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CONTENTS

Irena Rzeplińska

Preventing the Perpetration of Criminal Offences by Foreign Nationals Residing in Poland

It has been for several decades now that criminological literature has addressed the issue of crime prevention in societies.

Helena Kołakowska-Przełomiec argued in 1984: "While trying to formulate a definition of crime prevention, on no account should we disregard the fact that a criminal offence may be committed only by an individual who lives in a certain specific setting, in a society. Crime prevention can therefore be associated with the conditions of the external world in which a person lives, the constraints of social interactions, interpersonal relations, as well as with the person's own identity, self-development, lifetime experience, attitudes, aspirations, and the scope of individual activities. Accordingly, crime prevention may be associated with all that effectively makes up the fabric of an outside world in which the person lives, with the overall diversity of human activity, groups of people, and individuals. Indeed, such activity may be closely linked to crime prevention, or only indirectly related to it, or it may also be very far removed from crime prevention. Crime prevention may also exist objectively, without any human activity linked to it whatsoever (e.g. in a mountainous area devoid of roads it is effectively impossible to commit traffic offences)." The author formulated the following definition: "crime prevention is construed as any and all actions which might lead, be that directly or indirectly, to inhibiting the incidence of criminality at large, of criminal offences, and the development of criminal phenomena all over the world."

Ten years later, another definition of crime prevention was proposed by Janina Czapska: "crime prevention should to be construed as all measures aimed at reducing the overall crime incidence and load, either by limiting the circumstances conducive to committing criminal offences, or by exerting an impact on a potential perpetrator, as well as on all members of a society."

In a document of 2002 promulgated by the UN Economic and Social Council, crime prevention is construed as a set of policies and measures that "seek to reduce the risk of crimes occurring, and their potential harmful effects on individuals and society, including the fear of crime."

Modern Europe is a world of people who keep migrating, moving between countries. The presence of foreign nationals (i.e. those who are not the nationals of a particular country) in each of the EU Member States is a natural phenomenon, as they are the EU citizens and the third-country nationals. Criminal offences committed by foreign nationals are also natural enough, from random offences to fully premeditated ones, from minor offences to serious crimes, from common offences to criminal

offences specific to foreign nationals in a particular country and during a specific period, committed under certain social, economic and political conditions.

In Poland, police crime statistics have taken due note of foreign nationals as suspects since 1984. The proportion of foreign nationals to suspects in total in the period spanning 1984–1988 ranged from 0.1% to 0.5%. This proportion increased throughout the 1990s, from 0.8 in 1991 to 1.8% in 1996, and then to 2.02% in 1997. A decrease in this proportion was noted – 1.6% in 1998, 1.3% in 2000, 0.67% in 2004, and 0.43% in 2012.

Foreign nationals suspected of committing criminal offences in Poland in the first decade of the 21st century come from 61 countries. 30% of them are EU citizens. The most numerous are citizens of Germany, Lithuania, Romania, Bulgaria and the Czech Republic. Foreign nationals from non-EU countries constitute 70% of all foreign national suspects, among which the most numerous come from the neighbouring countries: Ukraine, Belarus, the Russian Federation and Armenia. In short, foreign nationals suspected of committing criminal offences in Poland originate from the neighbouring countries: Ukraine, Belarus, Germany, Lithuania, and Russia.

The overall picture of criminal offences committed by foreign nationals in Poland in the first decade of the 21st century is as follows: a negligible share of foreign suspects in the human crime category, a high proportion in the specific offences category, i.e. driving while under the influence of alcohol or drugs, whereupon, in the absence of a natural person victim, the only 'aggrieved' party is public order, i.e. road traffic safety. The high share of foreign suspects in the offences against the credibility of documents means that foreign nationals who hold residence in Poland, or who enter Poland, make use of forged IDs or travel documents. The overall picture that emerges from the police crime statistics still needs to be supplemented by such rare events as terrorist crime, crime committed in organized groups, or hard to detect crimes, e.g. illegal cigarette or illicit drug manufacturing.

In line with the definitions cited above, with regard to each particular type of criminal offence committed by foreign nationals, an appropriate strategy needs to be determined. In each individual case and for each type of crime a separate listing of crime risk factors should be compiled.

Smuggling (duly registered by the Customs Service) seems one of the 'favourite' types of a criminal offence committed by foreign nationals in Poland (even though Polish nationals also perpetrate this kind of crime). Smuggling takes place both at border crossings and elsewhere, along usually rather desolate, woodland areas straddling a state border, not subject to heavy patrolling by border guard troops. Moving contraband across the border stands to bring substantial profits to all parties involved. In 96% of cases, the contraband commodity of choice are the tobacco products.

Foreign nationals are also registered in Poland as the perpetrators of business-related crimes: criminal offences aimed at obtaining material benefits at the expense of other parties involved in business activity. Judicial statistics indicate that foreign nationals are convicted for breaching the Industrial Property Act, including its provisions pertaining to trademark protection, followed by offences under the Copyright and Related

Rights Act; here, for the most part, crimes involve illicitly replicated software, music, and movies on the market. The perpetrators of these offences are mostly Bulgarian, Romanian, Ukrainian, Belarussian, Armenian, Slovakian, and Georgian citizens. In the area of business crime, organized criminal groups appear to dominate. As may be gleaned from the case records, most groups dealt with violations of the trademark protection provisions, copyright, money counterfeiting, capital fraud, including bank loan fraud, offences related to ATM cards and Internet accounts, followed by insurance fraud and the offences related to trading in liquid fuels. The groups comprised criminals from nearly 20 nationalities, mostly from Bulgaria, Lithuania, Romania, Ukraine, and Armenia, and less frequently the citizens of the UK, Vietnam, China, Moldova, and Georgia. In the period spanning 2015–2016, a brand-new type of crime was uncovered, i.e. professionally organized illicit manufacture of cigarettes in Poland.

The report on the status of national security in Poland for 2014 draws attention to the involvement of foreign nationals in criminal activities. Tax fraud committed by foreign nationals from EU countries appears to be on the rise. Foreigners register business ventures in Poland and then proceed to abuse the Polish tax system with a view to benefiting from undue VAT refunds.

Combating business crime, as referenced in the Report, requires fostering closer cooperation between various departments, authorities, and statutory bodies involved in preventing and combating crime. This approach has already spawned a government programme for the prevention and combating business crime for 2015–2020, in which the key principles of the actual action plan have been laid down.

Research on organized crime groups, including those involving foreign nationals, reveals that all groups intended to profit from criminal activities, were managed by strong leaders, with ethnicity being of much lesser importance in their operations. They are mobile, moving both across the territory of Poland and beyond its borders. Organized crime groups involving foreign nationals are multi-disciplinary; they are involved in drug-related offences, business crime, and other types of criminal pursuits. Variability in the actual type of criminal activity pursued is always dictated by the principal objective – the achievement of material gain.

Prevention and combating terrorist threats in Poland is provided for in the National Counter-Terrorism Programme for 2015–2019.

There is no single system for preventing and combating crimes committed by foreign nationals, and hence we are not going to formulate its objectives here. Prevention, i.e. the identification of risk factors for criminal offences committed by foreigners, may be pursued in relation to a particular type of crime committed at any one time (types of criminal offences vary over time). Combating or controlling the criminal behaviours of foreign nationals, to express it in modern lingo, may be pursued through obtaining adequate insight into the actual aetiology of various kinds of criminal offences committed by foreign nationals, and an appropriate penal policy.

Konrad Buczkowski

The Concept of Criminalizing Migration vs. the Provisions of the Anti-Terrorist Operations Act

The paper addresses the issues related to the concepts of criminalizing migration as encountered in the literature, and their practical application in constructing the legislation on foreign nationals, including Polish nationals, in particular consideration of the provisions of the Anti-Terrorist Operations Act of June 10, 2016.

Migration processes are inherently related to the functioning of societies. It is estimated that currently as a result of migration, ca. 120 million people live in countries other than those in which they were born. The past century was marked by a series of events that caused large waves of migration, i.e. the two world wars, but also the geopolitical changes taking place across the world after 1945, e.g. end of the colonial period, the Cold War, and the collapse of the communist system in Central and Eastern European countries. The 21st century is not free from large scale migrations. They are, inter alia, the result of the strategy of combating terrorism, especially of Islamic provenance, pursued by the United States, following the attacks of September 11, 2001. In due course, this policy spawned the processes of destruction of political systems in northern African countries and on the Arabian Peninsula, and consequently the endeavours of the citizens of those countries to make their way to the rich European countries.

