczne* [Criminality of foreigners. Legal, criminological and practical aspects]. Warszawa: Wydawnictwo Naukowe Scholar, pp. 285–293.

Leun J. van der and Ilies M. (2016). *'The Netherlands: Assessing the Irregular population in a restrictive setting'*. In A. Triandafyllidou (ed.) *Irregular Migration in Europe Myths and Realities*. London: Routledge, pp. 187–206.

Liempt I. van (2022). *'Humanitarian smuggling in a time of restricting and criminalizing mobility.'* In M. Gallien and F. Weigand (eds.) *Routledge Handbook of Smuggling*. London: Routledge, pp. 303–312. http://doi.org/10.4324/9781003043645-22

Michalska-Warias A. (2018). 'Przestępstwo ułatwiania nielegalnego pobytu na terytorium Rzeczypospolitej Polskiej (art. 264a k.k.) – wybrane problemy' [Offence of facilitating illegal residence on the territory of the Republic of Poland (Art. 264a CC) – selected issues]. *Teka Komisji Prawniczej* 11, pp. 237–249.

Michalska-Warias A. (2024). *'Rozdział XXXII. Przestępstwa przeciwko porządkowi publicznemu'* [Chapter XXXII. Crimes against public order]. In M. Królikowski and R. Zawłocki (eds.) *Kodeks karny. Część szczególna*. T. 2. *Komentarz. Art. 222–316* [Penal Code. Special part. Vol. 2. Commentary. Articles 222–316]. Warszawa: C.H. Beck, pp. 365–543.

Mitsilegas V. (2019). 'The normative foundations of the criminalization of human smuggling: Exploring the fault lines between European and international law.' *New Journal of European Criminal Law* 10(1), pp. 68–85. https://doi.org/10.1177/2032284419834363

Perkowska M. (2013). *'Prawne i kryminologiczne aspekty dekryminalizacji przestępstwa nielegalnego przekroczenia granicy'* [Legal and criminological aspects of the decriminalisation of the offence of illegal border crossing]. In S. Pikulski and M. Romańczuk-Grącka (eds.) *Granice kryminalizacji i penalizacji* [Limits to criminalisation and penalisation]. Olsztyn: Wydawnictwo Uniwersytetu Warmińsko-Mazurskiego, pp. 505–515.

Perkowska M. (2017) *'Polityka karna wobec cudzoziemców – sprawców przestępstw granicznych w Polsce'* [Criminal policy towards foreigners – offenders of border crimes in Poland]. In W. Klaus, K. Laskowska and I. Rzeplińska (eds.) *Przestępczość cudzoziemców. Aspekty prawne, kryminologiczne i praktyczne* [Criminality of foreigners. Legal, criminological and practical aspects]. Warszawa: Wydawnictwo Naukowe Scholar, pp. 178–196.

Perkowska M. (2017). *'Charakterystyka przestępczości granicznej cudzoziemców w Polsce na podstawie wyników badań akt spraw karnych'* [Characteristics of border crime of foreigners in Poland based on the results of research of criminal case files]. In W. Klaus, K. Laskowska and I. Rzeplińska (eds.) *Przestępczość cudzoziemców. Aspekty prawne, kryminologiczne i praktyczne* [Criminality of foreigners. Legal, criminological and practical aspects]. Warszawa: Wydawnictwo Naukowe Scholar, pp. 197–239.

Perkowska M. (2021). 'Przerzut migrantów przez polską wschodnią granicę – studium przypadku' [Migrant smuggling across the Polish eastern border – a case study]. *Studia Migracyjne – Przegląd Polonijny* 2, pp. 57–85. https://doi.org/10.4467/25444972SMPP.21.020.13776

Perkowska M. (2023). 'Kryminalizacja organizowania nielegalnego przekroczenia granicy – analiza wdrożenia prawa Unii Europejskiej przez Polskę' [Criminalisation of the organisation of illegal border crossings – analysis of the implementation of European Union law by Poland]. *Europejski Przegląd Sądowy* 8, pp. 31–38.

Perkowska M., Adamczyk A., and Jomma F. (2024). *'Poland's response to the migration crisis on the Belarusian border: A legal perspective.'* In E. Kużelewska, A. Kasińska-Metryka, K. Pałka-Suchojad, and A. Piekutowska (eds.) *Geopolitical and Humanitarian Aspects of the Belarus–EU Border Conflict. Current Debates in European Integration*. Routledge, pp. 181–199.

Piórkowska-Flieger J. (2016). *'Rozdział XXXII. Przestępstwa przeciwko porządkowi publicznemu'* [Chapter XXXII. Crimes against public order]. In J. Piórkowska-Flieger and T. Bojarski (eds.) *Kodeks karny. Komentarz* [Penal Code. Commentary]. Warszawa: Wolters Kluwer, pp. 773–795.

