

# Criminality by foreign nationals in Poland and the state's legal response

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## **SUMMARY**

Introduction

1. The phenomenon of foreigners' crime in Poland
2. The state's legal response to crime by foreigners
3. Conclusions

Bibliography

## Introduction

In 2018, the population of Poland was 38,411,148, including 372,239 foreigners with a valid residence permit.<sup>1</sup> Poland was essentially an emigration country in the 19<sup>th</sup> and 20<sup>th</sup> centuries. Although in comparison with other EU countries immigration to Poland remains relatively low, different data sources point to a continuous, if moderate, increase in the number of foreigners in Poland, especially when it comes to their presence in the labour market. Ukrainians, followed by nationals of other countries bordering Poland, contribute the biggest share of incomers. Few data sources provide social and demographic characteristics of migrants.<sup>2</sup>

Between 1990 and 2012, the overall number of migrants living in Poland slowly increased, ranging between 50,000 and 150,000.<sup>3</sup> Before 2015, Ukrainians comprised about 30 percent of all foreigners holding residence permits, but since then their number has increased due to emigration after Russia's aggression on Ukraine in 2014. In 2018, almost two-thirds of all non-EU nationals holding temporary or permanent residence permits were Ukrainian citizens. Many more Ukrainians were working in Poland under a visa regime – with different estimates identifying as many as 1.5 million Ukrainians in Poland in 2018<sup>4</sup>.

As far as asylum seekers numbers are concerned, it is worth mentioning that the Polish asylum system only started to develop less than thirty years ago, since it was only in December 1991 that Poland signed the 1951 Convention Relating to the Status of Refugees.<sup>5</sup> Since 1992, there has been a consistent, albeit insignificant, inflow of asylum seekers reaching almost 15,000 applicants in 2013. However, most of them did not stay in Poland and ended up going to other Western European countries.<sup>6</sup> Few received any form of international protection. In the 1990s, only 100 individuals received protection annually, between 2005 and 2009 they were about 2,500, and since 2010 only a few hundred per year. Generally speaking, the Polish asylum system is not very friendly towards asylum seekers. The chances of obtaining any form of protection are low, e.g., between 2011 and 2016 only 2 percent of applicants received refugee status, the lowest recognition rate in the entire EU.<sup>7</sup>

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1 <https://udsc.gov.pl/statystyki/raporty-okresowe/raport-roczny-legalizacja-pobytu/2018-2/> [https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr\\_resfirst&lang=en](https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_resfirst&lang=en) accessed on 10 April 2020.

2 KĘPIŃSKA, KINDLER (2014), p. 506.

3 OKÓLSKI (2000), p. 63, KACZMARCZYK (2015), p. 29.

4 GÓRNY (2018), p. 48.

5 KLAUS (2020), p. 76.

6 RAFALIŃ, 2012, p. 40, SZULECKA, 2016, pp. 228-229.

7 KLAUS (2020), pp. 76-77.

The inflow of foreigners to Poland has been progressively increasing in recent years. An indispensable feature of foreigners' presence is also their crime. Therefore, the aim of this article is to determine the scale, structure, and dynamics of crime in Poland based on the statistics of the Police and the Border Guard. The discussion of the scale of crime will be supplemented by an analysis of legal solutions adopted in Poland in recent years to prevent crime by foreigners. The author makes an attempt to verify whether the adopted legal solutions are reasonable and proportionate to the scale of the threat.

## 1. The phenomenon of foreigners' crime in Poland

The changes, both political and in the system of government, that took place in Poland after 1989, and above all the opening of the borders, resulted in an influx of foreigners into Poland, which is inextricably linked to their criminal activity. The changes in the number of foreign suspects have definitely gained pace since 1991<sup>8</sup>. In general, from 2010 to 2012, a downward trend can be observed and only in 2013 an increase in the number of foreign suspects was recorded, which, however, was mostly caused by the change of the Police statistical system from the TEMIDA Police Crime Statistics System to the National Police Information System (KSIP), and the fact that the methods of data collection by the TEMIDA and KSIP systems are different (Table 1)<sup>9</sup>. The number of foreign suspects in the years 2013-2015 remained at a similar level, which indicates stabilization of the phenomenon; an increase was recorded in 2016 and continued until 2019. This increase is undoubtedly due to the growing foreign population in Poland, who (especially citizens of Ukraine and other countries of the former USSR) are choosing Poland as a country of destination rather than transit migration as they did in the late 20<sup>th</sup> and early 21<sup>st</sup> century.

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8 RZEPLINSKA (2000), p. 18.

9 From 1 January 2013, the function of a source of statistical information in the Police is performed by the Analytical System which enables generating data on the basis of data from the National Police Information System, where in the case of a crime detected and registration of information about a suspect, the field with information about citizenship must be completed in each case. In previous years, during the operation of the TEMIDA system, such a field was not compulsorily completed; consequently, some data on foreigners' crime could be omitted from the system.

Table 1. Foreign suspects identified by the Police compared to the number of all suspects in Poland in 2010-2019

Year	Total number of suspects	Number of foreign suspects	%
2010	516,154	2,326	0.45
2011	521,942	2,242	0.43
2012	500,539	2,152	0.43
2013	438,662	3,682	0.84
2014	345,549	3,571	1.03
2015	305,815	3,545	1.16
2016	312,366	4,640	1.48
2017	296,973	6,264	2.10
2018	325,804	8,343	2.56
2019	327,817	9,755	2.98

Source: National Police Headquarters.

In general, it should be stated that in the years 2013-2019 foreigners most often committed crimes related to road traffic safety, property, and authenticity of documents, crimes under the Act on counteracting drug addiction<sup>10</sup>, crimes against the activities of state institutions and local government, and fiscal crimes (related to excise tax and customs).

Table 2. Foreigners suspected by the police by type of crime in 2013-2019<sup>11</sup>

Crime type	2013	2014	2015	2016	2017	2018	2019
Against road traffic safety	1,175	1,160	1,065	1,662	2,466	3,343	4,083
Against property	912	858	829	1,116	1,414	1,974	2,513
Against authenticity of documents	318	401	422	526	601	645	198
Drug crimes	260	220	219	341	503	657	1,017

<sup>10</sup> Act of 29 July 2015 on counteracting drug addiction (Journal of Laws of 2018, item 1030, as amended). Similar information is presented in: RZEPLIŃSKA, WŁODARCZYK-MADEJSKA (2018), pp. 145-146, PERKOWSKA (2019), p. 371, PERKOWSKA (2019A), p. 366.

<sup>11</sup> Detailed data concerning the types of crimes for earlier years were not available.