As frequently referenced throughout the literature on the subject, this background of large scale migration gave rise to a conflict between the Global North, i.e. a number of highly developed and industrialised countries, with the Global South, a concept which covers a group of developing countries formerly called Third World countries. The Global North is perceived as the final destination for the residents of the Global South, who are also being portrayed as a potential threat (including that of terrorism), which should effectively be warded off. Nowadays, migration has acquired a new image, having evolved from a much desirable process into something perceived by the liberal world as synonymous with potential threat. Migrants, not only those from the Islamic countries, are portrayed as a threat, whereas regarding them as a necessary component for the development of capitalism, popular until very recently, seems to be clearly off the agenda now, if not altogether abandoned.

Such new trends in the perception of migrants are becoming even more prevalent due to the acts of terror for religious reasons committed in the countries of the Global North of which the migrants are then accused of, often unjustly so. Consequently, politically motivated concepts of combating terrorism come into being, which firmly assign both the cause and effect of such attacks to 'alien nationals.' This leads to a policy in which some groups of people shall enjoy the benefits of 'full social inclusion,' having become privileged with regard to the law in place, whereas others stand to suffer exclusion, separation, with their rights curtailed or restricted. In line with the

'membership theory' proposed by Juliet Stumpf, the positive rights arise from the social contract concluded between the government and the citizens. Those who are not part of the social contract, additionally being subjected to further actions taken by the government, are unable to claim any rights or positive rights equivalent to those enjoyed by the privileged 'members.' Therefore, the differences arise between the rights of citizens and the rights of non-citizens, the latter being much worse off in terms of their legal status than the former. Then the phenomenon of criminalization of legal provisions governing migration comes into being, defined by Stumpf as *crimmigration*, i.e. bringing together inherently different regulatory frameworks: criminal law (laid down for those who infringe the rules in force in a particular society, but at the same time functioning within that very same society), and the migration law (pertaining to non-citizens, or non-members of a particular community, whose only 'fault' consists in the fact that they just happen to have found themselves on the territory of a foreign state).

A good example of such trends in Polish law may be the provisions of the Anti--Terrorist Operations Act of June 10, 2016, and the amendments introduced into other laws in result of its adoption, including those pertaining directly to foreign nationals, as well as the regulations pertaining to the scope of statutory activities assigned to the state uniformed services. Generally speaking, this legislation differentiates between the legal status of the persons who are Polish nationals (enjoying the benefit of full legal protection), and the persons not vested with such a status, which may cause an infringement to the principle of freedom and equality before the law that stems directly from the provisions of Article 31 and Article 32 of the Polish Constitution, in conjunction with Article 37, Section 1, granting all persons under the authority of the Republic of Poland, inclusive of foreign nationals, the benefit of rights and freedoms guaranteed in the Constitution, and by other pertinent provisions of international law, as ratified by Poland.

The right of every state to ensure the security of its citizens, also against the threats of a terrorist nature, may not be put into question. In the modern world, in which a series of conflicts that have been dormant for the last decade have just got rekindled, or brand-new ones started as a result of specific actions carried out by various countries, deploying adequate measures designed to counter terrorism effectively is absolutely essential.

It should be borne in mind, though, that in the legal systems functioning in democratic countries, as much as the rights of the aggrieved parties (i.e. victims of a crime) are being upheld and protected, so are the rights of the perpetrators of such criminal acts. It should not be any different with regard to the perpetrators of terrorist acts, regardless of whether they just happen to be the citizens of the country in which they carried out a particular act of terror. A number of procedural constraints could be introduced with respect to such persons, or specifically structured modes of legal proceedings, but those should always be fully compliant with the minimum standards of human rights, as commonly recognized by the international community.

Sebastian Wojciechowski

Terrorist Threats in the Twenty-first Century: Selected Factors

Terrorism is one of the biggest problems in today's world and one that, to a greater or lesser extent, continues to evolve. This evolution is true of many aspects, including terrorist tactics and strategy as well as types of terrorist threats. The global and destructive reach of terrorism is clearly reflected in different comparative studies. For example, data gathered by the National Consortium for the Study of Terrorism and Responses to Terrorism (START) indicate that there were over 150,000 terrorist attacks around the world between 1970 and 2015. These attacks were carried out in over 100 countries, most of them, however, in Afghanistan, Iraq Nigeria, Pakistan, and Syria. In recent years, the force driving the escalation of terrorist activity was initially Al--Qaeda, followed by the Islamic State.

ISIS combines features commonly attributed to terrorist organizations, criminal groups, states, terrorist networks, and military formations. Contrary to the common view, the Islamic State is not a state as defined in international law and practice. Although it has territory, a population, and authorities, it does not have the capacity to pursue international relations and does not meet the criterion of external sovereignty. Only a state fulfilling all of these conditions can rightly be called a state. Thus, in the case of ISIS, we can only talk of certain elements of statehood and not of a state proper, as understood in international law and relations.

In 2015, the number of terrorist attacks around the globe dropped by 13% (from 13,463 in 2014 to 11,774 in 2015). A particularly sharp drop occurred in Pakistan (45%), Iraq (28%), and Nigeria (11%), whereas other countries witnessed a surge in the number of attacks. This was the case of Turkey (escalation by 353%), Bangladesh (270%), Egypt (69%) and Syria. Syria presents a particularly complex and alarming picture, with the number of terrorist attacks up by 65%, the number of people killed up by 62%, the number of those injured up by 91%, and the number of those kidnapped and held hostage up by 67%. In 2015, the number of people who lost their lives as a result of terrorism dropped by 14% (from 32,727 in 2014 to 28,328 in 2015). There was a rise in the number of people injured (2%) and kidnapped and held hostage by terrorists (29%). The latter phenomenon is particularly alarming since it indicates renewed terrorist interest in this form of activity.

The purpose of the article is to answer the following research questions: What is terrorism? How can it be defined? What are its primary causes and features? What characterizes contemporary terrorist threats? What is the scale of global terrorism today? What led to the emergence and subsequent rapid rise of the Islamic State? How can terrorism be prevented and combated effectively?

The author uses his own definition of terrorism. He defines terrorism as a variously motivated and implemented form of political and/or social violence (or threatening such violence) breaching the binding legal order, perpetrated by individuals or groups through different means and methods, leading to physical, psychological, or material

damage. This form of violence has a direct target or targets (for example individuals representing a given state) or an indirect target through which the perpetrator wants to achieve his final purpose. This definition draws attention to a couple of important and universal features of terrorism. Firstly, it demonstrates the diversity of its causes (motives), spanning a wide range of factors that drive and escalate the phenomenon. Secondly, it highlights the fact that terrorist acts violate the law, resulting in a broad range of consequences. Thirdly, it stresses that terrorism (as people often mistakenly assume) encompasses not just the actions of groups, but also those of individuals. Fourthly, it points to the multiplicity and diversity of means and methods employed by terrorists.

Religious, political, or ethnic reasons are not the sole driving forces behind terrorism, which springs from a combination of many different factors, including cultural, historical, psychological and socio-economic determinants – the latter often underestimated or overlooked. There is frequently a direct or indirect link between terrorism and poverty or other serious socio-economic problems observed in a given territory. This is reflected, inter alia, in the data published in the *Global Terrorism Index 2015*. This report indicates that in recent years, countries that have seen the steepest increase in the number of deaths due to terrorist attacks are largely poor ones, including Iraq, Nigeria, Afghanistan, Syria, and Somalia. Of course this does not mean that poverty or big social inequalities always lead to terrorism. They can, however, stoke up different extremist attitudes, including ones with ties to terrorism. This state of affairs is known as "fueling terror."

The paper highlights selected aspects of contemporary terrorism. Other important issues include the problem of terrorist financing, the consequences of terrorism, identifying real and potential perpetrators, the evolution of terrorist strategy and tactics as employed by "lone wolves," suicide bombers, and women and children used to carry out attacks, links between migration and terrorism, etc. A comprehensive discussion of these topics requires a separate and much broader study. Such a study should be prepared by an interdisciplinary team of specialists bringing together not just security, but also legal, psychology, sociology or economic experts. Such a team should include both theorists and practitioners with wide-ranging experience in analyzing, eliminating, and forecasting terrorist threats.

Maria Rychlik, Paulina Wiktorska

Penal Policy Toward Foreign Nationals Residing in Poland

The paper focuses on penal policy, or to be more accurate, on its part related to "the operation of the courts of law with a view to preventing and reducing the crime rate through the application of criminal law,"[1] though with regard to a selected group only,

[1] T. Szymanowski, *Polityka karna w Polsce współczesnej w świetle przepisów prawa i danych empirycznych (Penal policy in Poland in the light of contemporary laws and empirical data)*, in: A. Marek (ed.), *System Prawa Karnego*, t. 1. *Zagadnienia ogólne*, C.H. Beck, Warszawa 2010, p. 215.

i.e. foreign nationals who reside in Poland. In very simple terms, it addresses the policy of punishments and punitive measures pursued with respect to foreign nationals who have committed offences expressly prohibited by Polish criminal law, and were subsequently embraced by a formal system of social supervision. The studies at issue were conducted on the basis of statistical data collected by the Ministry of Justice. They comprise information on the kinds of punishment and punitive measures applied to foreign nationals for committing respective types of criminal offences, as revealed and discovered by Polish justice system throughout the country, in the period spanning 2004–2012. It appears that an 8-year period of scrutiny regarding the application of penal policy to foreign nationals allows for the identification of all attendant key trends, as well as any portents of forthcoming changes.