Potulski J. (2005). 'Pojęcie organizowania innym osobom przekraczania granicy RP. Glosa do wyroku SN z dnia 25 stycznia 2005 r., WK 23/04' [The concept of organising other persons to cross the border of the Republic of Poland. Glosa to the judgment of the Supreme Court of 25 January 2005, WK 23/04]. *Gdańskie Studia Prawnicze – Przegląd Orzecznictwa* 4, pp. 97–102.

Rychlik M. and Wiktorska P. (2016). 'Polityka karna wobec cudzoziemców przebywających w Polsce' [Criminal policy towards foreigners residing in Poland]. *Archiwum Kryminologii* 38, pp. 61–92. https://doi.org/10.5281/zenodo.7824808

Sakowicz A. (2017). *'Rozdział II. Formy popełnienia przestępstwa'* [Chapter II. Forms of committing a crime]. In M. Królikowski and R. Zawłocki (eds.) *Kodeks karny. Część ogólna. Komentarz Art. 1–116.* [Penal Code. General part. Commentary Art. 1–116]. Warszawa: C.H. Beck, pp. 393–557.

Spire A. (2020). 'Discretionary power as a political weapon against foreigners.' *Etikk i Praksis* 14(2), pp. 89–106. https://doi.org/10.5324/eip.v14i2.3479

Szulecka M. and Klaus W. (2021a). 'Who assists irregular migrants in Poland and at What cost? A court files' analysis of convictions of facilitating unauthorised stay of migrants.' *Studia Migracyjne–Przegląd Polonijny* 2(180), pp. 87–114. https://doi.org/10.4467/25444972SMPP.21.021.13777

Tata C. (2007). 'Sentencing as craftwork and the binary epistemologies of the discretionary decision process.' *Social & Legal Studies* 16(3), pp. 425–447. https://doi.org/10.1177/0964663907079767

Triandafyllidou A (2022). *'Migrant smuggling.'* In A. Triandafyllidou (ed.) *Routledge Handbook of Immigration and Refugee Studies*. New York: Routledge, pp. 426–433. https://doi.org/10.4324/9781003194316-50

UNODC (2017). *The Concept of „Financial or Other Material Benefit" in the Smuggling of Migrants Protocol*. New York: United Nations.

Wojciechowski J. (1997). *Kodeks karny* [Penal Code]. Warszawa: Librata.

Woude M. van der and Leun J. van der (2017). 'Crimmigration checks in the internal border areas of the EU: Finding the discretion that matters.' *European Journal of Criminology* 14(1), pp. 27–45. https://doi.org/10.1177/1477370816640139

Zgryzek K. (2021). *'Rozdział VI. Dowody'* [Chapter VI. Evidence]. In J. Zagrodnik (ed.) *Proces karny* [Criminal process]. Warszawa: Wolters Kluwer, pp. 345–428.

Internet sources

Dobuszyńska I. (2024). *Aresztowano czterech kurierów przemycających ludzi* [Four human smuggling couriers arrested], Strazgraniczna.pl. Available online: https://www.strazgraniczna.pl/pl/aktualnosci/13543,Aresztowano-czterech-kurierow-przemycajacych-ludzi.html?search=58191 [21.08.2024].

EUROPOL (2016). *Migrant Smuggling in the EU*, Europol.europa.eu. Available online: https://www.europol.europa.eu/cms/sites/default/files/documents/migrant_smuggling__europol_report_2016_0.pdf [21.08.2024].

Grzech K. (2024). *Granica polsko-białoruska – sytuacja wciąż napięta* [Polish-Belarusian border – situation still tense], Strazgraniczna.pl. Available online: https://www.strazgraniczna.pl/pl/aktualnosci/13366,Granica-polsko-bialoruska-sytuacja-wciaz-napieta.html?search=58191[21.08.2024].

Grześkowiak M. (2023). *Jest humanitarne i skuteczne wyjście z kryzysu na polsko-białoruskiej granicy* [There is a humanitarian and effective solution to the crisis on the Polish-Belarusian border], Krytykapolityczna.pl. Available online: https://krytykapolityczna.pl/kraj/zaprzestanie-pushbackow-pierwszy-krok-do-wyjscia-z-kryzysu/ [12.09.2024].

Kubal A. (2021). *Why is There a Humanitarian Crisis at the Polish-Belarusian Border*, Gjia.georgetown.edu. Available online: https://gjia.georgetown.edu/2021/11/17/why-is-there-a-humanitarian-crisis-at-the-polish-belarusian-border/ [10.01.2024].

Na granicy polsko-białoruskiej [On the Polish-Belarusian border] (2023), Strazgraniczna.pl. Available online: https://www.strazgraniczna.pl/pl/aktualnosci/12188,Na-granicy-polsko-bialoruskiej.html?search=3049868206 [21.08.2024].