Crime type	2013	2014	2015	2016	2017	2018	2019
Against the activities of state institutions and local government	164	140	124	153	198	269	268
Fiscal crimes	71	80	122	157	183	122	105
Other	782	712	764	685	899	1,333	1,571

Source: National Police Headquarters.

An analysis of the structure of foreigners' crime according to police statistics shows that among the above-mentioned types of crime in the analysed years the most numerous were those against road traffic safety (Table 2). The perpetrators of these crimes constituted over 37% of the total number of foreign suspects. The analysis makes it possible to conclude that within the offenses against road traffic safety, foreigners commit the offense under Article 178a of the Penal Code, which consists in driving a vehicle while intoxicated or under the influence of narcotic drugs and psychotropic substances. Unfortunately, the number of foreigners suspected of this offense increases yearly<sup>12</sup>. Taking into account the fact that the suspected perpetrators of these offenses are mainly citizens of neighbouring countries, this situation can be explained by the fact that in Polish law intoxication occurs when alcohol content in blood exceeds 0.5 g/l or leads to a concentration exceeding this value (Article 115 §16 of the Penal Code), while in German law above 1.1 g/l is treated as a crime, while in the range of 0.5-1.0 g/l the penalty is a fine,<sup>13</sup> whereas for citizens of the countries of the former USSR, excessive alcohol consumption is socially acceptable, which also translates into drunk driving.

Offenses against property are the second largest group of the most frequently committed crimes and constituted 24% of all crimes committed by foreigners in this period. Among the crimes against property, thefts and receiving stolen goods prevailed. One should keep in mind that the offence of smuggling stolen cars through the state border is commonly qualified as a crime of handling stolen goods by foreigners, which is also confirmed by research conducted earlier by I. Rzeplińska<sup>14</sup>. One should remember that according to Frontex data, Poland is on the transit route for motor vehicles (passenger cars and construction

12 RZEPLIŃSKA, WŁODARCZYK-MADEJSKA (2017), pp. 21-22.

13 According to:  
[https://ec.europa.eu/transport/road\\_safety/going\\_abroad/germany/alcohol\\_limits\\_en.htm](https://ec.europa.eu/transport/road_safety/going_abroad/germany/alcohol_limits_en.htm)

14 Cf. RZEPLIŃSKA (2000), pp. 54-55; PERKOWSKA (2009), pp. 290ff.

and agricultural machinery) stolen in Europe<sup>15</sup> on their way to Eastern Europe, outside the EU. Some of these vehicles are identified in the territory of Poland, near the border with Lithuania or at border crossings with Belarus and Ukraine.

The third important sphere of foreigners' criminal activity was crimes against authenticity of documents (almost 8% of all foreign suspects). When analysing the structure of the crimes, it should be concluded that the dominant behaviour is the offense specified in Article 270 of the Penal Code, which is a multi-offense behaviour, as it can be committed by counterfeiting or falsifying a document, or by using a forged or falsified document. In practice, the use of a forged or falsified document is more common than forging or falsifying a document. It also happens that foreigners acquire fake documents from third parties. If interference with documents happens, then the perpetrators more often falsify original documents (i.e., give them a different content than they originally had) than counterfeit them, i.e., make such a record of information that gives the impression of authenticity, especially the impression that it comes from a specific issuer<sup>16</sup>. The issue of document fraud and forgery is seen as a quite significant threat related to migration processes<sup>17</sup>. The phenomenon of document forgery or use of such documents on any scale raises concerns for several reasons. The main one is the assumption that the purpose of the stay of persons with false documents is different than the one declared. These are the examples of quasi-legal migration, for example, visa extortion on the basis of false declarations of intent to employ a foreigner or false invitations (e.g. Ukrainian citizens guided by economic motives and willingness to take up employment). Use of false documents by foreigners from the so called 'higher risk' countries, such as Syria, Pakistan, Iraq, and Turkey, is of much greater concern to experts. Use of false documents is linked to potential terrorist threats. However, in the case of Vietnamese citizens, use of other people's documents is intended to simulate the legality of stay, although it may be connected with other criminal activity like economic or drug crimes<sup>18</sup>, also in organized forms.

The fourth group of offenses were drug crimes. It should be pointed out that according to Polish law it is a crime to possess, produce, trade, import, etc., any quantity of drugs. Possession of any quantity of drugs is punishable by imprisonment of up to 3 years.<sup>19</sup> Foreigners were suspected mainly of possessing drugs or importing them into Polish territory. In the case of these crimes, what is

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15 FRONTEx (2012), p. 23; FRONTEx (2014), p. 29.

16 WRÓBEL (2018), electronic version LEX online. PERKOWSKA (2018A), p. 130.

17 LASKOWSKA (2011), pp. 242ff.

18 SZULECKA (2017), pp. 432-433.

19 According to Article 62 of the Act of 29 July 2005 on counteracting drug addiction, Journal of Laws of 2019, item 852.

also important is the regulations concerning possession of drugs in neighbouring countries. An example is the Czech Republic, where cultivation or possession of small quantities for personal use is a non-criminal offense under the Addictive Substances Act<sup>20</sup>. Citizens of this country were the majority of those suspected of possessing or importing drugs to Poland at the beginning of the analysed period. However, previous research carried out by the author indicates that in the case of Czech citizens, these are usually small amounts of narcotics held for personal use.<sup>21</sup> In recent years, the majority of persons suspected of drug crimes have been Ukrainian citizens, the vast majority of whom were suspected of possession of drugs.

Another group of offenses were crimes against the activities of state institutions and local government, and in this case the perpetrators most often committed a corruption offense consisting in giving or promising to give a financial or personal benefit, as well as crimes consisting in violating the physical integrity of or insulting an officer. As shown by I. Rzeplińska's research, handing a financial benefit, most often money, usually accompanies driving while intoxicated. The perpetrator assumes that as a result he or she will not be punished, a criminal case will not be brought against him or her, and, consequently, he or she will not be penalized with a prohibition to drive mechanical vehicles. In many cases, the effects of a conviction in Poland for drunk driving and a ban on driving mean the loss of a job by a driver, loss of income and financial means for the family. Foreigners from this group are mainly citizens of Ukraine, Belarus, the Russian Federation, and Lithuania.<sup>22</sup>

Fiscal crimes are mostly offenses related to excise tax and customs involving underreporting of the customs and tax value of transported goods. These are offenses committed mainly in connection with crossing of the national border, although they are not always detected at the border crossing point. In many cases foreigners in possession of cigarettes or alcohol without Polish excise tax marks are detained by law enforcement authorities within national territory. Therefore, they are suspected of introducing cigarettes and alcohol into the territory of Poland without the applicable customs procedures<sup>23</sup>.