An appraisal of the structure of criminal offences committed by foreign nationals reveals that they fall most frequently (87% in total) within 5 key categories, i.e. 21% of convictions against the credibility of documents, 20% against public order, 18% against the safety of transportation, 15% fraud, 13% against property. Criminal offences falling within the scope of other legislative constraints that serve as the conviction basis against foreign nationals are encountered much less frequently and comprise primarily offences against: human life and health, the justice system, family and family care, sexual freedom, public security, environment, commercial endeavours, and against the Republic of Poland.

There are also criminal offences whose characteristics fall within the scope of other legal classifications than those comprised in Polish Criminal Code, usually the following ones: the Polish Fiscal Penal Code of September 10, 1999 (Journal of Laws of 1999, No. 83, Item. 930), the Promotion of Sobriety and Prevention of Alcohol Abuse Act of October 26, 1982 (Journal of Laws of 1982, No. 35, Item. 230), the Health Protection Against the Consequences of Consumption of Tobacco and Tobacco Products Act of November 9, 1995 (Journal of Laws of 1996, No 10, Item 55), and finally, the Industrial Property Act of June 30, 2000 (Journal of Laws of 2001, No. 49, Item 508).

The current policy of criminal convictions against foreign nationals does not substantially differ from the general trends in Polish penal policy. By far, most frequently the courts of law opt for a term of imprisonment with conditional suspension of its execution as a penal measure. The next option in line comprises a fine, and then comes an immediate custodial sentence, occasionally a restriction of personal liberty.[2] It is clear that the key category of criminal offences for which foreign nationals ended up in Polish prisons were offences against property. In this particular category, most offenders had been convicted in pursuance of the provisions of Article 278 § 1, Polish Penal Code (theft), Article 279 §1, Polish Penal Code (burglary with forced entry), and Article 280 §1, Polish Penal Code (aggravated theft).

The legislation in place provides for an opportunity to apply a diversity of punitive measures apart from the penalty itself, also as probation measures, or as preventive measures. The legislators clearly aimed for generally increasing the role and overall

[2] Cf. the statistics for 2012, http://bip.ms.gov.pl/pl/dzialalnosc/statystyki/statystyki-2012/.

significance of punitive measures within the penal policy, although an overall body of convictions meted out against foreign nationals over the years 2004–2012 in Poland demonstrates that the courts of law were not particularly forthcoming in this respect, rather seldom ordering punitive measures against the perpetrators, and if so, they would usually reach out for the option of ordering fines and a driving ban, or a forfeiture of property. Statistical data taking into account the lawfully convicted foreign nationals, stratified by a specific type of criminal offence, gender, and punishment meted out for the principal offence, reveal that in 2005 there was a significant reduction in the number of punitive measures ordered by the courts. In fact, compared with 2004, their number decreased fivefold, and remained approximately at the same level throughout the following four years, whereas in 2010, a penal measure was ordered only once, none in 2011, and in 2012 – twice.

The sentencing and penal measures policy pursued by the Polish courts, as addressed in the present study, was assessed not only at the level of statistical data made available by the Ministry of Justice, but also through meticulous research conducted on the court's case files pertaining to foreign nationals whose cases had lawfully been closed, randomly sampled. Both the sampling methodology applied and the number of the records brought under study makes the results of this research project fully representative. Examination of the court's case files yielded the results fully consistent with the results obtained on the basis of the statistical data obtained from the ministerial records, including in terms of the actual application of the penal policy against foreign nationals committing criminal offences in Poland, although certain exceptions were encountered with regard to the policies applied to the perpetrators of specific types of criminal offences. On the other hand, though, those seem to have much more in common with a particular type and nature of the offence itself, rather than the fact that it was committed by a foreign national.

The conclusions drawn from the statistical data under study, as supplemented by a detailed appraisal of the court records, give sufficient grounds to believe that in its essence, the penal policy applied to foreign nationals residing in Poland does not differ from that applied in Poland at large.

Magdalena Perkowska

Review of the Border Crime Prevention and Combating System

The paper aims to review the legal solutions, mainly within the statutory powers of the Border Guard (BG) services, meant to ensure an efficient system of combating and preventing border crime. Statutory powers and prerogatives vested in the Border Guard service are deemed sufficient in terms of implementing its statutory objectives. It is important that in dealing with illegal immigration BG officers have the right to carry out operational reconnaissance and a range of monitoring tasks. BG officers also regard their scope of statutory prerogatives as sufficient, which was corroborated by their

opinions voiced during the interviews. The interviewees, officers on duty on both the Polish internal section of the EU border and the external EU border section, carrying out the actual checks at the border checkpoints, as well as serving in the operational and investigative division indicated that their present powers and prerogatives are sufficient and allow them to conduct the preliminary investigative proceedings effectively, as well as collect pertinent material evidence as needed.

The author advocates establishing a special border checks regime at the Polish--Lithuanian border, pursuant to the concept of EU border protection, as implied by the provisions of Article 67, Section 3, of the Treaty on the Functioning of the European Union, envisaging that the European Union shall endeavour to ensure a high level of security through appropriate crime-prevention measures, since Lithuania's external borders appear to be insufficiently secured.

In line with the concept of abolishing internal border checks, most of the financial resources, including those originating in the aid funds designed to facilitate border security and prevent illegal migration, are allocated to the external borders. As far as the border section with Lithuania is concerned, more direct financial support should be allocated down there, with a view to facilitating the use of the latest technologies in the area of law enforcement and combating border crime beyond the border crossing itself.

Besides, the appraisal of the situation on this section of the border, due to its particular status, leads to the conclusion that it would be prudent to collect statistical data on border crime along the Polish section of the EU inner border, whilst operationally dividing its length into the sections bordering with the respective EU countries. This would effectively reveal the scale and the actual dynamics of border crime along these sections, as well as facilitate preventing it more effectively. In view of the extensive use being routinely made of numerous documents like an invitation to trade cooperation, an invitation to a cultural event, etc. in order to obtain the Schengen visas, whereas in fact the true the purpose of entering the country is purely commercial, or for outright smuggling purposes, it might be prudent to consider issuing the single-entry visas. Since the ostensible purpose of a foreign national's entry into the Schengen area, in conformity with his/her own declaration, is to attend a single cultural event or a single meeting, it is totally unjustified to grant him the permit to cross the border and stay abroad for 90 days within a half-year period. This would effectively allow to at least partially eliminate obtaining visas for other purposes than the declared ones.

The introduction of the VIS system for the citizens of Russia, Belarus, and Ukraine might well be deemed a success. The system will facilitate eliminating the practice of having one's personal data altered and applying for brand new documents and brand new visas for persons already covered by a temporary ban on entry into Poland, as provided by Article 318 of the Foreign Nationals Act. In the author's view, Poland should not yield under the barrage of complaints expressed by the visitors and continue to collect fingerprints upon the issuance of visas, and when crossing the state border. This facilitates the detection of offenders making use of the 'look-alike' method when passing through a border checkpoint and producing another person's ID. The VIS system makes an essential contribution to combating illegal migration effectively.

An important, though controversial solution used in border crime prevention with regard to foreign nationals is an order to leave the territory of the Republic of Poland, coupled with the ban on entry for a specified period of time or its lifetime counterpart. It may easily be gleaned from the court's records, particularly with regard to smuggling offences, that every now and then the very same persons are being convicted, this being equally applicable to both Polish and foreign nationals. Ordering a ban on entry into the territory of Poland, apart from the penalty itself, in the event of committing a border offence would significantly curtail this practice. Very much in the same vein, foreign nationals legally residing in Poland are frequently involved in migrant smuggling or facilitating the stay of such migrants in Poland. An order to leave Poland, especially when accompanied by a ban on entry into the Polish territory, would make an effective deterrent, both on an individual basis and in general terms.

In view of highlighting in the national legislation the role of BG service in combating illegal migration into Poland, it is essential to ensure that pertinent data are collected consistently. Illegal migration is a phenomenon which may indeed be manifested in a number of different ways. The starting point for both combating and preventing illegal migration should be an adequate appraisal of the actual status, firmly anchored in the available statistical data. It seems rather prudent, therefore, to ensure that the data on particular incidents, e.g. crossing the border in open contravention of applicable regulations, illegal employment, illegal residence, are effectively pooled together in a single database. This would reveal, at least in part (known to pertinent authorities) the overall scale of the phenomenon and assist in combating it more effectively.