PWN Dictionary of the Polish Language (n.d.), Sjp.pwn.pl. Available online: https://sjp.pwn.pl/szukaj/organizowa%C4%87.html [18.07.2023].

Szczepańska E. (2023a). *21 Syryjczyków w nielegalnej podróży na Zachód* [21 Syrians on illegal journey to the West], Strazgraniczna.pl. Available online: https://www.strazgraniczna.pl/pl/aktualnosci/11971,21-Syryjczykow-w-nielegalnej-podrozy-na-Zachod.html?search=3049868206 [21.08.2024].

Szczepańska K. (2023b). *Zatrzymany kurier i kolejni nielegalni migranci na granicy* [Detained courier and more illegal migrants at border], Strazgraniczna.pl. Available online: https://www.strazgraniczna.pl/pl/aktualnosci/11562,Zatrzymany-kurier-i-kolejni-nielegalni-migranci-na-granicy.html?search=3049868206 [21.08.2024].

Szwed K. (2023). *Zatrzymano 9 kurierów w weekend, w tym dwóch po pościgu* [Detained 9 couriers over the weekend, including two after a chase], Strazgraniczna.pl. Available online: https://www.strazgraniczna.pl/pl/aktualnosci/11911,Zatrzymano-9-kurierow-w-weekend-w-tym-dwoch-po-poscigu.html?search=3049868206 [21.08.2024].

The Great Dictionary of the Polish Language (n.d.), Wsjp.pl. Available online: https://wsjp.pl/haslo/podglad/5752/organizowac/4045731/przyjecie [21.08.2024].

Legal acts

Law of July 7, 2022 on Amendments to the Law – Criminal Code and Certain Other Laws. Journal of Laws of 2022, item 2600.
Law of June 6, 1997. – Criminal Code. Journal of Laws of 2022, item 1138, as amended.
Law of May 20, 1971 – Misdemeanour Code. Journal of Laws of 2022, item 2151.
Ordinance of the Minister of Internal Affairs and Administration of March 13, 2020 on temporary suspension or restriction of border traffic at specific border crossings (border ordinance) (2020).

Court decisions

Judgment of the Supreme Court of 10 May 1982, Rw 317/82 [Rw 317/82] (1982).
Judgment of the Supreme Court of 7 March 2003, WA 8/03 [WA 8/03] (2003).
Judgment of the Supreme Court of 25 January 2005, WK 23/04 [WK 23/04] (2005). *Orzecznictwo Sądu Najwuższego. Izba Karna* 2, item 21.
Decision of the Supreme Court of 20 October 2005, II KK 184/05 [II KK 184/05] (2005).
Judgment of the Court of Appeal in Katowice of 28 June 2007, II AKa 190/07 [II AKa 190/07] (2007).
Judgment of the Court of Appeal in Lublin of 20 November 2008, II AKa 250/08 [II AKa 250/08] (2008). LEX no. 477864.
Judgment of the Court of Appeal in Katowice of 25 February 2015, II AKa 457/14 [II AKa 457/14] (2015).
Decision of the Supreme Court of 22 November 2016, IV KK 362/16 [IV KK 362/16] (2016). LEX no. 2183514.
Judgment of the Court of Appeal in Kraków of 29 April 2021, II AKa 183/20 [II AKa 183/20] (2021). LEX no. 3314964.
Judgment of the District Court in Białystok, III K 33/22 [III K 33/22] (2022).
Judgment of the District Court in Białystok, III K 500/22 [III K 500/22] (2022).
Judgment of the District Court in Białystok, III K 661/22 [III K 661/22] (2022).
Judgment of the District Court in Białystok, III K 72/22 [III K 72/22] (2022).
Judgment of the District Court in Białystok, III K 961/22 [III K 961/22] (2022).
Judgment of the District Court in Bielsk Podlaski VII Criminal Division in Hajnówka of 31 May 2022, VII K 137/22 [VII K 137/22] (2022).
Judgment of the District Court in Sokółka of 27 July 2022, III K 279/22 [III K 279/22] (2022).
Judgment of the District Court in Sokółka of 10 November 2022, III K 485/22 [III K 485/22] (2022).

Judgment of the District Court in Sokółka of 14 November 2022, III K 576/22 [III K 576/22] (2022).

Other documents

Commission staff working document Refit evaluation of the EU legal framework against facilitation of unauthorised entry, transit and residence: the Facilitators Package (Directive 2002/90/EC and Framework Decision 2002/946/JHA) (2017).

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A renewed EU action plan against migrant smuggling (2021–2025). COM(2021) 591 final (2021).

European Commission (2021). 'A renewed EU action plan against migrant smuggling (2021–2025)', COM(2021) 591 final, Brussels.

Explanatory Memorandum to the governmental draft bill on amendments to the Act – Penal Code and some other acts, 9th term, Sejm print no. 2024 (2022).