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20 [https://www.emcdda.europa.eu/countries/drug-reports/2019/czechia/drug-laws-and-drug-law-of-fences\\_en](https://www.emcdda.europa.eu/countries/drug-reports/2019/czechia/drug-laws-and-drug-law-of-fences_en).

21 PERKOWSKA (2017), p. 215.

22 RZEPLIŃSKA (2016), p. 182.

23 PERKOWSKA (2013), p. 43.

Table 2 Foreigners suspected by the police by citizenship in 2013-2019<sup>24</sup>

Citizenship	2013	2014	2015	2016	2017	2018	2019
Ukraine	862	1,084	1,315	2,294	3,650	4,838	5,581
Belarus	299	215	208	239	357	433	514
Bulgaria	233	206	185	172	188	319	360
Romania	217	206	217	228	220	249	217
Germany	251	233	177	197	206	228	258
Russia	234	251	150	173	214	241	286
Georgia	99	72	47	66	111	329	741
Lithuania	223	148	167	153	162	152	149
Armenia	94	91	104	97	107	169	146
Czech Republic	149	115	90	78	107	114	121
Moldova	8	13	28	42	94	158	219
Slovakia	80	109	73	51	58	74	61
Latvia	56	54	70	71	59	56	50

Source: National Police Headquarters.

When analysing the police statistical data, it should be clearly indicated that the largest number of suspected foreigners in Poland were citizens of neighbouring countries. The largest number of suspects in 2013-2019 were Ukrainian citizens, the second group were Belarusian citizens, followed by Bulgarian, Romanian, German, and Russian citizens. Foreigners suspected of committing crimes in Poland in 2013-2019 were citizens of over 70 countries. In the analysed 7-year period, citizens of European Union countries constituted 24% of all suspected foreigners. The most numerous groups of suspects within foreign nationals of EU countries are, in order of priority, Bulgarian, Romanian, German, Lithuanian, Czech, Slovak, and Latvian citizens. The rest, i.e., 76%, are citizens of countries other than EU countries. Among them, the largest share was that of citizens of Ukraine (almost 50% of all suspected foreigners), Belarus (6%), Russia (4%), and Georgia (4%). The presented structure of foreign suspects has changed in relation to the research conducted previously.<sup>25</sup> Although the largest number of suspects continued to be citizens of the former USSR, including in particular Ukrainian citizens, the proportion between suspected EU citizens

<sup>24</sup> Detailed data concerning the nationality of the perpetrators for previous years were not available.

<sup>25</sup> RZEPLIŃSKA, WŁODARCZYK-MADEJSKA (2017), pp. 21-22; RZEPLIŃSKA, WŁODARCZYK-MADEJSKA (2018), pp. 139-140.



and suspected third country nationals has changed. The number of the former decreased. However, it should be noted that the progressive and significant increase in the number of suspected Ukrainian citizens is due, on the one hand, to the increase in the population of Ukrainian citizens in Poland. On the other hand, the vast majority of the offenses constituted the offense of drunk driving, the detection of which largely depends on the concentration of work of law enforcement authorities and not on aetiological factors.

In conclusion, it can be stated that the criminal activity of foreigners in Poland disclosed by the police includes crimes against road traffic safety, non-economic crimes, and economic crimes. In this way, these behaviours violate important interests of both individuals (mainly property and health) and the state (mainly economic interests, security of documents, and safety of citizens)<sup>26</sup>.

Apart from the crime registered<sup>27</sup> by the police inside the country, crime by foreigners in Poland includes border crime<sup>28</sup> disclosed by the Border Guard and the Customs and Fiscal Offices.

Table 3. Suspected foreigners compared to the number of all suspects identified by the Border Guard in Poland in 2010-2018

Year	Suspects	Suspected foreigners	%
2010	5,693	3,536	62.11
2011	4,962	3,070	61.87
2012	6,062	4,162	68.66
2013	5,029	3,256	64.74
2014	5,771	3,845	66.63
2015	6,611	4,710	71.24
2016	6,493	4,615	71.08
2017	5,771	3,845	66.63
2018	5,799	4,154	71.63

Source: National Border Guard Headquarters.

26 PERKOWSKA (2013), p. 41; LASKOWSKA (2009), p. 241; GRUSZCZYŃSKA (1998), p. 29.

27 There is no single set of data in Poland which would include all the crimes and suspects recorded by the different agencies. Each agency, including the Police, the Border Guard, and the Customs and Fiscal Offices, keeps separate data sets.

28 Due to the diversity of definitions, the authors of the paper define 'border crime' as offenses that are related to the movement of entities and objects across the national border, regardless of which legally protected interest the offense is directed against (the interest of the state or the interest of individuals). See: PERKOWSKA (2013), p. 25.

The structure of perpetrators detected by the Border Guard in the years 2010-2018 is different from that presented by the police. In the analysed period, foreigners were a large majority of persons suspected<sup>29</sup> of border crimes.

The number of suspected foreigners in the discussed period always outweighed the number of Polish suspects. The percentage of foreigners varied from 62 to 72 per cent of all suspects. Therefore, it can be concluded that border criminality in Poland is dominated by foreigners. Its dynamics depends on the dynamics of foreigners' behaviours.

It is worth pointing out the factors that have influenced the changes in border crime by foreigners in recent years. An important factor was the entry into force of the local border traffic agreements with Ukraine (June 2009) and Russia (June 2012), which were connected with the introduction of solutions aimed to facilitate crossing of national borders by persons living in the border areas. It also resulted in an increase in the number of registered suspects, as increased border traffic on the borders with these countries also increased the number of criminal behaviour by foreigners. Moreover, according to Frontex, in 2012 the effectiveness of prosecution of illegal migration in Belarus decreased. The Belarusian agencies focused on those who went into Belarus and not on those who left it<sup>30</sup>. This resulted in an increase in the number of apprehended illegal migrants by the Polish Border Guard at the border with Belarus as well as at the Lithuanian-Polish border. The increase in the number of detainees at the EU's external border with Belarus in 2012 compared to 2011 was more than 52%<sup>31</sup>.

Another important factor was the abolition for people staying illegally in Poland that entered into force. The increase was attributed to so-called 'abolition tourism', that is, an intensified illegal inflow of foreigners who were attracted by the possibility of legalizing their stay in Poland but who did not, however, meet the conditions prescribed in the Abolition Act.<sup>32</sup>

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29 A similar trend was recorded by the Pomeranian and Silesian Unit of the Border Guard on Poland's western border: IWASZKIEWICZ (2010), pp. 51-52; SZYMANEK (2016), p. 141.

30 *Mniej szczelna granica polsko-białoruska*, Biuletyn Migracyjny 2012, no. 36, p. 1.