Based on the analyses of both the statistical data and the specific provisions of the Border Guard Act in terms of its statutory prerogatives, the author postulates that the BG tasks be reoriented, i.e. apart from securing the state border, to embrace combating illegal immigration in various manifestations, while at the same withdrawing altogether from the obligation to investigate other offences, e.g. the smuggling of excise goods, etc., which should fall exclusively within the statutory remit of the Customs Service, given the fact that both services work very closely together anyway.

Katarzyna Laskowska, Magdalena Perkowska

Good Practices in France and Russia in Combating Border Offences and Organized Crime Involving Foreign Nationals

The paper addresses the issues of appropriateness and overall effectiveness of endeavours undertaken by selected countries (France and Russia) in the area of preventing, combating, and reducing illegal migration and criminality of foreign nationals. Analyses of the overall body of experience gained by those countries, often struggling with far more serious problems than ours, make it possible to highlight

a variety of approaches to the issues under study, along with identifying new, frequently more effective ways of resolving them.

In the section dealing with the French solutions, the author focused on those that are aimed specifically at preventing and combating illegal migration, mainly in the form of illegal residence in France. This is due to the fact that criminal offences committed by foreign nationals in France comprise primarily those related to illegal residence or illegal entry into the country. An in-depth review of the available instruments, mainly on the basis of specific regulations comprised in the Code of Entry and Residence of Foreign Nationals, in conjunction with the provisions regulating their right to claim political asylum, allowed to identify certain specific French solutions which might well be deemed good practices, with a view to having them considered for a prospective transposition into the Polish legal system, specifically into administrative and criminal law. When assessing the French regulations in terms of good practices, it appears prudent to consider their prospective transposition into Polish criminal or administrative law, especially with regard to the following areas. First of all, one would need to consider the option of imposing a lifetime ban on the entry into Poland for committing an offence related to illegal migration, but also with regard to other common offences. It is essential in terms of combating illegal migration, to have any individual conduct involving aiding or facilitating a third party's illegal border crossing, contravening the law regulating the length of residence, or illegal residence in other countries of the Schengen Area, or in other EU Member States, duly criminalized, and not on the territory of Poland only. Another key solution at hand consists in the option to impose a ban on residence in France, also issued in the form of an administrative decision by the Minister of Internal Affairs, which might also apply to those individuals who are not currently residing in France, or those who have never held such residence do date, whereas might be deemed potential threat to public order.

In the section dealing with Russia, the author aimed to address specific projects designed to combat illegal migration of foreign nationals and criminality at large (including organized crime) undertaken in that country. It was established that the Russian Federation was actively involved in combating both phenomena.

In terms of preventing and reducing illegal immigration into the Russian Federation, several specific projects have been undertaken. In particular, The Concept of State Migration Policy for 2025 was developed, which sets out the objectives, principles, tasks, key directions, and specific constraints in the implementation of state migration policy across the country. It emphasises the need for the introduction of a number of modifications of legal, organizational and social nature, aimed specifically to radically restructure a number of areas within overall state migration policy. Several amendments were made to the Russian Penal Code of 1996, pertaining to illegal border crossings, organizing illegal migration, and others, as well as to the Code of Administrative Breaches of the Law of 2001 (i.e. a series of offences in breach of border security, visa procedures, etc.). The study emphasises the low effectiveness of the measures undertaken against illegal migration in view of the high rate of corruption among government officials throughout Russia, as well as the postulated solution to the

problem consisting in introducing strict border checks and scrutiny with regard to all foreign nationals coming into Russia.

In a direct response to offences committed by foreign nationals in Russia, the Russian Criminal Code of 1996 was amended with the provisions that criminalized illegal conduct of foreign nationals. Criminal liability for setting up a criminal association/criminal organization, or participation in any of them, was also provided for (Article 210, Russian Federation Penal Code). Any such offences were duly made subject to heavy penalisation.

Based on the analyses, the authors established that the Russian Federation addresses and tries to resolve the problems under discussion very much it its own way, i.e. by applying very severe and prescriptive law that only to an extent curb illegal migration and the number of crimes committed by foreign nationals.

Barbara Namysłowska-Gabrysiak

Overview of the Conditions and Procedural Measures Deemed Necessary to Increase the Overall Effectiveness of the State Law Enforcement Bodies in Combating Human Trafficking

The study aims to address the various procedural measures whose development at different levels of national legislation, as well as at the institutional level of state law enforcement agencies, may contribute both to preventing and combating human trafficking more effectively. The overall effectiveness of prosecuting the actual perpetrators of this crime and effective protection of its victims depends primarily on adopting adequate legal instruments, and secondly, on the actual organization of work within the law enforcement bodies directly responsible for preventing and combating human trafficking, i.e. the State Prosecuting Service, the Police, and the Border Guard, whereas ensuring adequate protection of the victims also falls within the statutory remit of the judicial institutions, first and foremost, the common courts of law.

With this in mind, the study discusses several select legal instruments pertaining to the prosecution of perpetrators and the system of victims protection, in conjunction with an assessment of their effective application in everyday practice.

At the same time, the study attempts to address the proposed procedural measures deemed necessary to boost the overall effectiveness of the state law enforcement bodies in pursuing their statutory objectives with regard to human trafficking at large.

Due to the space constraints, only those measures which are currently deemed to pose by far the biggest challenges, as well as those believed to create barriers to effective combating of human trafficking are addressed. In terms of the overall efficiency of the prosecution services, the present study discusses the results of other studies focused on practical application of the legal definition of human trafficking, as per the provisions of Article 189a, § 1 of the Polish Penal Code in conjunction with the provisions of

Article 115, § 22 of the Polish Penal Code, as well as the actual *modus operandi* of the perpetrators, and also those favoured by various crime syndicates involved in human trafficking for business purposes.

As far as the standards of victims protection are concerned, the study focuses on their presentation in terms of human rights, and the active obligation of the respective countries to ensure both legally and actually effective protection for the victims of this crime, in particular the standards applied to their identification, as strongly highlighted in the literature on the subject. Furthermore, the general body of knowledge and overall awareness of all state law enforcement agencies with regard to the individual components of human trafficking is also given due prominence. Those comprise, first and foremost, violence against women, secondary victimization, gender stigma, especially in the case of sexual exploitation, the overall cultural and social context, migration, and respective socio-economic status of the victims.

Making the law enforcement agencies and the judiciary more aware of the existence of those components is essential to improving and enhancing their overall effectiveness in the pursuit of their statutory obligations, particularly with regard to ensuring that an effective system of victims protection is put in place.

Elisa Ludwig

Risk Assessment and the Safe Return and Reintegration of Trafficked Persons

Human trafficking is a complex crime and a capital perpetration against human rights and in particular women's rights. Moreover, it is a threat to inter-/national security and freedom. People affected by trafficking often want to or even have to return to their home countries – and they are entitled to a safe return. The expertise on *Risk assessment and the Safe Return and Reintegration of trafficked persons from the perspective of Polish institutions* aims to enable public officers of Poland to prevent retrafficking and/or other harms and violations of human rights, in case that trafficked persons decide to return to their countries of origin or to resettle to a third country.

For that matter, the paper starts with describing the identification process as the most important step in order to enable any further assistance concerning support-, protection-, safety- and possible legal measures; including the preferably voluntary return of a survivor. Having a clear definition of human trafficking – orientated on the Polish Penal Code – is the basic requirement in order to properly identify (presumed) victims of trafficking. As experience and empiricism show, failure in the identification procedure is the most common reason for repeated trafficking in human beings or other violations of human rights. Therefore, the indicators presented in this chapter serve as an identification-checklist for the officers concerned. The experts responsible of the formal identification then have to act upon any suspicion that may arise. As soon as this is given, a reflection period has to be granted to any presumed victim. The provision of

this reflection period represents an indispensable principle in the adequate assistance of trafficked persons and is highlighted at the end of the chapter on identification.

In the following, the paper continues with the framework of a safe return, where the measures necessary to successfully carrying out a proper risk analysis and designing security scenarios are introduced. In order to prioritize the trafficked person's rights, safety and dignity, coordinated action in conducting a safe return between state actors and NGOs, embassies and consulates have to be emphasized. After putting a spotlight on the importance of a human rights based approach in the assistance of trafficked persons, the expertise goes more specifically into the required steps to conduct a systematic risk assessment. Here, the history of the trafficked person, research on additional sources in order to compile all possible facts and the concerted shaping of security scenarios between all involved actors are pointed out.

A safe return always has to include a successful reintegration in the country of origin respectively in a third country, where the trafficked persons might need to be resettled. For this reason, the situation for survivors after the return is examined. As part of the monitoring procedure, actors have to assess the success of a safe return including the reintegration experiences of a trafficked person. The respective indicators to ensure a successful reintegration are enlisted at the end of that chapter.

Finally, the expertise discusses the specific role of Polish public authorities and deals with their prospects and challenges, before it completes with examples from the practical experiences of Anti-Trafficking NGOs. Exigencies like the cooperation with specialized NGOs as early as possible during the identification phase, the provision of legal residences, the needed interventions concerning free mobility of trafficked persons and the requirements to support departure, migration and entry processes are examined more in-depth in the penultimate chapter. Eventually, the expertise describes specific challenges Polish public authorities have to face and closes with the chapter to a Best Practice and a Worst Case Scenario from Anti-Trafficking NGOs.

Katarzyna Laskowska

The Present body of Knowledge on Organized Crime Groups in Poland with Foreign Nationals as Members

The paper offers a synthetic insight into the activities of organized crime groups in Poland with foreign nationals as their members. All the relevant data were obtained from the staff officers of the Central Bureau of Police Investigation (CBSP), i.e. directly from the operatives involved in investigating such criminal structures. The interviews were conducted in February 2015, with the three officers serving in the three departments combating: organized crime, organized drug trafficking, and organized fraud, respectively.

On the basis of those interviews, it was established that the structures of interest are formed either exclusively by foreign nationals, or by foreign nationals in

association with their Polish peers. Some groups might be characterised by specific traits, e.g. organisational tightness, or excessive brutality. Some insight was also gained into the ways of recruitment to the organized crime groups involving foreigners, i.e. diversified ways of recruitment to the structures of different specialisations (crime, drugs, fraud). In due course, the most frequently committed types of criminal offences were identified, i.e. theft, drug production and trafficking, cigarette smuggling, VAT fraud, and money laundering. The study highlights the 'attractiveness' of particular offences to respective organized crime groups. It was also possible to gain an understanding of their *modus operandi* and organizational structuring (be that complex or simple), including consideration for their own security (i.e. making expert use of the most recent advances of modern technology and personal training and vigilance). The research allowed to establish the specific ways of managing the proceeds derived from the committed offences, in due consideration of the respective nationality of their members. A certain proportion of the crime structures consumed the proceeds, others made investments and promoted business development, still others transferred the funds to their home countries. The study revealed that well-organized groups were active in Poland, whereas the highly-organized ones also ventured abroad with their operations, whilst making use of their international contacts with a view to establishing collaboration with some other internationally structured groups in order to promote business development and maximize their illicit revenues.

The interviews revealed that police investigators manage to keep very much abreast of the activities pursued by internationally structured, organized crime groups in Poland.

Irena Rzeplińska

Foreign Nationals as Perpetrators of Bribery Offences in Poland. Foreign Nationals Convicted of Bribery – Penalties and Punitive Measures

By the end of 2013, some 60,0000 citizens of EU Member States, and 121,000 third--country nationals, holders of Polish residence permits, were registered in Poland. The aggregate number of foreign nationals who currently reside in Poland amounts to 0.5% of the country's own population. Among the EU citizens, the most numerous are German, Italian, French, British, Bulgarian, and Spanish nationals. Among the non-EU nationals, the largest proportion of residents comes from Ukraine, Vietnam, Russian Federation, Belarus, China, Armenia, Turkey, India, USA, and South Korea; the Ukrainians making up by far the most populous group among them (i.e. 31% of all third-country nationals residing in Poland).

Crime rate among foreign residents in Poland as gleaned from the police statistics on foreign offenders spanning 2004–2012 makes it clear that foreign suspects constitute

ca. 1% to 0.43% in 2012 of the total number of suspects investigated. In the course of nine years, these crime dynamics (i.e. officially disclosed crime rate among foreign nationals in Poland) appeared to decline. In total, foreign nationals suspected of committing crimes in Poland come from of 61 countries, with EU citizens accounting for 1/3 of them, the remaining 2/3 originating from the third countries.

The overall picture of offences perpetrated by foreign nationals in Poland in the period spanning 2004–2012 reveals some telltale characteristics of their prevalent structure. Firstly, a negligible proportion of human crime offences, secondly, a high proportion of specific crimes, e.g. driving while under the influence of alcohol or drugs, whereupon, in the absence of a human victim, the only 'aggravated' party is the public order, and thirdly, a growing rate of foreigners suspected of having committed an offence against the credibility of documents.

In the police statistics, foreign nationals suspected of committing offences under Articles 228, 229 and 230 of the Polish Penal Code make up 3.4% of all foreign suspects. Foreign nationals suspected of committing the offence of bribery under Article 229 of the Polish Penal Code, the actual subject matter of the study addressed in the paper, are foreign nationals convicted by Polish courts of law. Ninety-six criminal cases of bribery, originating in 2008–2013, which ended in convictions for foreign perpetrators, were randomly selected for the study. The issues of interest were as follows: the profiles of convicted foreigners, accompanying circumstances, general aetiology of the bribery offences committed by foreigners, the bribe recipients, convictions actually secured in a court of law against the perpetrators, and the types of punitive measures applied.

Foreign nationals – perpetrators of bribery offences across Poland, originated from 17 countries. 81.3% of the studied population was made up of Ukrainians (41.7%), Belarussians (22.9%), Lithuanians (9.4%), and Russians (7.3%). Single cases were perpetrated by the citizens of Kazakhstan, Turkey, Sweden, Bulgaria, Romania, Latvia, China, Slovakia, Vietnam, Armenia, India, Czech Republic, and Germany. Men prevailed – ca. 10% of those convicted of bribery were women. The most numerous were perpetrators aged 32–40, while the remaining number of offenders was almost equally split amongst the following age brackets 41–50, 22–30, and 51–63 years; the oldest offenders being the least numerous.

Two occupational groups clearly predominated: drivers and construction workers. Nonetheless, the perpetrators also included police officers, doctors, nurses, an office worker, and a teacher. The recipients of financial gains, i.e. those to whom the bribes were either handed out or offered, were police officers (48.9% of cases), border guards (31.3%), and customs service officers (15.6%). Individual cases comprise handing out a bribe to an official at the Registry Office (in connection with arranging for a fictitious marriage), public transport ticket inspector, and state railway security service officers.

In the cases under study, two places for handing out bribes have been identified, i.e. border crossings (40.6% of cases) and public highways (51% of cases), where traffic police officers are offered material gain. In the vast majority of cases, it was money (amounts ranged from PLN 50.00 to over PLN 1,000.00). Every third perpetrator, a foreign national, was under the influence of alcohol when offering the bribe.

The study of foreigners convicted of bribery in the years spanning 2008–2013 identifies two situations in which acts of corruption take place. The first one, driving under the influence of alcohol. Handing out material benefits to a traffic police officer, usually money, is intended to dissuade him from imposing a substantial fine, or from instigating criminal proceedings (prosecution), and consequently from an imposition of a ban on driving motor vehicles by a court of law. The other one, handing out financial benefits to Border Guard or Customs Service officers.

When analysing the explanations provided by the perpetrators of bribery, how they tried to rationalise their attempts to corrupt public officials (the police, border guards, customs service officers), the investigators found that it all seemed to stem from a different legal culture in the societies they come from, i.e. a culture of open disregard for the law, public morality in which everything can be 'sorted out,' even if it means that the perpetrator effectively evades criminal liability. A public morality in which both parties, a public official and a citizen, conspire to circumvent the law. I am therefore inclined to brand the social background of origin of the 80% of foreign nationals convicted of bribery in Poland as 'corruption-spawning communities,' where in the relationship between a citizen and a government agency official it is perfectly natural to offer/accept a consideration for 'sorting things out.'

Foreign nationals charged with bribery, except for a single case of conditional discontinuance of the proceedings in progress, were sentenced to fines and other punitive measures. A conditionally suspended term of imprisonment prevailed, followed closely by a fine. Apart from the actual penalties, the courts also applied selected punitive measures, such as driving bans, cash considerations, forfeiture of items originating directly from the offence, forfeiture of items actually used, or intended for use in the perpetration of an offence. Immediate custodial sentence was imposed in three cases, i.e. in convictions for several offences, such as bribery, driving under the influence of alcohol, and assaulting a public official.

Monika Szulecka

Forms of Irregular Migration in Poland

The article analyses a series of in-depth expert interviews conducted in the first half of 2015 with border guards from selected units across Poland within the framework of the project *CIS – Modular Multipurpose System of Foreigner Identification with a risk of trafficking analysis module*. Special preparedness for intensified migration in Europe, and potentially also in Poland, observed already in the first half of 2015 when the fieldwork was conducted, indicates that although the analyzed material covers the period before the onset of the refugee crisis, its conclusions are universal and can be applied to a different migratory situation.