31 FRONTEx (2013), p. 20.

32 PERKOWSKA (2015), pp. 33-49.

Table 4. Foreigners suspected by the Border Guard by type of crime  
 in 2010-2018

Legal qualification	2010	2011	2012	2013	2014	2015	2016	2017	2018
Crossing the border in violation of law	927	760	1,429	1,125	1,141	1,604	1,710	1,086	1,086
Organizing border crossing for other persons in violation of law	87	22	7	37	54	70	37	72	67
Enabling other persons to stay in Polish territory	26	12	8	8	10	17	21	16	13
Use of a counterfeit or falsified document	768	709	1,007	715	766	1,594	1,680	1,552	1,805
Other offenses against the authenticity of documents under Article 271-275 of the Penal Code	648	630	712	385	379	287	170	148	261
Granting a financial benefit	65	43	41	27	0	0	0	0	0
Participation in an organized crime group	8	22	18	11	7	30	30	79	62
Fiscal crimes	951	787	824	895	578	1,019	854	767	501
Drug crimes	0	15	30	16	19	35	35	42	69
Other crimes	57	55	76	30	49	52	72	80	290

Source: Border Guard Headquarters.

The structure of border crime by foreigners detected by the Border Guard consists mainly of three groups of behaviours: crossing the border in violation of law, offenses against authenticity of documents, and smuggling offenses (Table 4)<sup>33</sup>. The largest number of registered offenses committed by foreigners consist-

33 These behaviours also take the form of activities of organized crime groups. Border crime is also accompanied by corruption, as foreigners often try to hand financial benefits to border agency officers in exchange for abstaining from performing their official activities. PERKOWSKA (2017), pp. 215ff; RZEPLIŃSKA (2016), pp. 175-189.

ed in illegal migration and included crossing the border in violation of law and offenses against authenticity of documents. The majority of offenses classified as border crime in the years 2010-2018 were crimes against authenticity of documents (more than 40%), of which the most common was the offense consisting in the use of a forged or falsified document. Approximately 32% of the perpetrators crossed the Polish border in violation of law. The third largest group of offenses committed by foreigners were fiscal offenses.<sup>34</sup>

Table 5. Foreigners suspected by the Border Guard  
by citizenship in 2010-2018

Citizenship	2010	2011	2012	2013	2014	2015	2016	2017	2018
Ukraine	2,238	1,937	2,393	2,001	1,968	3,515	3,499	2,639	2,607
Belarus	252	368	789	314	176	188	198	185	241
Russia	132	154	177	412	150	231	252	195	214
Vietnam	65	60	80	55	143	162	152	129	193
Georgia	133	75	91	85	58	38	27	35	46
Lithuania	135	70	48	50	62	54	30	39	27
Pakistan	10	1	102	23	28	89	16	59	22
Armenia	44	34	21	37	37	53	40	39	41
Moldova	70	42	19	23	21	15	16	22	24
Afghanistan	14	28	63	25	13	14	4	17	31
Bulgaria	9	5	2	14	11	14	14	24	21
Romania	11	9	19	10	8	10	6	14	11
Germany	4	4	6	3	9	8	12	14	19
Czech Republic	8	6	1	2	2	5	4	1	3
Slovakia	11	6	–	–	3	2	1	–	4
Other	400	271	348	176	315	312	344	433	650

Source: Border Guard Headquarters.

In the analysed time span, Ukrainian nationals were always the largest number of people detected by the Border Guard for illegal crossing, followed by Belarusian, Russian, Vietnamese and Georgian nationals. It is an inevitable consequence of the fact that these border sections are mostly crossed by citizens

<sup>34</sup> The largest number of fiscal offenses is disclosed by Customs and Tax Offices, but these agencies do not publish data on the number of suspects, which makes it impossible to make comparisons with the data provided by the Police and the Border Guard.

of Poland's neighbouring countries<sup>35</sup>. However, it is worth stressing that a significant number of nationals of Moldova, Georgia and Vietnam were detected at the border as well. These people wish to join their communities that have been existing and functioning well in Poland for years; thus, they use both regular and irregular migration channels to achieve this aim.<sup>36</sup> In contrast to police statistics, third-country nationals constituted as much as 90% of the suspects. The greatest change was observed in the number of suspected Ukrainian citizens. Their behaviour is largely determined by the political situation in that country and all political and military events have an impact on the increase in the number of persons suspected of border crimes, mainly of crossing the border in violation of law and using false documents. However, this is natural, as EU citizens can move freely within the EU and have little difficulty in crossing its external borders and entering third countries.

The increase in the number of foreign nationals suspected of illegal border crossing in 2015 could easily be attributed to the migration crisis in Europe, as the Border Guard has recorded more illegal border crossings or the use of forged documents. In 2014 the Border Guard accused 1,141 foreigners for illegal border crossing, whereas in 2015 the number amounted to 1,604. This was an increase of 40%. It should be noted, however, that my analysis of the Border Guard's information concerning citizens of countries at the source of asylum seekers' flows (Syria, Afghanistan, Iraq, Pakistan), who came to Europe on a mass scale in 2015, does not confirm the big influx to Poland<sup>37</sup>. The citizens of Syria, Iraq and Pakistan attempted to enter Poland with forged or fake documents which authorized them to cross the border (as the citizens of Ukraine, Russia, Belarus or Albania did). They used air services as they entered into contact with criminal groups in Greece that arranged for them false documents (including Polish passports or ID cards) and tickets for the flights within the Schengen area, including flight tickets to Poland. If we examine the number of nationals from states which are under migratory pressure who were apprehended for crossing the Polish border illegally in 2015, as opposed to 2014, an increase can be observed. However, in nominal numbers it was not so considerable if compared to the situation on the other external borders of the European Union.

The migration crisis did not in any way contribute to the increased illegal migration at the Polish sections of the EU *external* border. In general, most interceptions in 2015 took place at the Polish sections of the internal EU border. Foreigners mainly used counterfeit or fraudulent documents. They rarely crossed

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35 POGODA (2014), pp. 214-215.

36 PERKOWSKA (2018), p. 201.

37 RAPORT (2017), p. 97.

the state border illegally using violence, threats, deceit or in cooperation with other persons. However, the rise in the number of persons accused of illegally crossing the Polish border in 2015 as compared to 2014 was affected by the increased number of intercepted Ukrainian citizens (1,968 of them in 2014 and 3,515 in 2015 respectively), but not by the number of accused persons who came from migration risk countries<sup>38</sup>.