The term "irregular migration" is used throughout the text to describe different instances of non-compliance with the law at different stages of the migration process

(mainly entry, residence, and work), keeping in mind that it is an imprecise term that is increasingly replaced with expressions meant to reduce stigmatization on the one hand, and to convey the complexity of the issue on the other. The expression "irregular migration" functions in Polish law, although without a precise definition. The Border Guard, as stated in the law regulating the activities of this formation, is the primary state agency tasked with preventing and combating irregular migration.

Statistics available in Poland – which allow to estimate the supposed scale of irregular migration – show it to be a very marginal phenomenon, in fact similar to immigration to Poland, in spite of an observable climb in statistics since 2014. From the viewpoint of the relevant services, it seems alarming, however, that although irregular migration levels remain relatively low (particularly compared to other EU countries), there are many (although it is not clear on what scale) violations, associated, if not with irregular migration as such, then with processes typically described as semi-legal or quasi-legal migration.

The data available indicate that the number of foreigners staying in Poland illegally is somewhere between a couple to several thousand people. The picture is somewhat different when it comes to the estimated number of foreigners staying in Poland for very short periods of time without the required documents. It is impossible to determine how many such people enter and leave Poland every month or year, particularly due to Schengen arrangements which leave a large section of the state border without checks.

Comparing irregular migration-related threats from a dozen years ago to those encountered in Poland today, we can describe today's irregular migration as irregular migration in "velvet gloves," or semi-legal migration. On the one hand, the complexity and content of Polish migration law (in terms of what is permitted, and what is not) create potential for abuses. These abuses have, however, become more and more difficult to detect and demonstrate in proceedings before other authorities (prosecutors, courts). Unauthorized movements or organized trans-border travel often have an air of legality; many elements of the migration process comply with the law, authentic documents are used and procedures are followed, yet deeper analysis reveals that the process is essentially based on activities that violate the law (for example, obtaining the attestation of false statements under false pretenses, deliberately misleading a public official, staying within the territory of Poland for purposes other than those stated when applying for a residence or entry permit).

The results of the qualitative study carried out among experts show that irregular migration in Poland in the second decade of the twenty-first century is essentially a marginal problem, particularly when compared to the challenges faced by other EU countries, unless we also consider so-called semi-legal migration. The latter is a mass-scale phenomenon, although this mass quality is not evidenced by official figures. Two phenomena belonging to semi-legal migration, with the potential of turning into "classic" irregular migration, came to the fore in the discussion on forms of irregular migration in Poland, the possibilities of detecting them, as well as the limited means there are of preventing them. The first is unjustified recourse to refugee procedures. The second consists in abusing a procedure that experts have deemed virtually

unverifiable, namely the simplified procedure for hiring foreigners based on the employer's declaration of intent. The fact that this procedure has contributed to the growth of services linked directly to organized irregular migration was mentioned by the respondents as the most problematic aspect of the said legal instrument. The issue of abusing other procedures remained in the background, which does not however mean that these infractions are treated dismissively, however from the viewpoint of the experts interviewed, they are either too few or pose less of a problem in terms of detection and application of relevant sanctions.

Taking into account the forms of irregular migration discussed in the article, including types of violations and the limited possibilities of checking them, effective enforcement of compliance with the law on entry, residence and work seems a considerable challenge, particularly given the not always consistent regulations and their interpretation. The institution with the most experience in contacts with foreigners, namely the Border Guard, has long-standing experience in protecting state borders. Currently, the Border Guard is not only a side in various administrative and penal proceedings, but also an institution controlling the legality of stay and work in the territory of Poland. This requires that migration processes be looked at in a broader context, and not merely through the lens of individual infractions. The author attempts to bring out the said broad context and to describe and explain occurring forms of irregular migration.

Witold Klaus

Marriages Between Polish and Foreign Nationals Entered into with a View to Circumventing the Law on the Legalization of Residence

In a changing and increasingly globalized world, in which migration is on the rise, more and more frequently marriages are being entered into between people of different nationalities, and also, often enough, of different confession or ethnicity. Many scholars claim that the widespread nature of this phenomenon may, in fact, attest to a high level of integration of the migrants into the society and their resultant social acceptance. On the other hand, various studies reveal that in numerous societies mixed marriages are not generally approved of.

Marriage may be perceived very differently, depending on the actual perspective or an approach opted for when putting it under closer scrutiny. For some, its key component will consist in the relationship between two individuals forming it, others will be happy to see rather as a primary building block of a society, a kind of social nucleus, others still, first and foremost in business terms. Finally, marriage may also be looked upon as a means of controlling and oppressing women. In different domains of the law, the institution of marriage is bound to be perceived very differently. In terms of immigration law, marriage is perceived first and foremost as an instrument for the legalization of a foreign national's residence in another country. Marriage may also be

looked upon as a certain source of risk, including that to public security. The very fact of its conclusion may be considered a criminal offence, e.g. in the case of forcing someone into entering into such a relationship. A number of countries face a recognized problem of the so-called forced marriages.

In terms of immigration law, the problem consists in making an instrumental use of the institution of marriage in order to legalize one's residence in the country. This is referred to as a marriage of convenience, or paper marriage, fictitious union, sometimes also referred to as fake marriage. Under Polish law, they are subsumed under the term "marriages contracted in order to circumvent the legislation in place," i.e. presumably the Foreign Nationals Act. There are various definitions of virtual marriages to be found in the literature on the subject. They are referred to as relationships in which at least one of the partners contracts a marriage with no intention of pursuing true married life whatsoever. Other definitions highlight a purely instrumental use of the institution of marriage in order to achieve certain benefits, usually with a view to being granted a bona fide residence status, but also for the purpose of escaping from oppressive family relations or cultural pressures exerted by a social group to which they happen to belong. Relevant EU provisions recommend that the Member States introduce mechanisms for the monitoring of mixed marriages and make references to specific cases whereupon a fictitious marriage might well be suspected. Polish legal regulations have been duly adapted to them (provisions of Article 169, Foreign Nationals Act).

The number of cases in which provincial governors agreed that a marriage had been contracted in order to circumvent the legislation in place is not high. Over 10 years, only 1,178 of such cases have been identified throughout the country, which accounted for just over 2% of all decisions on legalizing a foreign national's residence in the country in connection with contracting a mixed marriage.

The paper presents the results of a representative sample of residence legalization cases, whereupon provincial governors found marriages to have been contracted under false pretences in the period spanning 2009–2013. A total of 138 of such cases were examined.

A vast majority of the surveyed marriages subsequently found to be fictitious was based on the paradigm most popular in the Polish context, i.e. a female Polish citizen marrying a foreign national (72% of cases). Most often, such marriages were contracted by Nigerian nationals, followed by Armenians, Turks, and Ukrainians. The residence in Poland of around a half of the expats might be regarded as a short-term one (as it would not last in excess of 3 years), another 25% might can be described as medium-term migrants, and the remainder, the long-term ones, since they had lived in Poland country for over 10 years. Nigerians and foreign nationals from South Asia and the Mediterranean countries did not usually spend more than three years in Poland, whereas our eastern neighbours and the Armenians tended to stay for at least 4 years, and frequently more than 10 years.

A vast majority of married couples, almost 70% of all cases, first met in Poland. In 13% of the cases, they met in another EU country – usually during a longer sojourn of female Polish citizens in that country, or, in a single case, a male Polish citizen. Most

foreign nationals marrying Polish women (69%) were over 26 and under 40. There were relatively few older ones, i.e. those over 40 years of age. The average age of female Polish citizens married by them was different, though, as the group of younger ones, i.e. up to 30 years of age, seemed to be dominant. The group of older women, i.e. over 50 years of age, also is quite prominent.

In very few cases it was possible to determine during the residence legalization procedure that the spouses had concluded a formal agreement regarding the fictitious nature of their marriage, which would also have its financial aspect: a Polish national was due to receive money in exchange for contracting marriage to a foreign national. Such an aspect was encountered in 15 cases only, and most often the information came from a Polish national who felt cheated out of the payment of the amount originally promised to him/her.

When determining the fictitious nature of a marriage, the officials were often aided by the spouses themselves – in 2/3 of the cases under investigation at the time of filing an application for the legalization of residence, they no longer lived together (although sometimes it was due to the fact that the husband still lived abroad having just applied for the right to claim residence in Poland, yet such cases were rather few, as was indicated above). Following an on-site verification whether a married couple actually lived together for the duration of the administrative proceedings, it transpired that in up to 91% of the cases they did not, including the 42 cases, when one of the spouses explicitly described the relationship as over.

Polish citizenship as a 'commodity' has steadily grown in value in view of the attendant opportunity to obtain legal residence in other EU countries and contracting employment without the need for any permits. Hence, many people are ready to go to any lengths to obtain such a highly prized document. Consequently, the phenomenon of marriages of convenience is expected to rise. On the other hand, this particular type of motivation for contracting marriage by foreign nationals is, and most likely will remain rather hard to detect, so we might just as well acknowledge this as a hard fact of life. There will always be various ways to circumvent legal regulations. While constructing the legislation aimed at preventing fictitious marriages, it should be considered how much effort and resources we are prepared to allocate to preventive measures, to what extent they are expected to be effective (since often they are not, despite the substantial expenditures incurred), and to what extent we can afford to limit the citizens' rights in this particular respect. When making incursions into someone's family life and interfering with their marital relations, this is definitely an issue of paramount importance.

Finally, it should be borne in mind that marriage is a kind of social contract, and that it has always been so. Marriage out of love is a relatively new concept, and related to a larger extent to a cultural fabric of the global North. In other cultures, marriage has often retained its historical character. One simply needs to acknowledge and accept it as a fact of life when shaping migration policy.

Dagmara Woźniakowska-Fajst

Foreign Nationals as Perpetrators of Physical Abuse and Rape in the Context of Honour Based Violence

The number of foreign nationals convicted of physical abuse in the period spanning 2004–2012 was around a dozen cases a year. The percentage of convicted foreign nationals in comparison with Poles indicted with the offence described in the provisions of Article 207 of the Polish Penal Code, was very low, i.e. 0.1%, throughout all the years studied.

In the years 2004–2012, foreign nationals in Poland were convicted of 145 physical abuse offences. The perpetrators originated from 34 countries. Most of them came from Ukraine (24%), followed by Russia (12%) and Germany (7%). In the period under study, 8 convictions were secured for Armenian nationals, and 6 for Rumanian and Turkish, respectively.

It should be noted that in the case of physical abuse, the aggrieved parties were mainly family members, spouses, and partners, but also children and the elderly, as well as the persons physically dependent on others for assistance in their activities of daily living (e.g. persons with disabilities).

The relevant statistical data may readily be augmented by the materials gathered in the course of analysing the court's records. Among the persons indicted for physical abuse, women are seldom the perpetrators, as only two were found in the cases analysed (28 offenders were male). The aggrieved parties were not their partners, though, but dependent individuals.

The most numerous groups of perpetrators found in the court files included Russians (7 offenders) and Ukrainians (5). 7 offenders were EU citizens. Single cases were represented by other nationalities (2 Armenians, 2 Azerbaijanis, 2 Tunisians, 1 Belarussian, and 1 Iraqi).

Much as in the case of other aggressive acts, numerous instances of physical abuse were related to their perpetrators' inebriation. 18 offenders (i.e. almost 2/3 of the indicted ones) were under the influence of alcohol. The main motive of domestic violence was (besides alcohol abuse which seemed to directly trigger the outbursts of violent behaviour), some sort of conflict between family members in conjunction with an inability to alleviate it or resolve by other means. In the case of persons applying for a refugee status, long-term frustration was also found to be a contributing factor.

Immediate family members of, i.e. wife, partner, children, and stepchildren aged 1–17 usually fall victim to domestic violence.

In the case files under examination, a majority of the wronged women were of Polish nationality (23), 4 were Chechens, and one was an Azeri woman. In the majority of cases, where the perpetrator came from a country where Islam is the dominant religion (the perpetrator's religious denomination was not mentioned in all the cases) and the victim was a Polish woman, it was hard to determine whether domestic

violence has cultural reasons. These cases in no way differed from those in which the perpetrators were men of European origin.

The actual percentage of foreign nationals convicted of rape in relation to the total number of convictions secured in pursuance of the provisions of Article 197 of the Polish Penal Code varies in the respective years of the period under study, ranging from 0.5% (in 2008) to over 2% (in 2012). The number of such convictions with regard to Polish nationals has been steadily decreasing, while remaining fairly stable in the case of foreign nationals (ranging from 4 to 17 per year).

In the period spanning 2004–2012, foreign nationals in Poland were convicted of 88 rapes, their perpetrators originating from 29 countries. Over nine years, usually only one or two instances of convictions for rape were related to respective nationalities. Most convictions involved Ukrainians (20%), Bulgarians (17%), and Germans (8%). Romanian citizens were convicted in five cases, while Armenians and Russians 4 times each.

A rich source of data on the perpetrators are the court records of criminal cases. In those studied, 18 perpetrators were revealed, all men. It would be rather hard to speculate, though, on any apparent regularity regarding their nationality. In that particular group, the most numerous were the Ukrainians (3). Otherwise, the group comprised single representatives of Russia (Chechen extraction), Tunisia, Morocco, Belarus, Syria, Algeria, Iran, Armenia, and the United States. Six offenders were EU citizens.

The reason for a sexual assault was primarily the drive to satisfy one's sexual desire, which in more than half of the cases was also related to alcohol abuse by the perpetrator. The statistics on the total number of rape offences committed by foreign nationals also differ in terms of the actual location where the rape was perpetrated. The majority (10) of offences described in the records studied took place in apartments and houses (as indeed it usually happens in all cases of reported rape in Poland), but open public spaces (e.g. streets, fields, woodland areas) made up an equally significant category (10 cases).

In all cases the aggrieved parties were women, all of them of Polish nationality. They were mostly young or very young women. The youngest victim (of attempted rape) was 11 years old, while the oldest was 32. As with most cases of rape, one rule seemed to prevail throughout, i.e. first and foremost the victims of rape were personally known to the perpetrator. Out of the 20 identified victims, 12 knew the rapist, and 6 of them were members of the perpetrator's family.

In terms of the analysed records, minor victims appeared relatively numerous, also in view of the fact that the two perpetrators raped several girls. In no instance of rape of very young girls was the cultural aspect ever mentioned. In none of those cases was a young girl forced into marriage, or was cultural consent granted to having a sexual intercourse with a minor.

Summing up the issue of foreign nationals as the perpetrators of physical abuse and rape, especially in the context of honour based violence, it is clear that currently such acts do not seem to have been committed mainly by the Muslims. Since

foreign nationals residing in Poland mostly come from the neighbouring countries (predominantly Ukraine), they are by far the most visible as offenders.

As far as the cases of rape are concerned, as referenced in the criminal records under study, the perpetrators' mode of operation did not differ with respect to their nationality. In the case of foreign offenders, a substantial number of rape victims were very young girls, although this was in no way related to cultures that accept and promote child marriage or forced unions. All the perpetrators originated from our own cultural background.

Agnieszka Gutkowska

Conformism and Non-conformism in a Truly Multicultural Society – Theoretical and Empirical Issues

The relationship between cultural identity and the models of social behaviour, including criminal behaviour, appears to be obvious enough. On the other hand, however, the cultural determinants of criminal offences committed by foreign nationals in Poland has not been the subject of criminological research, whereas any insights into the cultural principles guiding their conduct when staying in Poland, were gained mainly within the framework of cultural studies.

The present paper sets out to address this gap, even if only partially. It would appear that an important indicator of a proper functioning of a multicultural society, which offers a common space for the co-existence of a number of different communities, is the way those communities view the applicable law in place, criminal law in particular.

The knowledge of which specific components of the identity of respective groups of immigrants (be that ethnic or religious) happen to be discordant, or even openly contradict the system of social values, as reflected in the legal system in place in Poland, may also be construed as the answer to the question which specific types of behaviours and cultural factors that actually determine them, will have to be faced fairly soon by the statutory bodies dealing with the legal cases in which the suspects, or indicted persons (as well as the victims and eyewitnesses) are foreign nationals representing respective minorities. In practical terms, the most essential seems to be the question how respective individuals shape their behavioural response when faced with the need to live in an everyday reality of conflicting axiological systems? Which standards, in a situation where they cannot be simply reconciled, i.e. the communities from which they originate or the social majority they live in, would they deem valid in axiological terms, and therefore binding for themselves?

One of the possible directions of research in this area consists in seeking to identify the factors or circumstances that determine an individual's choice when faced with just such a conflict of standards. It is therefore essential to determine those factors that make a foreign national comply with the law in place (despite various consequences arising from breaching the standards upheld within a group), as well as those whose

coming into play would make a foreigner break the law in order to remain true to the standards within his group (despite the legal sanctions he stands to face for making such a choice). Such considerations are actually meant to seek out the answers about individual conformity and nonconformity when faced with a conflict of values in a multicultural society. The conclusions to be drawn are all the more important that the conflict of values and the underlying standards appears to be an integral part of a multicultural society.