## 2. The state's legal response to crime by foreigners

As I. Rzeplińska points out, there is no single system for preventing and combating foreigner crime. Crime prevention means knowing the conditions of a given phenomenon: researching, determining aetiological factors of crime committed by foreigners, and then analysing the risk of this crime. Determination of the aetiology and analysis of the risk must always be carried out in relation to a given type of foreigner crime, at a given time. The fight against foreigner crime can be carried out on the basis of knowledge of the aetiology of different types of crimes committed by foreigners and control through appropriate penal policy<sup>39</sup>. Therefore, it is not possible to indicate all elements of foreigner crime prevention due to its multi-offense nature. In recent years, however, there has been a focus on legalization activity, which is most focused on combating irregular migration and terrorism.

One of the important steps taken by the Polish legislator to prevent illegal migration was the implementation of the European Council framework decision of 28 November 2002, on strengthening the penal framework to prevent the facilitation of unauthorized entry, transit and residence,<sup>40</sup> and EU Directive 2002/90/EC defining the facilitation of unauthorized entry, transit and residence.<sup>41</sup> Based on this, the legislator<sup>42</sup> penalized some actions undertaken for financial and personal benefits which include assisting illegal migration by virtue of added art. 264a of the Criminal Code. According to Ćwiakalski, Article 264a of the Criminal Code was a reaction to an increase in inflow and illegal stays of immigrants, which has resulted from Poland's increased attractiveness and would not be possible without other people's involvement in offering facilitation of illegal entry.

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38 PERKOWSKA (2019), p. 379; KLAUS, LÉVAY, RZEPLIŃSKA, SCHEINOST (2018), p. 481.

39 RZEPLIŃSKA (2016), p. 13.

40 European Council framework decision of 28 November 2002, on strengthening the penal framework to prevent the facilitation of unauthorized entry, transit and residence (2002/946/JHA).

41 Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorized entry, transit and residence [2002] OJ L328/17.

42 Explanatory memorandum to act changing Criminal Code and other acts, print no. 2407, p. 14.

Nevertheless, in exceptional cases the possibility of extraordinary mitigation or even waiver of punishment has been stipulated in the article.<sup>43</sup> However, the analysis of the phenomenon of foreigner crime presented above shows that this phenomenon, especially in relation to the European scale, is marginal in Poland.

According to the legislator, not every case of assisting in illegal migration requires the punishment stipulated under Article 264a(1) of the Criminal Code. In exceptional cases where the perpetrator has not received any financial benefits, the court might, by virtue of Article 264a(2) of the Criminal Code, mitigate or even waive the punishment.<sup>44</sup>

A person who intends to stay or stays in the territory of the Republic of Poland illegally (i.e., without legal entitlement) is criminalized under the aforementioned provisions, and only a foreigner, that is, anyone who does not possess Polish nationality,<sup>45</sup> fits into that category. Therefore, while Article 264a(1) of the Criminal Code does not expressly state that the provisions concern only foreigners it can be concluded as such from the Act on Foreigners which stipulates the rules and conditions attached to the stay of foreigners in the territory of the Republic of Poland.<sup>46</sup>

Another step to implement EU law, namely Directive 2009/52/EC of the European Parliament and of the Council providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals,<sup>47</sup> in the scope of combating illegal migration is the Act of 15 June 2012 on Effects of Illegal Employment of Foreigners Illegally Staying on Polish Territory.<sup>48</sup>

Directive 2009/52/EC introduced a ban on the employment of third-country nationals who are illegally staying in the territory of the EU Member States. The term 'foreigner' was limited in the Act on Effects of Illegal Employment of Foreigners Illegally Staying on Polish Territory following Directive 2009/52/EC, if compared to the general term 'foreigner' included in Article 2 of the Act on Foreigners. The Act on Foreigners and the Act on Employment Promotion and Labour Market Institutions, Article 2(1)(7), stipulate that a foreigner is every person who does not possess Polish citizenship.<sup>49</sup>

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43 ĆWIAKAŁSKI (2013), p. 1454.

44 GENSİKOWSKI (2011), pp. 182ff.

45 On the basis of Art. 2 of Act on Foreigners.

46 STEFAŃSKI (2005), p. 8; PERKOWSKA, JURGIELEWICZ (2014), p. 71; PERKOWSKA (2018), p. 213.

47 Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals [2009], OJ L168/24.

48 Act of 15 June 2012 on Effects of Illegal Employment of Foreigners Illegally Staying on Polish Territory, Journal of Laws 2012, item 769.

49 Art. 2(1)(7) of the the Act on Foreigners, Journal of Laws 2011, no. 191, item 1133.

Moreover, the Act on Effects of Illegal Employment of Foreigners Illegally Staying on Polish Territory provides for penal and administrative sanctions imposed on employers who violate the ban, which include the liability of legal persons and, under certain circumstances, also financial liability of contractor if a subcontractor breaches the employer's obligations.

Statutory conditions for the legal employment of foreigners in Poland are prescribed in the Act on Effects of Illegal Employment of Foreigners Illegally Staying on Polish Territory and the Act of Employment Promotion and Labour Market Institutions.<sup>50</sup>

Under Polish law, the implementation of Directive 2009/52/EC resulted in increasing liability for illegal employment of foreigners. Article 2 of the Act of 15 June 2012 on Effects of Illegal Employment of Foreigners Illegally Staying on Polish Territory obliges the employer to demand from the foreigner before s/he starts working to present a valid document, which authorizes him/her to stay in the territory of Poland.<sup>51</sup>

The Act on Employment Promotion and Labour Market Institutions, by virtue of Article 120, penalizes illegal employment of foreigners. It is a petty offense, which means employing a foreigner is in violation of law and is subject to a fine up to PLN 3,000. In accordance with Article 2(2) of the Act on Employment Promotion and Labour Market Institutions, the foreigners who illegally perform the work are also liable but the penalties are lower as they are subject to a fine up to PLN 1000. Thus, an increase in liability (for both migrants and employers) was reflected in the introduction of two new categories of offenses and an aggravated type of petty offense.

Employing many foreigners who stay in the territory of the Republic of Poland without a valid residence permit or employing a minor foreign national staying in the territory of the Republic of Poland without a valid residence permit is subject to a fine or a restriction of liberty. A similar punishment is prescribed if a foreigner who stays in the territory of the Republic of Poland without a valid residence permit is persistently employed, provided that the offender's actions are closely connected with that person's economic activity.<sup>52</sup>

The Act on Effects of Illegal Employment of Foreigners Illegally Staying on Polish Territory came into force in 2012 and is actually intended to counteract irregular migration in one of its forms, which is illegal employment. It is also intended to protect foreigners against exploitation by dishonest employers. Such employees are often employed for wages below the minimum rates provided for

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50 Act of 20 April 2004 on Employment Promotion and Labour Market Institutions, Journal of Laws 2004, no. 99, item 1001.