The paper consists of two parts. The first, theoretical one, comprises reflections on the concept of multiculturalism at large, offering a presentation of selected criminology theories based on the assumption that a society is made up of various groups representing different axiological systems around which various normative systems are duly constructed, with this heterogeneity lying at the source of any deviations, and also, whilst recognizing that conflict remains very much an integral part of an axiologically multicultural society (actual multiculturalism), conflict is addressed as a phenomenon, in due consideration of the concept proposed by T. Sellin, on two levels, i.e. the external one (i.e. when the standards governing a desirable behaviour of each group, minorities and a social majority, are found conflicting), and the internal one (i.e. an individually experienced dilemma whereupon in a situation of conflict, an individual must decide which standards to abide by). The author proposes that an internal conflict be construed in a slightly modified way, i.e. as a situation where an individual is trying to determine which standard, that applicable within his own group, or the country's s/he happens to be living in, in view of: a) the fact that both groups and their values are essential to him/her (conflict of beliefs), b) the fact that s/he wants to respect both groups and their values (conflict between discrepant legal norms), c) fear of the potential consequences of breaking the standards in place in each of these groups (conflict of consequences – the risk of having to face the negative consequences, or suffer the loss of benefits of compliance).

The second part is an empirical attempt to characterize the likely behavioural paradigms of foreign nationals representing different cultural principles when faced with a conflict of values and standards applicable in both social settings, i.e. in the society they originate from, and in the Polish society into which they migrated (external conflict). It seemed of particular significance to identify the specific factors that may affect the choice made by an individual in such a conflict situation, i.e. what would make him/her choose to break the norm applicable within his/her own group (group standard), which s/he has so far complied with, or rather break the social norms in place in the country in which s/he currently resides. Here the actual attitude of the individual to the two conflicting standards, i.e. the presence or absence of internal conflict, proved to be of key importance.

Given the extent to which the values and norms instilled in people in the process of socialization may impact their behaviours and individual choices, it was assumed that as far as the principle is concerned, people in conflict situations would be true to the values in which they had been brought up, instead of the values they did not identify with, new and culturally alien to them. It is therefore all the more essential to identify

the possible factors that actually influence individual choices, so that an individual would rather breach the normative standard applicable within his own group, and abide by the standards upheld by the country s/he came to. An additional benefit of the study consisted in gaining an insight as to which specific situations within a cultural group under study might spark off an external conflict (at the level of normative standards beyond the domain of individual will). In practical terms, a sample image of cultural norms applicable within a group of foreign nationals under study was obtained, of norms that remain in conflict with the social principles in place in Poland (occasionally including legal constraints). All these data are essential as the differences in the shared values, attendant normative standards and commonly accepted models of response to an infringement of a particular norm are a potential source of individual dilemmas in foreign nationals as to which standard they should actually abide by, i.e. the group one or the one applicable within social majority. They may thus provide a certain clue as to what actually look for when dealing with the members of a particular community, with a view to increasing the likelihood of an effective dialogue, achieving the intended results in mutual relations, and in the long term, persuading them to comply with the normative standards in place in Polish society.

The research was conducted in three selected communities, i.e. Caucasian, Vietnamese and Nigerian ones, even though the present paper is based predominantly on the research results pertaining to groups about which the research surveys yielded the most information, i.e. foreign nationals originating from the Caucasus, with particular consideration of the Chechen nationality. The Chechen examples were occasionally supplemented with the statements made by Armenian and Georgian respondents.

Agnieszka Martynowicz

Uncertainty, Complexity, Anxiety – Deportation and the Prison in the Case of Polish Prisoners in Northern Ireland

In recent years, the prospect of deportation after sentence has become an almost inevitable part of foreign national prisoners' experience in the UK. Since 2006, the year of the so-called 'foreign national prisoner scandal', the development of increasingly stringent laws and deportation policies has been relentless. This included the introduction of 'automatic deportation' for certain categories of offences and lenghts of sentences; the development of a raft of early removal schemes, allowing for removal of prisoners during a sentence; the imposition of limits to legal aid in deportation cases and, most recently, an introduction of the 'deport first, appeal later' rule which limits the number of cases in which deportation can be challenged before the actual removal of the person beyond UK's borders takes place.

The perception of those prisoners as a particular 'problem' to be 'managed' rather than as individuals who need additional assistance and support, results in an over-

focus on deportation to the detriment of their treatment while in prison custody. Foreign national prisoners regularly report lack of access to services in prisons, lack of interpretation and translation, confusion about the criminal justice process, isolation and loneliness. Both during and at the end of their sentences, they often receive little to no support with their re-integration needs. Foreign national prisoners often report difficulties in access to independent immigration legal advice and are rarely provided with any assistance at the time of deportation.

This article is based on the author's doctoral research with male Polish prisoners serving their sentences in Northern Ireland. In the course of the study, seventeen prisoners were interviewed either individually or in small groups between late 2013 and early 2015. The interviews took place in Maghaberry (high security) and Magilligan (medium security) prisons. In addition to interviews with prisoners, a small number of core prison staff responsible for equality and diversity policies were also interviewed, together with representatives of prison monitoring and oversight bodies. The study also included observations of aspects of the prison regime, and in particular the quarterly Foreign National Forum in each of the prisons.

Although the main research did not specifically focus on the experiences or processes of deportation, this theme – inevitably – run through a number of research encounters. When speaking about their plans for life after release, most Polish prisoners linked those to staying in Northern Ireland; they wanted to go back to work, continue or re-establish relationships with their families and friends; settle back into the routines outside of the prison. They were, however, very mindful that their plans might come to an abrupt end if they were to be deported at the end of their sentences.

The deportation process is complex and the anxiety experienced by Polish prisoners was often heightened by the lack of understanding of immigration law and procedures. Concerns about the lack of interpretation and translation of immigration-related documents; gaps in legal advice and confusion about the actual physical process of deportation defined the prisoners' experience. Stories and advice about preparation for deportation were often exchanged in small group interviews during the research, with prisoners reflecting on previous experiences of people they knew to have been deported. The fact that much information was exchanged in that way, and on other 'social' occassions in the prison where the prisoners could meet in a group, meant that it was often contradictory and partial. The overall anxiety was made worse by the fact that prisoners had to often wait for a long time for their deportation decisions, only made aware of what they were towards the very end of their sentences, leaving them with little time to make practical preparations for removal. Adding to apprehension about the deportation process was the possibility of spending additional time in immigration custody in detention centres after their sentence has finished. Those who did not contest deportation were particularly keen to be removed directly from the prison to Poland and the potential for extended detention was a clear source of frustration.

Overall, the research showed that Polish prisoners were still provided with minimal support, including at the time when they struggled to understand and navigate the deportation system. They appeared to be left almost entirely at the mercy of the prison

and immigration systems, where information from solicitors can be scarce and where their experience is dominated by waiting – waiting for contact with lawyers; waiting for the deportation decision; waiting to be deported. While they wait, their plans for release are put on hold and their re-integration into the community is jeopardised as they are unable to prepare for their life after release while not knowing where that life will be.

Mieczysława Zdanowicz

The Principles of Legalization of Foreign Nationals' Residence in Poland – a Structural Overview

The status of foreign nationals residing in the Republic of Poland is far from uniform. Individuals seeking refuge, to whom assistance should be offered in pursuance of international obligations or nationwide legislation, make up an unique group in many respects. As of May 1, 2015, foreign nationals on the Polish territory are eligible for the following forms of statutory protection:

1) refugee status,
2) subsidiary protection,
3) political asylum, or
4) temporary protection.

Yet another privileged group of foreign nationals comprises all individuals benefiting from the freedom of movement of persons within the European Union. The rules applicable to the citizens of EU Member States who reside in Poland, as well as to members of their families, are subject to regulations originating in two legal systems, namely the national legislation and that adopted by the European Union. The EU Directive 2004/38/EC was transposed into the Polish legal system through an act of parliament of 2006. The rules of residence pertaining to EU citizens and members of their families vary, depending on the length of stay: 3 months, over 3 months, and permanent residence.

In view of the actual length of residence of an EU citizen (a third-country national) in Poland, the formal requirements regarding the legalization of stay, vary. By far the least formalized approach applies to a foreigner intending to stay in Poland up to 3 months, whereas a stay of over 3 months requires a temporary residence permit. Apart from that, there is still an option of obtaining a permanent residence permit, and a long-term EU residence permit.

Low-level cross-border traffic is a legal instrument meant to facilitate cross-border co-operation of local communities with the visa regime between the two neighbouring countries still in place. It makes crossing the border considerably easier in terms of the formalities actually entailed, while tangibly assisting in the development of cooperation between the neighbouring communities in the domain of culture, family relations, social interaction, etc.

The total number of foreign nationals residing in Poland is relatively small. The group is well diversified in terms of individual status and the actual length of stay.

Out of the group of persons clearly intending to enjoy the benefits offered by an internationally warranted protection status in Poland, a higher proportion satisfies the requirements for a subsidiary protection rather than the bona fide refugee status.

EU citizens residing in Poland constitute a varied group with respect to their actual length of stay. By far, the most numerous is the group staying for up to 3 months.

In the remaining group of foreign nationals, there are ones who have received a temporary residence permit. Much smaller is the number of persons who have received a permanent residence permit and a long-term EU residence permit.

The opportunity to engage in low-level cross-border traffic is highly appreciated by the local communities.