51 DRABEK (2012), p. 320.

52 PERKOWSKA (2018), p. 214.



by law and are forced to work overtime, in conditions that do not meet the basic principles of health and safety at work. Importantly, as of the end of 2018,<sup>53</sup> nobody had been convicted under this law. This law is therefore dead letter, which does not mean that there is no employment of foreigners whose stay has not been legalized in Poland.

The next amendment made in Polish criminal law was Article 259a of the Criminal Code, which introduces the new offense of illegal border crossing with the aim of committing an act of terrorism on the territory of another state.<sup>54</sup> This regulation is grounded in 10 June 2016 Anti-terrorism Act. As pointed out in the explanatory memorandum to the draft Act (including very brief reference to criminal law), the said act, among other things, aims to introduce criminal law provisions following the Additional Protocol signed by the Republic of Poland with regard to the Council of Europe Convention on Prevention of Terrorism concluded on 16 May 2005 in Warsaw.<sup>55</sup> Therefore, numerous amendments and new types of offenses concerning the activities of the so-called foreign fighters were introduced. According to Article 259a of the Criminal Code, the offender who crosses the border has to manifest an intent to commit an offense in the territory of another state but, as Lach claims, this regulation is confusing. A doubt arises whether it refers either to entering or leaving the Republic of Poland. It may be assumed that both cases are criminalised. Any state, apart from the Republic of Poland, might be considered 'another state' according to these provisions. Therefore, both a person who leaves Poland to commit an offense in another state and a person who travels through Poland to reach another country to commit a terrorist attack are criminally liable. The Polish provisions are broader than the provisions of Article 4(1) of the Protocol which refer to leaving the country.<sup>56</sup> In order to be held criminally liable, it is irrelevant whether the border crossing was regular or illegal.<sup>57</sup>

It may be argued that criminal prosecution solely based on expressions of motivation by an individual, and without more concrete manifestation of any

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53 <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/>

54 Art. 259a of the Criminal Code states that whoever crosses the border of the Republic of Poland for the purpose of the commission of a terrorist offense in the territory of other state or the offense stipulated under Art. 255a or Art. 258(2) or (4) of the Criminal Code, i.e., distributing or publicly presenting content that could facilitate the commission of a terrorist offense or obtaining the access to the content with the intention that such an offense be committed, participation in a terrorist offense, receiving of training for terrorism, participation in an organized group or association whose purpose is to commit a terrorist offense, forming or leading an organized group or association whose purpose is to commit a terrorist offense is subject to the penalty of deprivation of liberty for the term from three months up to five years.

55 Council of Europe Convention on Prevention of Terrorism concluded on 16 May 2005 in Warsaw, Journal of Laws of 2008, no. 161, item 998.

56 LACH (2016), electronic version LEX online.

57 PERKOWSKA (2018), p. 217.

intent to actually carry out a principal criminal act, would appear to criminalise expression and manifestation rather than objective criminal conduct. This risk is heightened where the conduct to be criminalised is an attempt to carry out the said prohibited conduct. The draft Protocol should have laid down a prerequisite of a sufficiently direct connection with a principal criminal conduct and stipulate that clear and unequivocal intent has to be established.<sup>58</sup> A similar approach was taken by the Ombudsman, who underscored that the provisions of Article 259a of the Criminal Code shift the liability significantly to the moment when the good has not yet been infringed, which raises serious doubts from the perspective of a democratic state based on the rule of law and the principle of proportionality. Moreover, the drafter did not provide persuasive arguments that prohibited acts shaped in this way are necessary, useful and proportional in the strict sense.<sup>59</sup>

The penalties introduced for the offense prescribed by virtue of Article 259a of the Criminal Code appear to be reasonable bearing in mind the geographical location of Poland and transit routes running through Poland as well as illegal migration, smuggling of goods or movement of terrorists who wish to reach other European states. As indicated by the Border Guard, significant changes occurred in 2014 in the structure of illegal migration to Poland and new priorities appeared in the mechanisms to combat this, grounded, among other things, in increasing activity by extremist groups of Islamic fundamentalists in Europe. Therefore, monitoring of traditional, refugee and economic migration from Asia and Africa and its prevention have acquired increased importance in the light of common security.<sup>60</sup>

From the procedural point of view, it is crucial to prove the intent 'to commit a terrorist offense' provided for under Article 259a of the Criminal Code. One question might be posed in this context. What elements of the perpetrator's behaviour or objects and documents possessed might prove those intentions? The fact that a foreigner produces counterfeited documents or uses someone else's documents or documents obtained under false pretences does not unequivocally mean that the individual plans to carry out a terrorist attack. As Amnesty International points out, defendants should not in any circumstances bear the burden of proof in establishing that their travel to or presence in a specific area would be for a legitimate purpose, in keeping with the principle of presumption of innocence. The burden of proof in criminal proceedings lies solely with the prosecution.<sup>61</sup>

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58 AMNESTY INTERNATIONAL (2015), p. 8.

59 OMBUDSMAN (2020), p. 19.

60 REPORT (2015), p. 102.

61 AMNESTY INTERNATIONAL (2015) p. 8.

The provisions of Article 10(1) of the Anti-terrorism Act from 2016 need to be highlighted as they authorise the officers of the Internal Security Agency and the Border Guard to take fingerprints, record face image or non-invasively collect genetic materials to determine the foreigner's DNA profile. The officers may use this power when: (i) there are doubts regarding identity; (ii) there exists a justified suspicion of crossing Poland's border in violation of law or doubts regarding the declared objective of stay in the territory of Poland; (iii) there exists a justified suspicion that the person intends to stay in Poland illegally; and (iv) there exists a justified suspicion that the person was involved in a terrorist attack or participated in terrorist training.

When discussing the said prerequisites, some important aspects need to be highlighted in the context of the threat of illegal migration and terrorism. The Act introduces the right to collect biometric data and DNA samples in the event of doubts regarding the identity of the individual or suspicion of illegal border crossing. It should be remembered that persons who cross the border in violation of the law frequently do not possess any documents that would confirm their identity (in the European context, this is usually seen when migrating on sea routes) and it is also closely connected with another negative phenomenon: 'bogus citizenship'. Bogus citizenship means that a foreigner who does not possess any identity documents declares citizenship of a country, which is, for example, at war or which has been affected by natural disaster, with the aim of increasing their chances of obtaining international protection such as refugee status. In this situation, the foreigner does not come from a region where he or she is at risk of suffering persecution or other events which would give grounds for such protection, except for economic migration. Therefore, collecting data or DNA samples is the only way to identify the person concerned or at least register this information (as frequently there is no data to compare). Such registration would then be used for future identification of the person in the territory of Poland, and in other EU states.<sup>62</sup>

Identification is of key importance in the context of refugee procedure, which is frequently abused in economic migration. Szulecka highlights that there are no measures which would facilitate monitoring the status of a foreigner who applied for international protection and whose proceedings were dismissed (dismissal would result from the fact that the applicant was neither interested in participating in the proceedings nor present in Poland). Although these dismissals are directly connected with the person's absence, it is not possible to tell whether foreigners have left Poland or stayed there illegally. The fact that there is no confirmed information as to what has happened to the people who were refused

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62 MĄDRZEJOWSKI, *Wiak* (2016), p. 410.

their applications in Poland or whose proceedings were dismissed makes the scale of any abuse difficult to determine. Nevertheless, the statistical data on refusals or dismissals serve as indicators confirming the abuse of procedures of international protection.<sup>63</sup>

Thus, the possibility of downloading the foreigner's data on the grounds of Article 10 of the Anti-terrorism Act will undoubtedly facilitate monitoring their stay in Poland or other EU states in the context of illegal migration and illegal stay, which was pointed out by the legislator in the explanatory memorandum attached to the Act. Furthermore, the adopted solutions aimed at data exchange with third-country services seem justified in the context of the abolition of border controls based on the Schengen agreement.<sup>64</sup>

The term 'suspicion of illegal stay or relation with a terrorist action' used in the article in question appears to be imprecise as the legislator did not even add an adjective 'justified' before the word 'suspicion,' which could allow to refer to the doctrine and the judicial decisions while interpreting. For example, Article 17(1)(1) of the Code of Criminal Proceedings<sup>65</sup> could be quoted as it points to a substantive premise, which allows a criminal proceeding to be instigated. The phrase 'no data which would sufficiently justify the suspicion that prohibited act was committed' included in Article 17(1)(1) of the Code of Criminal Proceedings indicates the situation when insufficient evidence was gathered to prove the act was committed<sup>66</sup> or there are no sufficient data to claim that the act occurred.<sup>67</sup>

Some questions might be posed in this context. For instance, what behaviour demonstrates the intent of the perpetrator to stay illegally in Polish territory? Is it enough to cross the border in violation of the law, for example at a place which is not designated for that purpose, like the Green Line, or to use false or someone else's documents? To what extent is the suspicion sufficient when justified suspicion (i.e., supported by evidence) is not required by law?

In accordance with Article 10(1) of the Anti-terrorism Act, suspicion is a sufficient condition to collect biometric data and DNA samples but subsequent proceedings relating to illegal border crossing or terrorist offenses as well as petty offenses concerning illegal border crossing or illegal stay will require, under Article 17(1) of the Code of Criminal Proceedings and Article 5(1) of the Petty Offences Procedure Code, the production of evidence which justifies the suspicion of committing the offense. Hence, the decision to instigate a criminal proceeding will verify the legitimacy of this suspicion but will not cancel the data which

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63 SZULECKA (2016), p. 233.

64 Explanatory memorandum to Anti-terrorism Act and other acts, Print no. 516, p. 10.

65 Act of 6 June 1997 Code of Criminal Procedure, Journal of Laws 1997, no. 89, item 555.

66 STEINBORN (2016), electronic version LEX online.

67 GRZEGORCZYK (2016), electronic version LEX online.

have already been included in the relevant databases. In addition, a problem of consent or lack thereof for taking fingerprints or DNA samples arises. Neither the Anti-terrorism Act nor the Decree of the Prime Minister of 25 July 2016 on collecting and transferring fingerprint images and genetic materials and recording the image of the face of a person who is not a national of the Republic of Poland<sup>68</sup> include the provisions thereon.

According to the provisions of the Code of Criminal Proceedings, only an accused person is obliged to undergo external examination, which includes photographing or collecting fingerprints or DNA samples.<sup>69</sup> However, by virtue of Article 192a(1) of the Code of Criminal Proceedings, it is possible to collect fingerprints, buccal mucosa swabs, hair, saliva, handwriting samples or take a photo of the person or record that person's voice in order to restrict the number of suspects or to assess the value of the disclosed evidence. Nevertheless, once the materials originally collected or recorded for a particular case are used, they have to be removed from the files and destroyed the moment they become unnecessary.

The provisions of the Anti-terrorism Act go far beyond the provisions of the Code of Criminal Proceedings or of other Acts, as collecting the data is not related to any procedure stipulated in the Act. In some illegal migration cases the foreigner did not consent to have fingerprints taken. Could coercive measures be applied in this situation? It is not provided for in the current legislation but one should bear in mind that any limitation of human rights and freedoms may only be imposed by law.<sup>70</sup>

As the Ombudsman rightly points out in the light of the provisions of the Act on the Protection of Personal Data,<sup>71</sup> personal data must be processed within the scope and subject to the procedure provided for by law; processing must be reliable and transparent for the individual concerned and may serve exclusively specified purposes stipulated by law. It does not preclude any enforcement authorities from taking any preventive actions, conducting preliminary proceedings, detecting and prosecuting prohibited acts, or enforcing punishments if these actions are stipulated by law, are indispensable and proportional in the democratic society and take into consideration a particular individual's justified interest. The principle of reliable personal data processing laid down in the legal system of personal data protection means that individuals have to be informed on the risk,

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68 Decree of the Prime Minister of 25 July 2016 on collecting and transferring fingerprint images and genetic materials and recording face image of the person who is not a national of the Republic of Poland, Journal of Laws of 2016, item 1102.

69 Art. 74 (2) of the Code of Criminal Proceedings.

70 Art. 31(1) of the Constitution of the Republic of Poland.

71 Act of 29 August 1997 on the Protection of Personal Data, Journal of Laws of 2015, item 2135.

rules, securities and rights related to personal data processing and how they can execute their rights in the context of personal data processing. The purposes of personal data processing should be precise, justified and relevant at the moment of their collection. In addition, personal data should be adequate and appropriate in relation to the purpose for which they are processed. It should, in particular, be ensured that personal data gathered are not excessive and they are stored not longer than necessary to achieve the purpose of their processing. Personal data may only be processed if the purpose of the processing could not be achieved by other methods. To prevent the situation when the data are stored longer than needed, the administrator should fix the date when they are to be regularly reviewed or removed. In the Ombudsman's opinion, the Act does not explain if access to all the databases is really needed to accomplish its purposes, and does not confer any rights on the data subjects. In addition, it does not implement the principle of temporary restriction on the data storage, hence it breaches the fundamental principles of data protection.<sup>72</sup>

A similar claim may be made with regard to Article 9 of the Anti-terrorism Act,<sup>73</sup> which authorises the head of the Internal Security Agency (ABW), in order to detect, prevent and combat terrorist offenses, to take classified actions, for a period of up to three months, towards a person who is not a national of the Republic of Poland where there is a concern that this person might conduct terrorist activities. These actions encompass: (i) obtaining and recording the content of conversations and other information conveyed through telecommunications networks; (ii) obtaining and recording images and sounds of the people from the premises, the means of transport and places other than public spaces; (iii) obtaining and recording the content of correspondence, including the content of electronic correspondence; (iv) obtaining and recording data in digital data media, telecommunications terminal equipment and information and ICT systems; and (v) gaining access and control of the consignment composition. As it is rightly pointed out by Buczkowski, these provisions start quotation before distinguish the legal status of people who are Polish citizens and enjoy the full protection of the law from the people who do not have this status and whose rights are restricted, which may infringe the principle of freedom and equality before the law based on Articles 31 and 32 of the Constitution of the Republic of Poland in conjunction with Article 37(1) and which ensures that people under the sovereignty of the Republic of Poland, hence foreigners, may enjoy freedoms and rights provided for in the Constitution'. Moreover, the said provisions include

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72 OMBUDSMAN (2015), p. 9.

73 Importantly, the head of the Internal Security Agency does not have to obtain any permission to take actions against foreigners. See KUREK (2016), p. 435.

imprecise, hence ambiguous, terms like 'concerns as to possibility of conducting terrorist activities'.<sup>74</sup>

Restricting foreigners' freedoms and rights is also included in the provisions of the Act on the Entry into, Residence in and Exit from the Territory of the Republic of Poland of Nationals of the European Union Member States and their Family Members (2006).<sup>75</sup> It relates to the decision on expulsion from the territory of the Republic of Poland when there is a concern that a person may conduct terrorist and espionage activities or is suspected of having committed these offenses. The decision in question has immediate effect, which limits the right to appeal and the right to a fair trial.<sup>76</sup>

The group most affected by the new regulations are foreigners (including citizens of other EU countries). In addition to all previous regulations, each foreigner might become a target of practically unrestricted surveillance by the Head of Internal Security Agency, taking the form of phone tapping, bugging the house (also with cameras), access to all forms of correspondence along with all the data aggregated or sorted electronically by the person (Art. 9 of the Anti-terrorist Act); the Head of Internal Security Agency has also obtained access to all databases where the information about foreigners is kept, and all these data can be acquired and stored without limitation.<sup>77</sup>

In 2017 the Minister of Internal Affairs additionally presented a draft amendment to the Act on granting protection to foreigners in the territory of the Republic of Poland. Its aim, according to the Minister, is to increase the level of security in our country. We do not know what shape the regulations will ultimately take, as the work has only just begun, but their current shape raises a considerable concern. The project will revolutionise Polish migration law, introducing the so-called accelerated border procedures to examine applications for international protection. The conditions have been formulated very broadly and sketchily, enabling a great majority of asylum procedures to be conducted in the accelerated mode (it should be concluded by issuing a final decision within 20 days), which leaves very little time to investigate the case thoroughly. Furthermore, detention of asylum seekers will now be possible on a much larger scale. Again, almost every person seeking protection in Poland might be placed in a detention centre. The right to justice has also been limited, anticipating the possibility of immediate

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74 BUCZKOWSKI (2016), p. 29; MARSZALEK (2016), p. 139.

75 Act of 14 July 2006 on the Entry into, Residence in and Exit from the Territory of the Republic of Poland of Nationals of the European Union Member States and their Family Members, Journal of Laws of 2006, no. 144, item 1043.

76 Remarks of the Helsinki Foundation for Human Rights to the bill on anti-terrorist activities (Print no. 516), < <http://www.hfhr.pl/ustawa-antiterrorist/> > accessed on 18 June 2017, p. 22; PERKOWSKA (2018), pp. 223-224.

77 KLAUS (2017), p. 525.

deportation of the person whose application has been rejected by the Office for Foreigners in any of the accelerated procedures.

The aim of the new regulation is in fact restricting access to asylum in the territory of Poland and discouraging potential asylum seekers from submitting applications in our country and a prompt return of those foreigners who received a negative decision. In fact, the decision denying international protection issued during the procedure is final. No administrative court proceedings can prevent the expulsion of the foreigner from the territory of Poland. Allegedly, the draft reform is a response of the authorities to the crisis on the Polish border in Terespol described above. It is the expression of the policy of closure towards foreigners, including limited access to obtaining asylum in Poland.<sup>78</sup> The objective of this legislation is to obstruct asylum seekers' access to international protection in Poland. In the explanatory memorandum to the latest draft of amendments it is indicated that the majority of applicants are not 'genuine refugees' and wish to circumvent the legal conditions for crossing the external border of the European Union. Using the 'logic' of the Polish government, special legal measures should be introduced to prevent 'abuse of refugee procedures by economic migrants.' These new mechanisms are intended not only to efficiently manage asylum processes, but also to 'contribute to internal security of the state and protect the public order'.<sup>79</sup>

### 3. Conclusions

Foreigners are an indispensable part of the society of any country. In recent years, an increase in the number of incoming foreigners has been observed, which indicates a change in the nature of migration to Poland from transit to destination, especially in the case of Ukrainian citizens. A natural consequence of the influx of foreigners is their crime. However, in the case of Poland, this crime is marginal, even if we put together the crimes committed inside the country registered by the police and the border crime registered by the Border Guard. Foreigner crime in Poland mainly comprises offenses directed against road traffic safety, property, and authenticity of documents. Falsified documents are also a part of border crime and are used mainly in irregular migration. The largest group of suspects are citizens of the former USSR, a vast majority of whom are Ukrainian citizens.

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78 KLAUS *et al.* (2018), p. 483.

79 KLAUS (2020), p. 82.



Although foreigner crime is a statistically insignificant phenomenon in Poland, the actions of the legislator seem to contradict this. Poland implemented into criminal law legal regulations of the EU and the Council of Europe aimed at combating illegal migration and terrorism, being a member of those organizations, basically without reference to the scale of real and potential threat. As it was shown, the scale of irregular migration (especially in the form of illegal border crossing) to Poland is none, if compared with other Member States. The same concerns the terrorism threat. This gap is also evidenced in particular by the fact that, under the Act on Effects of Illegal Employment of Foreigners Illegally Staying on Polish Territory, not a single person has been convicted by the end of 2018; similarly, no criminal proceedings have been initiated or any person has been convicted under Article 259a of the Criminal Code. Poland is not very attractive for illegal migration and, in comparison with other EU countries, it is not yet too often chosen as a destination country. It was not in any way affected by the 2015 migration crisis, which caused an influx of people with an irregular status in other countries. Therefore, introduction into national law of the European regulations indicated in the article is due rather to obligations arising from international law than to a real need to counteract this phenomenon.

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